UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 5, 2016 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 this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

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 DECEMBER 12, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 28, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 5, 2016. 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. 16-25804-A-7 PHILIP/MARTHA BEARGEON — MOTION TO COMPEL ABANDONMENT
SNM-1 — 9-1-16 [5]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 7, in order for the deadline to object to exemptions to expire. No objections were filed prior to the deadline.

The debtors request an order compelling the trustee to abandon the estate's interest in their P & M Auto Repair business.

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

According to the motion, the business assets include an auto repair license (with a value of $1.00), City of Suisun business license (with a value of $1.00), three automotive hoists (with a value of $300 each), computer scanning equipment (with a value of $1,500), tire changing machine (with a value of $500), tire balancing machine (with a value of $400), compressor (with a value of $750), hand tools (with a value of $500), hydraulic press (with a value of $75), sandblaster (with a value of $50), engine hoist (with a value of $50), transmission jack (with a value of $25), two hand jacks (with a value of $25 each), drill press (with a value of $25), oil tank (with a value of $50), welder (with a value of $50), rototiller (with a value of $10), table saw (with a value of $15), desk (with a value of $50), cabinet (with a value of $25), two computers (with a value of $100 each), and refrigerator (with a value of $50).

The assets have been claimed fully exempt in Schedule C. Docket 1. 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.

2. 14-31211-A-7 ALICE CARLSON — MOTION TO AVOID JUDICIAL LIEN
MOH-2
VS. CITIBANK (SOUTH DAKOTA), N.A. — 11-21-16 [38]

Tentative Ruling: The motion will be denied in accordance with the November 21, 2016 ruling the court issued in connection with the debtor's prior motion to avoid this lien (DCN MOH-1). Docket 35. That ruling is incorporated here by reference. Once again, "the debtor claimed an exemption in the amount of $143,929 in Schedule C, pursuant to Cal. Civ. Proc. Code § 704.710[,] [but] Cal. Civ. Proc. Code § 704.710 is not a statute permitting any exemptions under California law." Id. The debtor's exemption in the property has not been amended.

3. 15-21845-A-7 JOSEPH BARNES — MOTION TO RECONVERT CASE OR TO REVOKE DISCHARGE OF DEBTOR
SS-6 — 10-31-16 [119]

Tentative Ruling: The motion will be denied.

The debtor requests conversion from chapter 7 to chapter 13. This case was filed as a chapter 13 proceeding on March 9, 2015. The court converted the case to chapter 7 on June 6, 2016. Docket 94. Now, the debtor is seeking to convert the case back to chapter 13. The debtor is also seeking revocation of his chapter 7 discharge, entered on September 22, 2016, pursuant to Fed. R. Civ. P. 60(b)(1) and (6), as made applicable here by Fed. R. Bankr. P. 9024.

Under Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The motion will be denied.

First, the motion says nothing about the debtor's chapter 13 debt eligibility. Nor is there evidence with the motion about the debtor's chapter 13 debt eligibility.

Just because the debtor was in a chapter 13 proceeding prior to converting to chapter 7, does not mean that he had necessarily met the chapter 13 debt eligibility requirements unless that issue was actually litigated. There is no evidence of such.

Second, the motion says nothing about the debtor's availability of regular or disposal income to fund a chapter 13 plan. Neither the motion, nor the supporting declaration indicates the debtor's regular or disposable income.

More, the court converted the original chapter 13 proceeding to chapter 7 because "the debtor has failed to pay to the trustee approximately $4,418 as required by the proposed plan" and "the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's post petition taxes and wages/income." Docket 93.

And, the debtor has admitted that he was released from jail only on August 6, 2016. Docket 122.

As such, the court is not convinced of the debtor's good faith in seeking conversion back to chapter 13 and availability of regular income to fund a chapter 13 plan.

Third, the court will deny the request for chapter 7 discharge revocation.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been

discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The court is unconvinced that the request for discharge revocation is timely. The debtor was released from jail on August 6, 2016 and the chapter 7 discharge was not entered until September 22, 2016, whereas this motion was not filed until October 31.

Also, the motion contains no facts to establish relief under Rule 60(b)(1) or (6). There are no facts to establish mistake, inadvertence, surprise, or excusable neglect in the entry of the discharge or the debtor's failure to file a motion to delay the discharge or seek conversion to chapter 13 prior to entry of the discharge. The above time line demonstrates that the debtor had 47 days after having been released from jail to take action to avert entry of the discharge.

And, the debtor has had even more time to prevent entry of the discharge, prior to his release from jail, as he has been represented by counsel in this proceeding, continuously. The attorney who filed this motion is the attorney who filed the original petition on March 9, 2015. The debtor did not have to be released from jail in order for his counsel to file a motion on his behalf to delay entry of the discharge. The court finds no other reason that justifies relief from entry of the discharge.

4. 16-24261-A-7 C.C. MYERS, INC. MOTION TO APPROVE COMPROMISE
DNL-11 11-7-16 [270]

Tentative Ruling: The motion will be granted in part and denied in part.

The trustee requests approval of a settlement agreement between the estate and Liberty Mutual Insurance Company and Safeco Insurance Company of America (collectively, Liberty) resolving the estate's interest in property serving as collateral for Liberty's $26 million claim against the estate.

Creditor Bay Cities Paving & Grading opposes the motion, to the extent it seeks to adjudicate the validity, priority, or extent of Liberty's claim as to third parties.

Under the terms of the compromise:

- the estate will sell three properties in Rancho Cordova, California and vacant lot of land in Bakersfield, California before March 31, 2017, at a price

to be agreed by the parties; the estate will retain 5% of the net sales proceeds; if the properties are not sold prior to March 31, 2017 and the parties have not agreed to their further marketing, the properties will be abandoned by the estate (the court assumes that the estate will have to file a separate motion to abandon);

- the estate will receive 5% of the net proceeds from the post-petition sale of steel, above a baseline scrap value of $0.0323 a pound;

- the estate will retain the undisbursed balance of funds in the U.S. Bank account, from which the trustee uses cash collateral as approved by the court (approximately $287,000 – Docket 272 at 4);

- the estate will retain the funds in the Enterprise Truck Sales Escrow Account ($174,453.25 – Docket 270 at 5 or $123,216 – Docket 272 at 4);

- Liberty will bear the cost of providing the estate with 30 hours of operator time for the use of the debtor's ViewPoint records system, to be used for the estate's benefit, specifically excluding attempts of third parties to bypass discovery in other pending litigation;

- the estate shall disburse to Liberty $5,546.05 in proceeds from pre-petition sales of Liberty's collateral, $78,286.38 in proceeds received post-petition from miscellaneous sources, and any future receipts that are collateral for Liberty's claim;

- the parties agree to the allowance of Liberty's proof of claim against the estate;

- the parties agree to the entry of a court order "affirming the validity of Liberty's security interest in all assets of the Debtor;"

- the parties agree to the entry of a court order "approving the disbursements and abandonments of estate property listed in the Settlement, and the abandonment of all other property of the estate not previously administered," including, without limitation, any rights of the estate to "[deposit] funds held as collateral by Arch Insurance" and "any suits or claims relating to the deposit;"

- the parties agree to the entry of a court order "granting of stay relief to Liberty to exercise any and all rights as secured creditor with respect to its collateral;"

- Liberty will waive any and all unsecured claims against the estate;

- Liberty must do what is necessary to preserve records of the debtor that are being abandoned by the estate; and

- the parties agree to execute mutual releases, including among others waiver of estate surcharge claims against Liberty's collateral and waiver of Cal. Civ. Code § 1542 claims.

The trustee anticipates that the benefit from the settlement to the estate will exceed $500,000, which is more than the trustee would recover—assuming she is successful—on any surcharge claims.

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).

With one exception, the court concludes that the Woodson factors balance in favor of approving the compromise. That is, given Liberty's overwhelming $26 million claim, given the broad collateral base for the claim, given the unlikelihood of the estate recovering more on the surcharge claims than what it is generating for the creditors in the settlement, given Liberty's waiver of any unsecured claims against the estate, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

The exception to the court's approval is the entry of an order "affirming the validity of Liberty's security interest in all assets of the Debtor." While the court may approve abandonment and stay relief stipulations on a motion with a notice and a hearing, the court cannot determine the validity, priority, or extent of anyone's interest in property outside of an adversary proceeding. Fed. R. Bankr. P. 7001(2); see also Fed. R. Bankr. P. 4001(d) and 6007(a) & Local Bankruptcy Rule 9014-1(f)(1)-(3). This is not an adversary proceeding and the court is not prepared to enter an order adjudicating Liberty's interest in any property.

Therefore, with this exception, the court concludes the compromise is 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. The motion will be granted in part and denied in part.

5. 16-24261-A-7 C.C. MYERS, INC. — MOTION TO SELL
DNL-12 — 11-7-16 [277]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $122,500 the estate's interest free and clear of Liberty Mutual's approximately $25 million secured claim in a real property (10 acres of vacant land) in Bakersfield, California to BAPCO, L.L.C. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of a 12% break-up fee for the buyer. According to the motion, other than Liberty's claim, there are no encumbrances against the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money

satisfaction of the lien.

The sale will generate some proceeds for distribution to creditors of the estate. Liberty has agreed to a carve-out of 5% for the estate, from the net sales proceeds. The sale will be approved pursuant to 11 U.S.C. § 363(b) and § 363(f)(2), as it is in the best interests of the creditors and the estate. Liberty consents to the sale. The court will waive the 14-day period of Rule 6004(h) and will approve payment of the 12% break-up fee, given that the estate is not paying a real estate commission.

6. 16-24261-A-7 C.C. MYERS, INC. MOTION TO ABANDON
DNL-9 10-10-16 [224]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 7 to November 21 because creditor Construction Laborers Trust Funds for Southern California Administrative Company was unable to attend the November 7 hearing. The court again continued the hearing on the motion to December 5 pursuant to a request of the trustee.

The trustee seeks an order abandoning the estate's interest in all the debtor's paper and electronic records, which are currently in the possession of principal secured creditor Liberty Mutual Insurance Company. LMIC claims security interest in the records. In the alternative, the trustee asks for authority to dispose of the records.

Construction Laborers opposes the motion, contending that it was filed in bad faith because the trustee sought use of cash collateral also to pay for the preservation and management of the debtor's records. Construction Laborers argues that, under Midlantic Nat. Bank v. New Jersey Dep't of Envtl. Prot., 474 U.S. 494 (1986), the court cannot order abandonment until the trustee has produced the records to Construction Laborers, for the liquidation of its claim against the estate.

Creditor Ghilotti Bros., Inc. has filed a conditional objection to the sought abandonment, seeking more information about the records from the trustee and seeking assurances from the trustee and LMIC about the post-abandonment preservation and maintenance of the records. GBI demands:

- an inventory of the records,
- the location and custodian of the records,
- certification of no post-petition alternation or spoliation of the records,
- certification that abandonment will not cause "material alternation or spoliation,"
- certification that LMIC will maintain the records at its cost, without "material alternation or spoliation," and
- LMIC to certify that it will provide full and complete access to the records in response to discovery requests.

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 court rejects both oppositions. There are no conditions to the abandonment of property, other than what is specified in section 554(a), namely that the

property is burdensome or of inconsequential value or benefit to the estate.

The Midlantic case is inapplicable. It is disingenuous to seek the application of that case here, as it applies only to abandonment of property that would endanger the "public's health and safety." Midlantic at 507. The decision's holding is quite narrow:

"[W]ithout reaching the question whether certain state laws imposing conditions on abandonment may be so onerous as to interfere with the bankruptcy adjudication itself, we hold that a trustee may not abandon property in contravention of a state statute or regulation that is *reasonably designed to protect the public health or safety from identified hazards*."

Midlantic at 507 (emphasis added).

Midlantic dealt with environmental health and safety hazards — the debtor had accepted and stored over 70,000 gallons of toxic, PCB-contaminated oil in deteriorating and leaking containers. Midlantic at 497. Environmental health and safety hazards are not a concern here.

Construction Laborers points to no statutes "reasonably designed to protect the public health or safety from identified hazards" applicable here. No health or safety hazards have been identified. Construction Laborers seeks access to the records only to liquidate its claims against the estate and to make claims on the payment of bonds issued by LMIC. Docket 265 at 3. It is free to do so, with the appropriate court orders, to do so whether the records are in the trustee's or the debtor's possession.

The court will not force the estate to incur costs just to accommodate third party litigation without any benefit or consequential value to the estate.

And, the trustee's request for permission to pay for the preservation and maintenance of the records is only that, a permission. It is within the trustee's business judgment to obtain such a permission from the court and then decide against exercising it. The trustee has never represented or bound herself that she would be using the requested cash collateral to preserve and maintain the records.

The court will not question the trustee's business judgment. It finds no deception or bad faith in her seeking the cash collateral use for the records, while contemporaneously filing a motion to abandon the records. The abandonment motion was not to be heard for nearly another month after the trustee obtained permission to use cash collateral to preserve and maintain the records. The trustee obtained the permission on October 11, whereas the original hearing on the abandonment motion was not until November 7. Dockets 225, 228, 276. This gave the trustee nearly a month to rethink her judgment on the abandonment of the records.

Further, both oppositions are misguided in assuming the court would be abandoning the records to LMIC. Abandonment is to the debtor. See 11 U.S.C. § 554(c). If a party other than the debtor has control or possession of the records, it is up to the debtor to recover its records. There is nothing requiring the estate to turn over the records to the debtor, when the estate has no control or possession of the records. The trustee has stated that the records — or some of the records — are in the possession of LMIC.

The court will not impose any conditions on the abandonment of the records.

Section 554(a) does not impose any conditions on the trustee, absent his judgment that the property is burdensome or of inconsequential value to the estate. And, nothing requires the trustee to recover, examine and account for every document in the debtor's records, prior to determining that the records are burdensome or of inconsequential value to the estate. See, e.g., 11 U.S.C. § 704(a)(1) & (2).

The trustee has demonstrated that the records are burdensome or of inconsequential value to the estate. Docket 226. The records are not required for the trustee to administer the estate and they are of no monetary or otherwise beneficial value to the estate. The estate does not have the resources to preserve and maintain the debtor's records. The trustee is also concerned about the risk of spoilation and consequent potential liability, if she accesses the records, given that the records are likely to be used in future litigation involving LMIC, other creditors, and the debtor's officers and directors. The trustee represents in this motion that she has not accessed the records and does not think this to be in the best interest of the estate. Docket 226; Contra Docket 302, Trustee Decl. dated November 23, 2016.

This is sufficient to order the records' abandonment.

By granting this motion, the court makes no determination as to the propriety of LMIC having or retaining any possession or control of any of the debtor's records.

7. 16-21599-A-7 CHRISTOPHER/GLEE WOODYARD — MOTION TO RECONVERT CASE 11-4-16 [109]
SS-2

Tentative Ruling: The motion will be denied without prejudice.

The debtors request conversion from chapter 7 to chapter 13. This case was filed as a chapter 13 proceeding on March 15, 2016. The debtors converted the case to chapter 7 on August 11. Docket 71. Now, they are seeking to convert the case back to chapter 13.

Under Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The motion will be denied.

Initially, the motion says nothing about the debtors' chapter 13 debt eligibility. Nor is there evidence with the motion about the debtors' chapter 13 debt eligibility.

Just because the debtors were in a chapter 13 proceeding prior to converting to chapter 7, does not mean that they had necessarily met the chapter 13 debt eligibility requirements.

And, the motion says nothing about the debtors' availability of regular or disposal income to fund a chapter 13 plan, except that "[w]e will be able to afford the Plan payments, as is evidenced by the accompanying Current Budget." Docket 111 at 2.

Neither the motion, nor the supporting declaration states what is the debtors' regular or disposable income, while the figures in the debtors' "Current Budget" are inadmissible hearsay. Fed. R. Evid. 802. The figures are unsupported by a declaration.

FINAL RULINGS BEGIN HERE

8. 16-25804-A-7 PHILIP/MARTHA BEARGEON — MOTION FOR RELIEF FROM AUTOMATIC STAY
ETL-1 — 10-25-16 [18]
NATIONSTAR MORTGAGE, LLC 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 be dismissing the motion as moot, 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, Nationstar Mortgage, L.L.C., seeks relief from the automatic stay as to a real property in San Antonio, Texas.

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 November 11, 2015, the subject debtors filed a chapter 13 case (case no. 15-28768). But, the court dismissed that case on March 12, 2016 pursuant to a request by the debtors. The debtors filed the instant case on August 31, 2016. The chapter 13 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 property on September 30, 2016, 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 September 30, 2016, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

9. 16-23709-A-7 DINA NORTHCUTT
DNL-5

MOTION TO
APPROVE COMPROMISE
11-7-16 [35]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the 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 the debtor, resolving the estate's interest in a pending personal injury litigation, which the debtor has valued at $250,000 and has claimed as fully exempt under Cal. Civ. Proc. Code § 704.140 (exempting proceeds to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor).

Under the terms of the compromise, any recovered proceeds from the litigation will be applied to pay:

- first, allowed medical and other liens, as negotiated by counsel;
- second, the attorney's fees and costs of the parties' counsel;
- third, $23,000 to the estate; and
- fourth, the balance to the debtor.

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 debtor's assertion of necessity for support, given the debtor's health issues and advanced age, given her lack of present and retirement savings or investments, given her loss of employment, 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.

10. 13-35110-A-7 MARIO/BRISA LIMA
SSA-4

MOTION TO APPROVE COMPENSATION OF BROKER
11-4-16 [50]

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, on behalf of Bob Brazeal, has filed Mr. Brazeal's first and final motion for approval of compensation. The requested compensation consists of $357.50 in fees and $0.00 in expenses. The court approved the movant's employment as the trustee's real estate broker on October 20, 2015. The requested compensation is based on a $110 hourly rate for advisory services.

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, researching public records pertaining to a real property of the estate, inspecting the property, and updating comparable sales for the property.

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

11. 13-35110-A-7 MARIO/BRISA LIMA
SSA-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
11-4-16 [56]

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 Law Office of Steven Altman, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $6,810 in fees and $137.24 in expenses, for a total of $6,947.24.

This motion covers the period from August 24, 2015 through the present. The court approved the movant's employment as the trustee's attorney on September 9, 2015. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing schedules and other petition documents, (2) analyzing administration issues pertaining to a real property in Stockton, California, (3) negotiating with the debtors about sale of the estate's interest in the property, (4) assessing and resolving exemption issues pertaining to the property, (5) preparing and prosecuting a motion to sell the property, (6) communicating with the trustee about proof of claim issues, and (7) 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.

12. 16-21112-A-7 KENDALL BROOKS — MOTION TO APPROVE COMPROMISE
DNL-7 — 11-7-16 [57]

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 of a settlement agreement between the estate and the debtor:

- resolving the debtor's interest in a mortgage escrow account with a balance of $1,236.20, pertaining to a real property (Salton Sea Way) sold by the trustee and subject to an uncontested exemption for $75,000; and

resolving the estate's interest in exempt property, including:

(1) life insurance policy with a cash value of $94,170.94, subject to an exemption of $12,200;

(2) health savings account with a balance of $10,998.28, subject to an exemption of $10,998.28;

(3) deposit accounts with Golden 1 Credit Union totaling $3,635.95 and cash in the amount of $250, subject to an exemption (under Cal. Civ. Proc. Code § 704.070) of 75% in deposit accounts; and

(4) bank accounts totaling $2,974.02 (excluding $500.26 in an account with Bank

of the West), not subject to an exemption.

Under the terms of the compromise, the debtor will pay $93,564.73 to the estate in full satisfaction of the estate's interest in the above life insurance policy, the health savings account, the Golden 1 deposit accounts, and the bank accounts. The debtor will make the payment by releasing his interest in the $75,000 held by the trustee that are subject to the exemption in the real property. The debtor will pay the remaining $18,564.73 by borrowing against his life insurance policy.

The trustee will not enforce the estate's interest against the life insurance policy, health savings account, Golden 1 accounts and bank accounts, pending the debtor's timely payment of the remaining $18,564.73 toward the settlement amount. If the debtor defaults under the settlement, the trustee may keep the $75,000 exemption proceeds and pursue any other permissible course of action against the other assets. The exemption objection deadline will be extended until the debtor fully performs under the settlement.

In addition, the debtor will release any interest in any of the proceeds from the sale of the real property, including the $1,236.20 in the mortgage escrow account.

The debtor is retaining only $3,350 of the $10,998.28 in the health savings account. The remaining $7,648.28 are allocated to the estate, under the settlement.

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 that the trustee already possesses a sizeable portion—$75,000—of the settlement amount, given the debtor's asserted defenses to the challenge of the health savings account exemption, given the unsettled question of whether a health savings account is within the scope of Cal. Civ. Proc. Code § 704.130, given that the trustee is recovering 69.5% of the health savings account funds (($7,648.28 / 10.998.28) x 100), 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.

13. 12-28413-A-7 F. RODGERS CORPORATION
CWC-37

MOTION FOR ADMINISTRATIVE EXPENSES
11-4-16 [1068]

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 seeks retroactive permission to pay a filing fee of $173.83 for mailing expenses pertaining to the filing of an abandonment motion; and $37.71 for mailing expenses pertaining to a notice sent to wage claimants requesting information from them.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

The expenses were incurred and paid to preserve the estate, in the trustee's regular course of administering the estate. Mailing costs for motions, notices and the like are within the regular scope of the trustee's administration of the estate. The payment of the expenses has benefitted the estate. The motion will be granted and the expenses will be approved as an administrative claim.

14. 16-26813-A-7 FRED BYARS
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-2-16 [22]

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

The motion will be granted.

The movant, Santander Consumer U.S.A., Inc., seeks relief from the automatic stay with respect to a 2012 Ford Fiesta. The vehicle has a value of $6,239 (Schedules B and D) and its secured claim is approximately $11,988.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

15. 12-41025-A-7 PATRICK MULLIN — MOTION FOR APPROVAL OF STIPULATION 10-28-16 [84]
CWC-10

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 seeks approval of a stipulation for allowance of payment of $1,315.20 as administrative expenses (including a $500 discount for the estate's cost of filing and prosecuting this motion) to George Mullin, the co-owner of a property sold by the estate. Mr. Mullin paid insurance premiums, utilities, fire district fees, and landscaping and maintenance costs. The estate's portion of those total $1,815.20.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

As Mr. Mullin maintained the property and paid bills pertaining to the property, he helped facilitate the ultimate sale of the property. The payments made by Mr. Mullin benefitted the estate. This is especially so given that the sale was complicated and prolonged due to the discovery of a lot line encroachment that had to be corrected prior to closure of the sale. The payments made by Mr. Mullin were reasonable and necessary for preserving the property, pending the trustee's administration of it.

The court will approve the stipulation and allow payment of the $1,315.20 to Mr. Mullin as an administrative expense claim.

16. 12-41025-A-7 PATRICK MULLIN
CWC-11

MOTION TO
APPROVE COMPENSATION OF SURVEYOR
11-3-16 [89]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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, on behalf of Frank Lehmann, has filed Mr. Lehmann's first and final motion for approval of compensation. The requested compensation consists of $3,900 in fees and $1,486.89 in expenses, for a total of $4,586.89. The sought compensation is for services from December 22, 2014 through October 6, 2015. The court approved the movant's employment as the trustee's surveyor on November 25, 2014. The requested compensation is based on an hourly rate of $150.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing public records pertaining to the real property to be sold by the estate, (2) meeting and communicating with the Butte County Planning Department, (3) surveying and compiling information on the subject property and adjacent parcels, and (4) preparing and filing an application for a lot line adjustment.

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

17. 12-41025-A-7 PATRICK MULLIN
CWC-9

MOTION FOR
ADMINISTRATIVE EXPENSES
10-28-16 [80]

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

The motion will be granted.

The trustee seeks retroactive permission to pay a filing fee of $1,623.36 to Butte County, when it filed a lot line adjustment application for a real property the trustee was selling. The sale was approved by the court. The lot line adjustment was necessary as there was a lot line encroachment identified by the title company when the sale of the property went into escrow.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

As the court had approved the sale and the trustee was unaware of the encroachment prior to the sale, the court will approve the payment of the application fee retroactively. It benefitted the estate by remedying the encroachment and facilitating closure of the sale.

18. 13-33728-A-7 MARIA KESSLER
BHS-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-31-16 [57]

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 Law Office of Barry H. Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,215 in fees (including $400 for the preparation of this motion, responding to any oppositions or objections to it, and appearing at the hearing) and $34.95 in expenses, for a total of $4,249.95. This motion covers the period from January 30, 2014 through October 31, 2016. The court approved the movant's employment as the trustee's attorney on February 5, 2014. In performing its services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing and advising the trustee about the debtor's interest in a tow company, (2) investigating the transfer of the tow company from the debtor to her son, (3) negotiating settlement of the estate's avoidance claim pertaining to the transfer of the tow company, (4) preparing and prosecuting a motion for approval of the settlement, 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.

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

19. 16-27043-A-7 SHERI SCHMITZ — MOTION FOR
SMR-1 — RELIEF FROM AUTOMATIC STAY
DOUGLAS SALO VS. — 11-3-16 [12]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Douglas Salo and Kathryn Callant, 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 it from the movant in March 2016. The debtor defaulted under the lease agreement in August 2016. The movant served the debtor with a three-day notice to pay or quit on August 3, 2016. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on August 30, 2016. The debtor filed an answer in the action on September 22. The debtor filed this bankruptcy case on October 24, 2016.

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 defaulted under the lease agreement by failing to pay the rent due from August 2016 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise any available state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor or the estate, however. The movant is limited to recovering possession of the property to the extent 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.

20. 16-27343-A-7 JOE/HANGALE HUGHART — ORDER TO SHOW CAUSE 11-18-16 [11]

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 debtors did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtors paid the fee in full on November 29, 2016. No prejudice has resulted from the delay.

21. 16-26645-A-7 DAVID MANSCH — MOTION TO VACATE DISMISSAL OF CASE 11-15-16 [30]
NCK-2

Final Ruling: The motion will be denied without prejudice because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. See Local Bankruptcy Rule 9014-1(d)(7) (providing that "[e]very 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(c)(4)").

22. 15-23164-A-7 JF MCCRAY PLASTERING, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-31-16 [54]
JAR-1
FLINTCO, INC. VS.

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

The motion will be granted.

The movant, Flintco, Inc., Flintco, L.L.C., and Flintco Pacific, Inc., seeks relief from the automatic stay to proceed in state court with its construction defect claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance coverage, the court concludes that cause exists for the granting of relief from the automatic stay.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are 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 ordered waived.

23. 11-48272-A-7 ANNE MARQUEZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HSM-7 — 11-7-16 [99]

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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $78,283.50 in fees and $1,289.75 in expenses, for a total of $79,573.25. This motion covers the period from January 19, 2012 through the present. The court approved the movant's employment as the trustee David Gravell's attorney on January 31, 2012. Mr. Gravell resigned as trustee in this case on March 19, 2013. The court approved the movant's employment as the successor trustee Susan Didriksen's attorney on May 10, 2013. In performing its services, the movant charged hourly rates of $295, $300, $310, $360, $380, $390, $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) reviewing petition documents,

(2) analyzing and advising the trustee about the estate's interests in two real properties, one in Winters, California and the other in Sacramento, California,

(3) investigating and analyzing the debtor's transfer of the Winters property,

(4) negotiating with the parties who had purportedly purchased the Winters property,

(5) preparing, filing and prosecuting an adversary proceeding complaint against the purported purchasers of the property,

(6) conducting discovery and other litigation in the adversary proceeding,

(7) negotiating settlement of the adversary proceeding and the estate's interest in the Winters property,

(8) preparing the settlement agreement,

(9) preparing and prosecuting a motion for approval of the settlement,

(10) obtaining a title policy for the Winters property in anticipation of a sale,

(11) preparing and prosecuting a motion to approve the sale of the Winters property,

(12) reviewing proofs of claim and assessing the necessity for objections, and

(13) 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.

24. 15-25585-A-7 MATTHEW WATERS — MOTION TO APPROVE COMPROMISE
MF-3 — 10-26-16 [63]

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 of a settlement agreement between the estate and Lisa Hattig, resolving litigation over the estate's interest in a real property in San Francisco, California.

Ms. Hattig and the debtor had a long-term relationship, living on the property together from 2002 through 2003 under a lease agreement. In 2003, they purchased the property, holding title as joint tenants. Their relationship terminated in or about November 2007. The debtor continued to live on the property until December 2008 or January 2009. As they were unable to agree on what to do with the property, Ms. Hattig sued the debtor in state court. They then entered into a settlement agreement, providing that Ms. Hattig will pay $30,000 to the debtor in exchange for conveyance of his interest in the property.

The settlement fell apart though, due to a disagreement over how to resolve an unanticipated $17,021.24 lien against the debtor's interest in the property. Ms. Hattig did not pay the $30,000 and the debtor did not deliver the grant deed. The debtor then filed this chapter 7 case on July 13, 2015.

The estate filed an adversary proceeding on August 14, 2015 against Ms. Hattig, asserting avoidance claims and a cause of action under 11 U.S.C. § 363(h), seeking to sell the property. Ms. Hattig countered under 11 U.S.C. § 365(i), seeking to compel the estate to transfer its interest in the property to her, pursuant to the pre-petition settlement agreement with the debtor. Ms. Hattig

has also claimed credits for expenditures she has made in connection with the property.

Under the terms of the compromise, Ms. Hattig will pay the estate $31,500 in full satisfaction of the estate's interest in the property. Ms. Hattig will be responsible for all encumbrances against the property, including the $17,021.24 lien. Also, the parties will exchange mutual releases.

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 Ms. Hattig's reasonably equivalent value and solvency defenses, given Ms. Hattig's assumption of the $17,021.24 claim against the estate, given Ms. Hattig's claim to attorney's fees based on the pre-petition settlement agreement 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.

25. 11-27496-A-7 PETER/TERESITA PIASECKI — MOTION TO AVOID JUDICIAL LIEN
DVD-2
VS. UNIFUND CCR PARTNERS — 10-24-16 [32]

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 Peter Piasecki in favor of Unifund CCR Partners for the sum of $12,906.72 on June 11, 2010. The abstract of judgment was recorded with San Joaquin County on July 14, 2010. That lien attached to the debtor's residential real property in Manteca, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $280,000 as of the petition date. Dockets 35 & 1. The unavoidable liens totaled $530,245 on that same date,

consisting of a mortgage in favor of Indymac Bank in the amount of $431,577 and a mortgage in favor of Citibank in the amount of $98,668. Dockets 35 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 29 & 1.

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).