UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 6, 2014 at 10:00 a.m.

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

1, 4, 8

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 NOVEMBER 3, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 20, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 27, 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. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE 7-28-14 [683]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from August 25, 2014 for the movant trustee to supplement the record. On September 4, 2014, the trustee filed a supplemental declaration. Docket 707. An amended ruling from August 25 follows below.

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 court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the raised issue about whether the funds transferred by the debtor were indeed property of the debtor 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.

2. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO DISMISS
14-2119 SJL-1 — 5-29-14 [7]
MCGRANAHAN V. WESTERN STATES ASBESTOS WORKERS' TRUST FUNDS

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

3. 12-28413-A-7 F. RODGERS CORPORATION — STATUS CONFERENCE
14-2119 — 4-29-14 [1]
MCGRANAHAN V. WESTERN STATES
ASBESTOS WORKERS' TRUST FUNDS

Tentative Ruling: None.

4. 13-33618-A-7 CAROLE BAIRD — MOTION TO ASSIGN THE DEBTOR'S RIGHT TO PAYMENT
DNL-11 — 8-25-14 [158]

Tentative Ruling: The motion will be granted.

The trustee is asking the court to "assign the Debtor's right to payment on account of her claim of exemption against the [Cuatro Buenos Amigos] Partnership to the Trustee in the amount of $26,521.00," pursuant to Cal. Civ. Proc. Code § 708.510(a), which provides that:

"Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments: (1) Wages due from the federal government that are not subject to withholding under an earnings withholding order. (2) Rents. (3) Commissions. (4) Royalties. (5) Payments due from a patent or copyright. (6) Insurance policy loan value."

Cal. Civ. Proc. Code § 708.510(a) provides the court with authority only to "order the judgment debtor to assign to the judgment creditor . . . a right to payment." While on its face the statute provides the court only with authority to order the judgment debtor to assign his interest in a right to payment, the statute has been interpreted to give courts authority to assign the judgment debtor's interest in the right to payment, to the judgment creditor. See, e.g., Weingarten Realty Investors v. Chiang, 212 Cal. App. 4th 163, 166-67 (2012).

On July 17, 2014, the court entered an order awarding $26,521 in damages against the debtor in favor of the trustee. Docket 143. In Schedule C, the debtor claimed an exemption in the partnership in the amount of $26,773. Docket 17.

As the trustee is a judgment creditor of the debtor in this case, the court will order the assignment to the trustee of the debtor's right to payment of $26,521 payable by the partnership to the debtor. Weingarten at 167 (noting the limitation of the assignment to the debtor's interest in the right to payment, rather than the right to payment itself). This is an assignment of a right to payment, not an assignment of the debtor's interest in a partnership.

5. 14-20431-A-7 JENNIFER MILLS — MOTION TO SELL
DNL-4 — 8-20-14 [33]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell, as is and where is, for $60,000 the estate's interest in the following assets to the debtor:

- real property in Sacramento, California (4820 I Street), subject to any liens or encumbrances,

- a 2005 BMW 645 CI vehicle,

- a real estate commission received by the debtor post-petition in the gross amount of $46,267.19, and

- $3,750 in gross income earned by the debtor pre-petition, between January 1, 2014 and January 15, 2014, but received post-petition.

The real property has a scheduled value of $625,000, but the trustee believes that the value of the property is approximately $795,000. The encumbrances on the property total $661,766, with a single mortgage against the property totaling $655,530 and outstanding property taxes in the approximate amount of $6,236. Although the debtor's Schedule C lists an exemption claim of $0.00 against the property, the debtor apparently is planning to amend her exemption to $75,000, which would leave no nonexempt equity in the property, even if it is sold for $795,000.

The debtor's BMW vehicle has a scheduled value of $21,000 and, even though it is fully exempt in Schedule C, the debtor has apparently proposed to lower the exemption in the vehicle to $2,900.

Although in Schedule C the debtor exempted only $5,753.76 in the real estate commission, she has apparently proposed to exempt the commission in full in an amended exemption.

The debtor has claimed an exemption of $1,687.50 in the $3,750 of pre-petition earnings.

While the trustee believes that the debtor's exemptions in the commission and the earnings may be successfully objected to, assuming the debtor amends the exemptions as she has proposed, the trustee has agreed to accept the debtor's offer to purchase the above assets for $60,000, after taking into account the potential objections to the proposed exemption claims.

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 and it will avoid administrative costs of the estate having to sell the above assets otherwise. For instance, if the trustee were to market and sell the property via a real estate broker, he would have to pay a real estate commission. Hence, 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.

6. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 8-29-14 [29]
THE BANK OF NEW YORK MELLON VS.

Tentative Ruling: The motion will be denied in part without prejudice and dismissed as moot in part.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Santa Rosa, California. The movant claims that the property has a value of $170,000, according to Schedule A, and it is encumbered by the movant's single mortgage of approximately $206,988. Docket 33 ¶ 6.

The trustee opposes the motion, desiring to sell the property as he believes that it has a value of approximately $270,000.

Given the entry of the debtor's discharge on August 7, 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 court has no evidence of value for the property as to the estate. The only evidence of value from the movant is the scheduled value of the property, as asserted by the debtor. The proffered value then is not admissible as to the trustee. It is hearsay as to the trustee. Fed. R. Evid. 802. The movant has not carried its burden of persuasion as to the value of the property. Thus, the court cannot determine whether and to what extent the movant's interest in the property is protected. Accordingly, the motion will be denied as to the trustee. The court finds it unnecessary to address the remaining objections to the motion.

7. 14-29161-A-7 RICHARD/HWA STOWERS — MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 9-26-14 [17]
TF-1
2ASJ COMPANY, L.L.C. VS.

Tentative Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. While documents are attached as exhibits, those exhibits have not been authenticated. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

8. 14-21867-A-7 DEREK/LAURA FITZGERALD — MOTION TO ABANDON 9-15-14 [16]
TAA-1

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee wishes to abandon the estate's interest in real property in Placerville, California.

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

The property has a scheduled value of $215,760, whereas its encumbrances total approximately $154,159 and the property is subject to an exemption for

$61,600.52, claimed under Cal. Civ. Proc. Code § 704.730. The trustee has estimated the property to have a value of between $261,000 and $297,000. Given this and given the full potential of the debtor's exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

9. 14-29268-A-7 GEORGINA DEL TORO — ORDER TO SHOW CAUSE 9-18-14 [12]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay the petition filing fee and was denied a waiver of the filing fee. Docket 7. The failure to pay the filing fee is cause for dismissal.

10. 13-32288-A-7 RANDALL ACKERMAN — MOTION TO SELL 9-4-14 [41]
THA-2

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $30,300 the estate's 11.11% membership interest in Halvorson Oil Properties, L.L.C., a North Dakota limited liability company, to the debtor. The interest has a scheduled value of $20,000 and the debtor has received post-petition $10,000 in royalty distributions. The trustee also asks for a good faith finding 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. Hence, 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 also make a good faith finding under 11 U.S.C. § 363(m).

FINAL RULINGS BEGIN HERE

11. 14-27109-A-7 JAIME/ARACELI VITAL — ORDER TO SHOW CAUSE 9-8-14 [26]

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

This order to show cause was issued because the debtor filed an Amended Schedule F on August 21, 2014, but did not pay the $30 filing fee. However, the debtor paid the fee on September 22, 2014. No prejudice has resulted from the delay.

12. 14-27010-A-7 NASSER SUBLABAN — MOTION TO COMPEL ABANDONMENT 9-6-14 [11]
DMA-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the 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 debtor requests an order compelling the trustee to abandon the estate's equity interest in the debtor's corporation SoundQuest, Inc., which owns store fixtures, inventory, and other business assets.

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

According to the motion, the value of SoundQuest, Inc. is $0.00 because its liabilities exceed its assets. The assets have a value of $34,542, whereas the liabilities total $107,157, $18,200 of which are long term liabilities. Also, the debtor has claimed a $13,000 exemption in SoundQuest, Inc. Given the value of SoundQuest, Inc. and the exemption claim, the court concludes that the equity interest in SoundQuest, Inc. is of inconsequential value to the estate. The motion will be granted.

13. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-11-14 [711]
AMS-1
CASTLE PRINCIPLES, L.L.C. VS.

Final Ruling: The movant has provided only 25 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule

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

14. 13-23813-A-7 DALE/MARYANN ANDERSON — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-5 — 9-5-14 [54]

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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,107.68 in fees (reduced from $8,905) and $129.32 in expenses, for a total of $3,237.50. This motion covers the period from October 10, 2013 through September 2, 2014. The court approved the movant's employment as the trustee's attorney on October 24, 2013. In performing its services, the movant charged hourly rates of $150, $175, $225, $275, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) evaluating the estate's interest in real property and four vehicles, (2) negotiating and preparing a stipulation for extension of the deadline for exemption objections, (3) preparing and prosecuting a motion to sell the vehicles, (4) advising the trustee about the general administration of the estate, and (5) preparing and filing employment and compensation motions.

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

15. 13-35223-A-7 GERARDO ROBLES AND RUBY SALCEDO — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 8-29-14 [25]
THE BANK OF NEW YORK MELLON 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 in part.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Stockton, California.

Given the entry of the debtor's discharge on March 14, 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 $108,329 and it is encumbered by claims totaling approximately $288,061. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

16.	12-36347-A-7 PA-14	ARNOLD THREETS AND TESSA BANUELOS-THREETS	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-8-14 [207]

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.

Pino & Associates and Wilcoxen Callaham, L.L.P., special counsel for the estate, has filed a first interim motion for approval of compensation. The requested compensation consists of $22,500 in fees, to be shared equally among the two firms, and $1,376.60 in expenses ($1,280 to P&A and $96.60 to WC), for a total of $23,876.60. The compensation relates to services provided in discrimination litigation brought by the debtor against the City of Richmond. The movants' employment as special counsel for the estate was approved on April 25, 2013. The services were provided between February 14, 2013 until approximately December 6, 2013, when the settlement with the City of Richmond was approved by the court. The requested compensation is based on a 45% contingency fee basis.

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 movants' services consisted, without limitation, of: attending various court hearings in the district court litigation; preparing for and attending a lengthy mediation in San Francisco, California; preparing and prosecuting a motion to abandon an appeal from a state court judgment against the debtors; participating in continued settlement negotiations; preparing a settlement agreement; preparing and prosecuting a motion to approve the settlement; preparing and prosecuting employment and compensation motions.

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

17. 13-20361-A-7 ANTIONETTE ROSSETTA — MOTION TO COMPEL ABANDONMENT
ULC-2 — 9-4-14 [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 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 debtor wishes to compel abandonment of the estate's interest in a pending predatory lending litigation against her mortgage holder, Citimortgage, Inc. The causes of action include intentional misrepresentation, negligent misrepresentation, breach of contract, promissory estoppel, negligence, intentional infliction of emotional distress, conversion, unfair business

practices, and civil conspiracy claims, seeking money damages and declaratory relief.

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 debtor has exempted $24,371.92 in the lawsuit and its value has been scheduled as "unknown". Docket 30. Prosecution of the lawsuit will require the estate to retain an attorney and recover a monetary award beyond the debtor's exemption claim. However, at least some of the value of the lawsuit is anticipated to come in the form of a non-monetary award, including anticipated mortgage restructuring. More, the trustee does not oppose abandonment of the lawsuit. Given the foregoing, the court concludes that the lawsuit is of inconsequential value or burdensome to the estate. The motion will be granted.

18. 14-25962-A-7 KAREN CONYERS — MOTION TO REDEEM
SDB-1 — 8-25-14 [16]

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

The debtor served the motion on General Motors Financial Company, Inc., without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

In the event the debtor resets the motion for hearing, she should note that the evidence of value for the vehicle in the motion is inadmissible hearsay. See Fed. R. Evid. 802; Docket 18 ¶ 4.

19. 11-41264-A-7 JONATHAN ENGLAND — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 8-26-14 [22]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., Inc., seeks relief from the automatic

stay with respect to a 2003 Aljo 365 travel trailer 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 August 31, 2011 and a meeting of creditors was first convened on September 27, 2011. Therefore, a statement of intention that refers to the movant's property and debt was due no later than September 30, 2011. 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 has not done 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 October 27, 2011, 30 days after the initial meeting of creditors.

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

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

Therefore, without this motion being filed, the automatic stay terminated on October 27, 2011.

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.

20. 13-35374-A-7 JAMES/YVONNE BOYD — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 8-25-14 [30]
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 in part and dismissed as moot in part.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Tracy, California.

Given the entry of the debtor's discharge on March 24, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The trustee has filed a non-opposition. This is cause for the granting of relief from stay.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

The property has a value of $340,000 and it is encumbered by claims totaling approximately $285,808. The movant's deed is the only encumbrance against the property.

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

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no

later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

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

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

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

21. 14-27675-A-7 MICHELL MORENO — MOTION TO COMPEL ABANDONMENT
RWF-1 — 9-2-14 [14]

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 debtor requests an order compelling the trustee to abandon the estate's interest in her day care business, Michelle's Daycare, and in her 2001 Ford Expedition.

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 business assets consists primarily of toys and have a value of $200. The

vehicle has a scheduled value of $2,040. Docket 1, Schedule B. All assets have been claimed fully exempt in Schedule C. Given the exemption claims, the court concludes that the business and vehicle are of inconsequential value to the estate. The motion will be granted.

22. 14-26088-A-7 PATRICK THORNTON — MOTION TO AVOID JUDICIAL LIEN
JKU-1
VS. CAPITAL ONE BANK (USA), N.A. — 9-3-14 [18]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the creditor. Docket 24. It was not addressed to anyone.

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