UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 21, 2013 at 10:00 a.m.

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

1, 2, 4, 6, 7, 10, 15

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 18, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 4, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 12, 2013. 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. 09-36302-A-7 MYRA JACKSON
JRR-2

MOTION TO EMPLOY AND TO APPROVE COMPENSATION OF ATTORNEY (FEES $28,000, EXP. $1,619.72)
9-26-13 [38]

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 asks the court to retroactively approve the employment of the Lee Murphy Law Firm and Clark Love & Hutson, on a 40% contingence fee basis. The law firms represented the debtor and the estate in litigation against an unidentified pharmaceutical manufacturer, resolving the debtor's claims against the manufacturer for injury she sustained in 2002.

The trustee also asks for approval of the compensation of the law firms. The requested compensation is $28,000 in attorney's fees and $1,619.72 in expenses.

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

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."

But, when a professional does not obtain prior approval of his or her employment, retroactive approval of the employment may be possible. The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. The following must be shown: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988).

In deciding whether there is a satisfactory explanation for the failure to obtain prior court approval, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Id.

This case was filed on August 1, 2009. After the debtor received a discharge

on November 16, 2009, the case was closed on November 20, 2009 without the administration of any assets. Although the debtor was aware of the injury at the time of bankruptcy, she did not become aware of her claim against the manufacturer until April 2012. She retained counsel, the Lee Murphy Law Firm and Clark Love & Hutson, on a 40% contingence fee basis and eventually settled the claim without the trustee's involvement, for $70,000. After the settlement was reached, the trustee learned of it and reopened this case to administer the settlement proceeds for the benefit of creditors. The debtor asserted an exemption claim in the settlement proceeds, but the trustee pointed out that he would object to the exemption because the claim against the manufacturer was not disclosed in the original schedules.

As a result, the trustee and the debtor entered into a settlement agreement, *i.e.*, the second settlement, resolving the estate's objection to the debtor's exemption claim in the settlement proceeds. Under this settlement agreement, the debtor received 40% and the estate received 60% of the net settlement proceeds. This translates into the debtor receiving $16,152.11 and the estate receiving $24,228.17, after the 40% contingency fee ($28,000) and reimbursement of $1,619.72 in expenses of the law firms.

The court approved the settlement between the trustee and the debtor, resolving the estate's interest in the litigation settlement proceeds, on September 24, 2013. Docket 37.

The law firms are entitled to $28,000 in attorney's fees and $1,619.72 in expenses for their services in prosecuting the litigation against the pharmaceutical manufacturer, based on their 40% contingency compensation arrangement.

The court is satisfied that the standard of THC Financial has been met. The law firms were not employed by the trustee prior to their services of prosecuting the litigation because the trustee did not become aware of the litigation until after it was settled already and the law firms had completed their services. The law firms have benefitted the estate in recovering proceeds that would benefit the estate, *i.e.*, $24,228.17 or 60% of the net settlement proceeds.

Accordingly, the court will approve the employment of the law firms retroactively. The court will also approve payment of their compensation, as described above.

2. 13-30705-A-7 MELINA KOCHOO — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
EVERBANK VS.
9-27-13 [12]

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

The motion will be granted.

The movant, Ever Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $133,061 and it is encumbered by claims totaling approximately $356,327. The movant's deed is in first priority position and secures a claim of approximately $176,035.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 30, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

3. 12-33107-A-7 JOHN ARISHIN — MOTION TO SELL
SLF-9 — 9-23-13 [49]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $5,000 the estate's interest in unencumbered receivables to the debtor. The debtor scheduled the value of the receivables at $15,000 and, while he initially claimed them as exempt, he later amended Schedule C removing any exemption claims. The debtor is a chiropractor.

Although the debtor already collected $7,249.99 from the receivables, he spent the proceeds on living expenses. Nevertheless, in an effort to avoid further litigation and expenses in the collection of the receivables, the trustee has agreed to sell all nonexempt receivables to the debtor for $5,000.

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.

4. 13-30310-A-7 ELTON HALLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
NFS-1
GREENTREE SERVICING L.L.C. VS. — 10-3-13 [19]

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

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $201,874 and it is encumbered by claims totaling approximately $324,138. The movant's deed is in first priority position and secures a claim of approximately $278,811.

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 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) is not 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.

5. 13-31715-A-7 THE BROILER, INC. MOTION FOR
FWP-1 RELIEF FROM AUTOMATIC STAY ETC.
CDA ROTUNDA PARTNERS, L.L.C. VS. O.S.T.
10-4-13 [19]

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

The movant, CDA Rotunda Partners, L.L.C., seeks:

- relief from the automatic stay as to a commercial real property in Sacramento, California,

- an order that possession of the property be surrendered to the movant, to the extent not surrendered already,

- an order permitting the movant to set off its $2,000 security deposit against outstanding pre-petition rent and other pre-petition charges under the lease,

- an order compelling the trustee to abandon the estate's interest in the personal property at the real property or to grant relief from stay for the movant to dispose of the personal property in accordance with state law,

- waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3), or, in the alternative,

- an order requiring the trustee to provide adequate protection to the movant by paying all accrued post-petition lease charges in the amount of $18,829 by the hearing date for this motion and by timely paying all future lease charges due under the lease agreement.

The movant also requests $5,000 in attorney's fees for enforcing its rights under the lease agreement.

This is a liquidation proceeding. The debtor is not operating and it has no ownership interest in the property. It only a leasehold interest. The trustee is not making post-petition lease payments to the movant. Post-petition obligations under the lease exceed $15,000 (2,973 a week).

This case was filed on September 5, 2013. One day earlier, on September 4, the debtor surrendered the subject real property to the movant and the movant terminated the lease agreement between the parties. The foregoing is cause for the granting of relief from stay.

Relief from stay will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to obtain possession of the real property in state court. If the movant prevails, no monetary claim may be collected from the debtor or the estate. The movant is limited to recovering possession of the real property if such is permitted by the state court.

The court will not order surrender of the real property as this court does not determine anyone's interest in property on a motion. Fed. R. Bankr. P. 7001(2). The movant's rights to the real property shall be determined under the lease agreement in accordance with state law in state court.

The court will grant relief from stay as to the personal property as well. In Schedule B, that property has a value of $60,000, but it is over-encumbered, as Walter H. Harvey "Trustees UDT DTD 1/24/81" holds a UCC Financing Statement

security interest on all inventory, fixtures, assets, leasehold, improvements, general intangibles, etc., securing a claim for $282,725.

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

Accordingly, relief from stay as to the personal property will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of the personal property pursuant to applicable law.

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

The court will allow the movant to offset its $2,000 security deposit against outstanding pre-petition rent and other pre-petition charges under the lease agreement. See 11 U.S.C. § 553(a). As of the petition date, the outstanding payments under the lease were $14,664.27.

Finally, the lease agreement between the parties contains an attorney's fee provision and the movant is an unsecured creditor. The movant then is entitled to fees and costs for the prosecution of this motion. Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 449-54 (2007); Infonet Mgmt. v. Centre Ins. Co. (In re SNTL Corp.), 571 F.3d 826, 839-41 (9th Cir. 2009).

However, the court does not have admissible evidence of the movant's attorney's fees and costs in bringing this motion. The supporting declaration of John McKee asserts: "I am informed and believe that by the time the Motion is heard, [the movant] will have expended at least an estimated $5,000 in attorneys' fees and costs to enforce its rights under the Broiler Lease." Docket 21 at 3-4. This statement acknowledges that Mr. McKee has no personal knowledge of the fees and costs incurred by the movant, in that the statement is based on belief and information, likely from someone else, *i.e.*, hearsay. See Fed. R. Evid. 802. Also, the court cannot determine the necessity of the services provided and reasonableness of the fees requested as it has no evidence of the nature of services rendered and time spent incurring the fees. This part of the motion will be denied without prejudice.

6. 13-29629-A-7 ALBERTO MENDOZA — MOTION TO COMPEL ABANDONMENT 9-26-13 [27]
TOG-3

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's

interest in his "vehicle paint and body shop 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 hand tools, paint and body shop equipment, with a total value of $2,500 ($6,500 in the motion, apparently in error) and $500 for the business name (Amended Schedule B, item 35). The assets have been claimed fully exempt in Amended Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

7.	11-24633-A-7 RWF-2	ANDREW/KIMBERLEY BROCCHINI	MOTION TO COMPEL ABANDONMENT 9-18-13 [54]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in a worker's compensation claim for $1,000 against the City of Sacramento Fire Department. The trustee has filed a non-opposition to the motion.

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 claim has been scheduled in the debtors' Amended Schedule B, filed on February 6, 2013. As the claim is in the amount of only $1,000 and after taking into account administration costs, the court concludes that the claim is of inconsequential value to the estate. Given this and given the trustee's non-opposition, the motion will be granted. The claim will be abandoned to the debtors.

8.	12-41741-A-7 MWT-3	RAR ENTERPRISES L.L.C.	MOTION TO EXTEND STAY 9-9-13 [115]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to extend the automatic stay to two pending

lawsuits against James Rozak, the debtor's manager and sole-remaining member. One of the lawsuits is by LA Commercial Group, Inc., seeking to recover $7,045 on a breach of contract claim against Mr. Rozak, on the basis that he guaranteed the debt owed by the debtor to LA Commercial. The other lawsuit is by PPC Folsom Parkway, LP, the debtor's landlord, for unlawful detainer and recovery of $27,000 in unpaid rent, against Mr. Rozak as guarantor of the debtor's lease obligations to PPC.

The debtor says that there is such identity between the debtor and Mr. Rozak "that a judgment against [Mr. Rozak] will in effect be a judgment or finding against the debtor." This, the debtor contends, is because the debtor and Mr. Rozak have a defense and indemnity agreement. Thus, judgment against Mr. Rozak would arguably be a judgment against the debtor.

The motion will be denied.

First, the automatic stay of 11 U.S.C. § 362(a) protects only the debtor, property of the debtor or property of the estate. It does not protect non-debtor parties or their property. Thus, 11 U.S.C. § 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor. Boucher v. Shaw, 572 F.3d 1087, 1092 (9th Cir. 2009); Chugach Forest Products, Inc. v. N. Stevedoring & Handling Corp. (In re Chugach Forest Products, Inc.), 23 F.3d 241, 246 (9th Cir. 1994).

The Ninth Circuit has consistently refused to apply the unusual circumstances exception to the above rule.

"We have refused to extend the automatic stay to enjoin claims against a contractor-debtor's surety, even though a surety bond guarantees the contractor-debtor's performance. See In re Lockard, 884 F.2d 1171, 1178-79 (9th Cir. 1989). In Lockard, we reasoned that extending the stay was inappropriate because the surety, not the contractor-debtor, puts its property directly at risk of liability to creditors in the event of nonpayment by the contractor-debtor, and therefore a surety bond is not property of the bankruptcy estate. Id. at 1178. We found that this was the case even though allowing a claim against the surety would trigger the surety's right to recourse against the debtor. Id. Similarly, the automatic stay does not protect the property of parties such as officers of the debtor, even if the property in question is stock in the debtor corporation, and even if that stock has been pledged as security for the debtor's liability. Advanced Ribbons, 125 B.R. at 263.

"We have never addressed the question whether a company's bankruptcy affects the liability of its individual managers under the FLSA. But our case law regarding guarantors, sureties and other non-debtor parties who are liable for the debts of the debtor leaves no doubt about the answer: the Castaways bankruptcy has no effect on the claims against the individual managers at issue here."

Boucher at 1092-93.

Second, as the chapter 7 estate does not have the funds to defend claims by creditors, an action against a guarantor, such as Mr. Rozak, would actually benefit the estate, as Mr. Rozak has much more incentive, and probably means, than the estate to defend against claims by creditors. Staying the litigation against Mr. Rozak only hampers the administration of the bankruptcy estate as

the claims in the litigation would still have to be liquidated for purposes of dividend distribution.

Third, the debtor has not shown that any of the bankruptcy estate's assets are "at stake," if the litigation against Mr. Rozak continues. United States v. Dos Cabezas Corp., 995 F.2d 1486, 1491 (9th Cir. 1993) (noting that "unless the assets of the bankrupt estate are at stake, the automatic stay does not extend to actions against parties other than the debtor, such as codebtors and sureties"). The motion does not explain how or why are the estate's assets implicated unless the stay is extended to Mr. Rozak. The motion says only that collecting against Mr. Rozak "would essentially be the same as collecting against [the debtor]." Docket 115 at 5.

However, this changes nothing for the estate and its assets, as the estate will have to pay the claim regardless of whether it will pay the creditor or Mr. Rozak.

Fourth, the court has no evidence that Mr. Rozak will indeed be able to pay the debt he guaranteed for the debtor, qualifying him to file a proof of claim against the debtor. Mr. Rozak's supporting declaration says nothing about his ability to pay the claims asserted against him.

Fifth, the two cases cited by the debtor, Gardner v. Nygard Int'l, 321 F.3d 282 (2nd Cir. 2003) and A.H. Robins Co. v. Piccinin, 788 F.2d 994 (4th Cir. 1986), are both chapter 11 cases. This, on the other hand, is a chapter 7 case.

In chapter 7, whether the claim is brought against the debtor or the guarantor for the debtor - who will probably later file a proof of claim of his own against the debtor's estate - makes little difference because the debtor will not be receiving a discharge, the debtor will not survive the bankruptcy, and the estate is merely concerned with the liquidation of the creditor's claim and the distribution of a limited pool of assets. Extending the stay as to Mr. Rozak will bring no practical benefit to the bankruptcy estate because the trustee is concerned with merely liquidating the estate and the estate does not have the funds or the incentive to defend the liquidation of each claim.

In chapter 11 cases though, the debtor in possession is typically hoping to reorganize and exit the bankruptcy, making litigation against guarantors much more concerning.

Finally, the Ninth Circuit has held that the usual preliminary injunction standard applies to stays of proceedings against non-debtors under 11 U.S.C. § 105(a), another provision upon which the debtor relies in this motion. Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086, 1094 (9th Cir. 2007). But, the issuance of preliminary injunctions requires an adversary proceeding. The court cannot issue injunctive relief on a motion. Fed. R. Bankr. P. 7001(7).

Nonetheless, assuming a preliminary injunction could be obtained without an adversary proceeding, this motion makes no effort to brief the standard for issuance of a preliminary injunction.

9. 13-29948-A-7 PAMELA FOURNIER — MOTION TO DISMISS
JRR-1 — 9-11-13 [15]

Tentative Ruling: The motion will be denied.

The trustee moves for dismissal because the debtor did not attend the first continued meeting of creditors held on September 9, 2013. The debtor responds that she missed the meeting because her counsel had scheduling conflicts for both September 5, the initial meeting of creditors, and September 9, the continued meeting. The debtor and her counsel plan to attend the continued meeting on November 7, 2013 at 9:00 a.m.

Given the scheduling conflicts of the debtor's counsel, the motion will be denied and the case will not be dismissed. However, because the meeting of creditors was continued to November 7, 2013, the court will order that the deadlines for filing complaints under 11 U.S.C. § 727 and filing motions to dismiss under 11 U.S.C. § 707 be extended by 60 days. The deadlines will be extended from November 4, 2013 to January 3, 2014.

10. 13-29554-A-7 STUART/ZOANNE WILKINSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
AMERICAN HONDA FINANCE CORP. VS. — 9-23-13 [13]

Tentative Ruling: The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2012 Honda Accord vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on July 19, 2013 and a meeting of creditors was first convened on August 28, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than August 18. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on August 18, 2013, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit

to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on August 28, 2013, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on August 18, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

11. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO APPROVE LOAN MODIFICATION 10-4-13 [168]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to approve a loan modification agreement with Wells Fargo Home Mortgage, of the debtors' sole mortgage on his residence in Chico, California.

However, the court does not approve loan modification agreements in a chapter 7 case. To the extent the agreement purports to preserve the debtor's personal liability, the debtor should file a reaffirmation agreement under 11 U.S.C. § 524. The court will not approve such agreements outside the protections prescribed by 11 U.S.C. § 524(c).

12. 10-38965-A-7 JOSEPH/LATSAMY CESAR
DJH-8
VS. NATIONAL CREDIT CONTROL AGENCY AND FRANKLIN LOVE — MOTION TO AVOID JUDICIAL LIEN 9-23-13 [140]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to avoid the judicial lien of National Credit Control Agency, Inc., which encumbers their real property in Carmichael, California.

A judgment was entered against the debtors in favor of National Credit Control Agency, Inc. for the sum of $9,266.72 on April 29, 2009. The abstract of judgment was recorded with Sacramento County on July 13, 2009. That lien attached to the debtors' residential real property in Carmichael, California.

The requirements for lien avoidance under section 522(f) are as follows: (1)

there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). A creditor who has not timely objected to a claim of exemption may nevertheless challenge the validity of the exemption when defending a lien avoidance motion under section 522(f). Morgan at 152.

The property was sold at a foreclosure sale on April 16, 2010, before this bankruptcy case was filed. Docket 142 ¶ 6. This case was filed on July 19, 2010. The court cannot avoid the judicial lien on a property the debtors do not own. Avoidance of a judicial lien is based on the impairment of an exemption in the debtor's real property. If the debtor does not own the property, he cannot have an exemption in it, whether claimed or not, and there can be no impairment of an exemption. The motion will be denied.

To the extent the debtors are asking the court to determine the respondent's interest in the property, this requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

13. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO AVOID JUDICIAL LIEN
DJH-9
VS. CHARTER ADJUSTMENTS CORP. AND DONALD STERNBERG
9-23-13 [145]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to avoid the judicial lien of Charter Adjustment Corporation and Donald Sternberg on their real property in Carmichael, California.

A judgment was entered against Debtor Joseph Cesar in favor of Charter Adjustment Corporation for the sum of $6,970.47 on November 6, 2009. The abstract of judgment was recorded with Sacramento County on March 8, 2010. That lien attached to the debtors' residential real property in Carmichael, California.

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). A creditor who has not timely objected to a claim of exemption may nevertheless challenge the validity of the exemption when defending a lien avoidance motion under section 522(f). Morgan at 152.

Mr. Sternberg is not the judgment creditor, he only represents Charter Adjustment Corporation. The motion will be dismissed as to him.

Further, The property was sold at a foreclosure sale on April 16, 2010, before this bankruptcy case was filed. Docket 142 ¶ 6. This case was filed on July

19, 2010. The court cannot avoid the judicial lien on a property the debtors do not own. Avoidance of a judicial lien is based on the impairment of an exemption in the debtor's real property. If the debtor does not own the property, he cannot have an exemption in it, whether claimed or not, and there can be no impairment of an exemption. The motion will be denied.

To the extent the debtors are asking the court to determine the respondent's interest in the property, this requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

14. 12-33467-A-7 RONALD DUNCAN
RLC-1

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $15,420, EXP. $33.20)
9-30-13 [162]

Tentative Ruling: The motion will be granted in part.

Stephen Reynolds, attorney for the debtor during the chapter 11 portion of the case, has filed his first and final motion for approval of compensation. The requested compensation consists of $15,420 in fees and $33.20 in expenses, for a total of $15,453.20. This motion covers the period from July 18, 2012 through April 30, 2013, the date the case was converted from chapter 11 to chapter 7. The court approved the movant's employment as the attorney for the debtor in possession on August 16, 2012. In performing its services, the movant charged hourly rates 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) preparing schedules and statements not filed on the petition date, (2) communicating with the debtor about strategy, (3) attending and representing the debtor at the IDI and the meeting of creditors, (4) attending court hearings, (5) reviewing and assisting the debtor in the preparation of operating reports, (6) preparing plan and disclosure statement, 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, except that the court will not approve any fees incurred pre-petition. The court does not approve fees incurred pre-petition, as they are pre-petition claims, just as any other pre-petition claims. The movant shall deduct the fees incurred on July 18, 2012, July 19, 2012 and July 20, 2012, prior to the filing of this petition on July 20, 2012 at 5:45 pm.

The court reminds the movant that chapter 7 administrative expenses have priority in payment over chapter 11 administrative expenses.

15. 13-31782-A-7 LINDA JACOBS
JHW-1
FORD MOTOR CREDIT COMPANY L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-19-13 [10]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay with respect to a 2009 Ford F150 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 September 6, 2013 and a meeting of creditors was first convened on October 16, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 6. The debtor filed a statement of intention on the petition date but without listing the vehicle in the statement.

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 filed a statement of intention on the petition date, she did not list the vehicle in it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 7, 2013, 30 days after the petition date.

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

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

Therefore, without this motion being filed, the automatic stay terminated on October 7, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

16. 13-25497-A-7 ESMAEL SHAHGHADAMI AND MARIZA KALBASI — MOTION TO RECONSIDER 9-12-13 [38]

Tentative Ruling: The motion will be denied.

Creditor Jagroop Khela asks for reconsideration of the court's June 27, 2013 order compelling the trustee to abandon the estate's interest in the debtors' real property in Granite Bay, California. According to Schedule D, the movant holds two judicial liens against the property, one for $10,425 and the other for $5,419.96. The movant also asks for attorney's fees and costs in bringing this motion.

The movant complains that he did not have notice of the bankruptcy case and of the abandonment motion that generated the order at issue. Also, he asserts that the property's value is $1.8 million and not $1,283,400 as stated in the ruling on the abandonment motion.

The court agrees that the movant was not served with the abandonment motion. But, this by itself is not basis for vacating the order compelling the trustee to abandon the property.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside 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).

"[R]evisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original summary judgment motion was briefed' is likewise inappropriate." Van Skiver at 1243.

The court does not have admissible evidence from the movant that the property has a value of $1.8 million. The only evidence from the movant on this point is a statement that "On information and belief, the true value of the Property is roughly $1,800,000." Docket 40 at 2.

However, the movant has not been qualified as an expert witness, able to testify about matters involving specialized knowledge, such as the valuation of real property. Fed. R. Evid. 701.

More, statements made on information and belief are inadmissible because the

declarant admits to not having personal knowledge of the information in the statements. Fed. R. Evid. 602.

The movant also does not state the basis for his opinion. Fed. R. Evid. 702.

Further, the trustee's response to the motion states that he filed a non-opposition to the abandonment motion and that he investigated the value of the property. He was not persuaded that the property could be sold for a sufficient sum to benefit the creditors and the estate.

Finally, the granting of the abandonment motion was without prejudice to the secured creditors attempting to generate sufficient value in the property to satisfy their claims. The granting of the abandonment motion had no impact on the movant's secured claim. In other words, the trustee does not administer the estate for the benefit of holders of secured claims. The trustee administers the estate for the benefit of holders of unsecured claims. The movant has not demonstrated any basis for reconsideration of the abandonment order. Accordingly, the motion will be denied.

17. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO COMPEL ABANDONMENT 9-20-13 [86]
KWY-1

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

The debtors request an order compelling the trustee to abandon the estate's interest in real property in Fair Oaks, California (Spicer Drive), a residential care facility for the elderly operated by the debtors as a business, known as Compassionate Care Homes, and $10,915.42 of cash that serves as collateral for a claim held by Community Commerce Bank.

The trustee has filed a partial opposition, opposing the abandonment of the cash collateral.

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.

As to the real property in Fair Oaks, California, the debtors assert and the trustee does not dispute that the property has a value of approximately $185,000, while it is encumbered by two mortgages, one in favor of Bank of America in the amount of approximately $306,524 and the other in favor of Wells Fargo Bank in the approximate amount of $100,000. Given the encumbrances against this property, the court concludes that it is of inconsequential value to the estate. The court will order its abandonment.

As to the Compassionate Care Homes business, the main asset of the business is the license, issued by the California Department of Social Services. The license is not transferable. Given this, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The court will order abandonment of the business to the extent it includes the license held by the debtors.

Lastly, the court will deny abandonment of the cash collateral. The cash is currently held by the trustee (derived from real property in Orangevale, California) and the debtors have not demonstrated that the cash is burdensome

or of inconsequential value to the estate.

Conversely, the motion states that the debtors have cured the arrearages on the property generating the cash collateral, meaning that the bank's claim is being satisfied under the terms of the note and the bank will not resort to seek recovery of the rents generated by the property.

Importantly, the court disagrees with the debtors' urging that the court order the abandonment of the cash collateral to the bank. 11 U.S.C. § 554 does not authorize abandonment to creditors. The only abandonment envisioned by 11 U.S.C. § 554 is to the debtors. But, in this case, as mentioned above, the debtors have not shown that the cash collateral is of inconsequential value to the estate.

Thus, to the extent the debtors are asserting that the cash collateral should be turned over to the bank, this is a turnover claim, requiring an adversary proceeding. This is not an abandonment request under 11 U.S.C. § 554(b). See Fed. R. Bankr. P. 7001(1). The court does not adjudicate turnover claims on a motion, except for the exceptions enumerated in Fed. R. Bankr. P. 7001(1), *e.g.*, turnover requests under 11 U.S.C. § 554(b).

One final point, the cash collateral, to the extent not sought by the bank, is property of the estate because it was generated - whether pre or post-petition - from the real property in Orangevale, California prior to the abandonment of that property by the trustee. Thus, the court agrees with the trustee that the debtors do not have standing to ask that the cash collateral be turned over to the bank. The debtors have no interest in the cash collateral because it belongs to the estate or to the bank, to the extent the bank may assert an interest in it under the terms of the note and deed of trust. But, the bank likely cannot assert an interest in the cash collateral as long as the payments under the note are current. This part of the motion will be denied.

This ruling does not determine whether the bank has an interest in the cash collateral.

THE FINAL RULINGS BEGIN HERE

18. 13-27103-A-7 WESTERN WATER PRODUCTS — MOTION TO APPROVE COMPENSATION OF AUCTIONEER (FEES $3,179.68) AND TO APPROVE AUCTIONEER'S REPORT
DMW-3 — 9-10-13 [16]

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.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,179.68 in fees and $0.00 in expenses. This motion is for a sale completed on August 22 and 26, 2013. The court approved the movant's employment as the trustee's auctioneer on July 24, 2013. The requested compensation is based on a 20% commission and reimbursement of expenses for moving, storing and securing the assets to be sold.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of a 2002 Ford van vehicle, a dust collector, tools, parts, an office copier machine, a pallet jack, and other items.

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

19. 13-29208-A-7 SANDINO ENTERPRISES, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
MCG-1 — 9-20-13 [10]
VENTANA PLANNED UNIT DVMT. ASSOC. 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, Ventana Planned Unit Development Association, 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 proceeds, 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.

20. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
LUSARDI CONSTRUCTION CO. VS. — 9-12-13 [536]

Final Ruling: The motion will be dismissed without prejudice because the debtor and counsel for the trustee have not been served with the motion. Docket 540.

21. 13-22913-A-7 CLINTON WILLIAMS — MOTION TO AVOID JUDICIAL LIEN
VS. KELKRIS ASSOCIATES — 9-18-13 [27]

Final Ruling: The motion will be dismissed without prejudice for several reasons.

First, there is no separate proof of service with the motion indicating that it was served on anyone. The court has been unable to find any proof of service with the motion. See Local Bankruptcy Rule 9014-1(e).

Second, the notice of hearing does not say whether and when written opposition is due to the motion. Local Bankruptcy Rule 9014-1(d)(3).

Third, the court does not have admissible evidence of the judicial lien on the subject property. The court needs a copy of the recorded abstract of judgment, as filed with the pertinent county. References to the abstract of judgment are inadmissible hearsay. Fed. R. Evid. 802.

Fourth, the motion does not have a docket control number as required by Local Bankruptcy Rule 9014-1(c). This makes it difficult to identify all papers on the docket pertaining to the motion.

22. 13-25413-A-7 ANTOINEESHA MENEESE — ORDER TO SHOW CAUSE 9-23-13 [63]

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 September 13, 2013, but did not pay the $30 filing fee. However, the debtor paid the fee on October 2, 2013. No prejudice has resulted from the delay.

23. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO CONVERT CASE TO CHAPTER 13
WSS-2 — 9-16-13 [33]

Final Ruling: The hearing on this motion has been continued to November 4, 2013 at 10:00 a.m.

24. 13-23225-A-7 LORRAINE LITTLE-DENNIS — MOTION TO CONVERT CASE TO CHAPTER 13
SJS-5 — 9-16-13 [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 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 conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in 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 court has reviewed the record and concludes that the debtors are not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtor has amended Schedules I and J to reflect monthly net disposable income of $527. Docket 51. The income appears to be regular as it is generated by the debtor's employment as an executive assistant with Health Net Pharmaceuticals. And, the debtor has secured debt in amount less than $1,149,525 (actual amount is $29,051) and unsecured debt in amount less than $383,175 (actual amount is $67,811). Given the foregoing, the court concludes

that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

25. 13-29632-A-7 ROBERT DENSMORE — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 9-23-13 [13]
JPMORGAN CHASE BANK, N.A. VS.

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

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to real property in Placerville, California. The property has a value of $215,000 and it is encumbered by claims totaling approximately $275,697. The movant's deed is in first priority position and secures a claim of approximately $239,697.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 28, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not 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.

26. 13-32232-A-7 REGINALD CHANDRA — ORDER TO SHOW CAUSE 9-26-13 [12]

Final Ruling: This order to show cause will be discharged as moot because the case was dismissed on September 30, 2013.

27. 12-29633-A-7 GERALD HALLIGAN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $2,047.50, EXP. $107.24) 9-9-13 [48]
SMD-4

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $2,047.50 in fees and $107.24 in expenses, for a total of $2,154.74. This motion covers the period from March 30, 2013 through June 20, 2013. The court approved the movant's employment as the estate's accountant on April 2, 2013. In performing its services, the movant charged an hourly rate of $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included preparing estate tax returns, a capital gain and loss analysis on the sale of equity in real property, and determination letters for the IRS and the FTB.

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

28. 13-20434-A-7 YVETTE AMARO — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-13-13 [22]
RLL-1
NATIONSTAR MORTGAGE, L.L.C. 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, Nationstar Mortgage, seeks relief from the automatic stay as to real property in Rancho Cordova, California.

Given the entry of the debtor's discharge on April 29, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $145,000 and it is encumbered by claims totaling approximately $263,869. 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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

29. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPROMISE
DNL-3 — 9-23-13 [34]

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 debtors, resolving the parties' interest in a $15 million medical malpractice action. The debtors did not disclose the action in their original schedules. The trustee did not discover the action until the debtors' disclosure at the meeting of creditors. After the meeting of creditors, the debtors amended their schedules, listing the action and exempting $19,781.43 under Cal. Civ. Proc. Code § 703.140(b)(5), $24,060 pursuant to Cal. Civ. Proc. Code § 703.140(b)(11)(D), $3 million for loss of future earnings under Cal. Civ. Proc. Code § 703.140(11)(E), and $8 million for prosthetic equipment under Cal. Civ. Proc. Code § 703.140(b)(9).

Under the terms of the compromise, the debtors have agreed to a November 1, 2013 extension of the deadline to file objections to their exemptions, and have agreed that the recoveries from the action shall be divided as follows:

First, to satisfy allowed medical liens,

Second, to satisfy the attorney's fees in the action, as allowed by this court,

Third, to satisfy all administrative expenses in this case (including taxes),

Fourth, to satisfy the debtors' wild card and personal injury exemptions in the total amount of $43,841.43,

Fifth, 50% to satisfy allowed and timely filed unsecured claims in this case and 50% to the debtors on account of their loss of future earnings and prosthetics exemption claims in the amount of $11 million,

Sixth, to satisfy allowed and untimely filed unsecured claims,

Seventh, to satisfy interest on allowed claims, and

Eight, remainder will be given to the debtors.

The trustee has agreed also that the debtors' legal malpractice claim against their previous attorney will be abandoned back to the debtor. The trustee has determined that the claim has no consequential value to the estate.

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 compromise facilitates the cooperation between the trustee and the debtors in the prosecution of the action, and given the inherent costs, risks, delay and inconvenience of further litigation over the exemption claims, 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.

30. 13-28242-A-7 MARK DUMALIG
NATIONSTAR MORTGAGE, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-27-13 [15]

Final Ruling: The motion will be dismissed without prejudice because although it was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(2), the notices of hearing say that the respondent must file written opposition or appear at the hearing. Dockets 16 & 22. Local Bankruptcy Rule 9014-1(f)(2) does not require the filing of written opposition. The notice of hearing should not say what the rule does not require, as respondents may be confused about their obligation to appear at the hearing if they oppose the motion.

A motion placed on the calendar by the moving party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the motion.

This motion was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

The motion will be dismissed without prejudice.

31. 13-25844-A-7 LEVI/KIMBERLEE DELANEY
DBJ-3

MOTION TO COMPEL ABANDONMENT
9-16-13 [41]

Final Ruling: The motion will be dismissed without prejudice because it was not served on all creditors as required by Fed. R. Bankr. P. 6007(a).

The motion will be dismissed also because the motion papers have been filed and served in piecemeal fashion. The motion and notice of hearing were filed and served on September 16, 2013, pursuant to Local Bankruptcy Rule 9014-1(f)(1). Yet, the declaration in support of the motion was not filed and served until October 7, 2013, 14 days prior to the October 21 hearing on the motion. Local Bankruptcy Rule 9014-1(f)(1) requires that all motion papers be filed and served at least 28 days' prior to the hearing on the motion.

32. 13-26551-A-7 MICHAEL HOLT
EVS-1

MOTION TO APPROVE COMPENSATION OF AUCTIONEER (FEES $2,329.50)
9-19-13 [125]

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.

First Capital Auction, Inc., auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,450 in fees and $879.50 in expenses (including $554.50 for windshield replacement of the 2006 Porsche vehicle sold by the movant), for a total of $2,329.50. This motion is for a sale completed on August 17, 2013. The court approved the movant's employment as the trustee's auctioneer on August 1, 2013. The requested compensation is based on a 5% commission and reimbursement of reasonable expenses in preparing the property for sale, up to $500, including transportation and storage expenses.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of a 2006 Porsche vehicle for $29,000.

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

The court concludes that the $554.50 in expenses for the windshield replacement exceeded the reasonableness standard for the envisioned expenses to be paid by the movant. The court will approve reimbursement of those expenses as extraordinary and unforeseen expenses that benefitted the estate in facilitating the sale of the vehicle by presenting it at the auction for sale without the cracked/broken windshield that was replaced.

33. 10-53160-A-7 BERTA ESCOBAR
DNL-6

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $8,340.89, EXP. $159.11)
9-13-13 [79]

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 $8,340.89 in fees and $159.11 in expenses, for a total

of $8,500. This motion covers the period from October 25, 2012 through September 5, 2013. The court approved the movant's employment as the trustee's attorney on November 7, 2012, after the court reopened the case pursuant to a motion by the U.S. Trustee. In performing its services, the movant charged hourly rates of $75, $175, $225, and $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the administration of the debtor's personal injury, emotional distress and loss of earnings claims against Eskaton Properties, Inc., (2) negotiating a settlement with the debtor over an objection to her exemption in the claims, (3) preparing the settlement agreement and obtaining an order approving it, (4) assisting the estate in the settlement of the claims against Eskaton, (5) obtaining court approval of the Eskaton settlement, and (6) 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.

34. 10-31261-A-7 MICHELE REED — MOTION TO AVOID JUDICIAL LIEN
PSB-3
VS. BENEFICIAL CALIFORNIA, INC.
9-23-13 [31]

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 "Upon 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 Beneficial California, 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."

35. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR SANCTIONS
DJH-5
8-26-13 [67]

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 (both original and amended notices of hearing) on Charter Adjustment Corporation 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." This violates Fed. R. Bankr. P. 7004(b)(3). Also, the motion has not been served on the agent for

service of process for Charter Adjustment Corporation. Dockets 118 & 119. Accordingly, the motion will be dismissed.

36. 13-27466-A-7 KELLY/JANINE BROSSARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD-1 — 9-5-13 [27]
U.S. BANK N.A. VS.

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

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

The movant, U.S. Bank, seeks relief from the automatic stay as to real property in Medford, Oregon.

Given the entry of the debtor's discharge on September 16, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $120,000 and it is encumbered by claims totaling approximately $203,135. The movant's deed is in first priority position and secures a claim of approximately $171,735.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 10, 2013.

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.

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) is not 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.

37. 13-30270-A-7 CLAIRE WATKINS
RCO-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-16-13 [13]

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

The motion will be granted.

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

The trustee filed a report of no distribution on August 28, 2013 and, in the statement of intention, the debtor has indicated an intent to surrender the property. The above is cause for the granting of relief from stay as to both the debtor and the estate, pursuant to 11 U.S.C. § 362(d)(1).

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

The motion will be granted 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 $240,000 and it is encumbered by claims totaling approximately $227,702. The movant's deed is the only encumbrance against the property and secures a claim of approximately $227,306.

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) is not 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.

38. 13-30071-A-7 JON/CARRIE ROSTAD — MOTION TO COMPEL ABANDONMENT
SJJ-1 — 9-18-13 [16]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their roofing, Truckee River Roofing.

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 a "business checking account, business savings account, two desks, a chair, a copy machine, compressor, nail guns, hand tools, ladders, a 1986 BigTex Utility Trailer in poor condition, a 2006 Snake River Utility Trailer in fair condition, and a

1999 NUCTY Dump Trailer in fair condition." The assets have an aggregate value of $6,094.89 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

39. 13-27574-A-7 BRIAN CARPENTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 9-19-13 [19]
WELLS FARGO BANK, N.A. VS.

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Astoria, Oregon. The property is not listed in the schedules or statements of the debtor.

Given the entry of the debtor's discharge on September 16, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the property has a value of $105,000 and it is encumbered by claims totaling approximately $228,313. Docket 22. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 10, 2013.

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.

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) is not 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.

40. 13-27887-A-7 STEVE MESAROS
JHW-1
FORD MOTOR CREDIT COMPANY L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-10-13 [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 in part and dismissed as moot in part.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay with respect to a 2012 Ford Mustang.

Given the entry of the debtor's discharge on September 24, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The vehicle has a value of $20,000 and its secured claim is approximately $21,687.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on August 17, 2013.

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) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.