UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 12, 2018 at 10:00 a.m.

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 FEBRUARY 26, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 12, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 20, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 12-30911-A-7 DNL-18 — VILLAGE CONCEPTS, INC. — MOTION TO SELL 1-11-18 [335]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell to Andco Farms, Inc., for $8,000 the estate's interest in an installment promissory note with the following terms:

- original principal balance of $29,000;
- 7% interest;
- monthly payments of $336.71;
- term September 16, 2012 to August 16, 2022.

The obligors on the note are Douglas and Hilda Hilak. The note is secured by a 2005 Champion manufactured home and the proceeds and products of the home. The trustee has been receiving the monthly payments on the note. The remaining balance on the note is approximately $15,300.

The trustee will keep all payments on the note through December 2017. The buyer will be entitled to all payments on the note due and payable starting in January 2018.

The proposed sale is subject to any claims, interests, and/or encumbrances. The buyer will cover all transfer fees and costs.

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 significant proceeds for distribution to creditors of the estate, without the continued risks and costs of non-payments on the note. 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.

2. 16-25749-A-7 TJW-1 — ROBERT GARZA AND MARIA HERRERA — MOTION TO COMPEL 1-24-18 [142]

Tentative Ruling: The motion will be denied.

The debtor Maria Herrera asks that the court compel the trustee to release to her $90,941.50 in proceeds from the recent sale of a real property in Dixon, California, as the $90,941.50 are allegedly her separate property asset, while the remaining claims against the estate "consist[] of separate debt of debtor, Robert Garza." Docket 142.

The motion will be denied for several reasons.

First, the motion is not signed. Although the name of Timothy Walsh, counsel for both debtors, appears on the signature line of the motion's last page, page seven, his signature is missing. Docket 142 at 7. This violates Fed. R. Bankr. P. 9011.

Second, by filing this motion on behalf of Mrs. Herrera but not Mr. Garza, Mr.

Walsh has a conflict of interest.

The Ninth Circuit's "*relevant test for disqualification is whether the former representation is 'substantially related' to the current representation. See Gas-A-Tron of Arizona v. Union Oil Co. of California, 534 F.2d 1322, 1325 (9th Cir.), cert. denied, 429 U.S. 861, 97 S.Ct. 164, 50 L.Ed.2d 139 (1976); Westinghouse Electric Co. v. Gulf Oil Corp., 588 F.2d 221, 223 (7th Cir. 1978); Government of India v. Cook Industries, Inc., 569 F.2d 737, 739 (2d Cir. 1978). The interest to be preserved by preventing attorneys from accepting representation adverse to a former client is the protection and enhancement of the professional relationship in all its dimensions. It is necessary to preserve the value attached to the relationship both by the attorney and by the client. These objectives require a rule that prevents attorneys from accepting representation adverse to a former client if the later case bears a substantial connection to the earlier one. NCK Org'n Ltd. v. Bergman, 542 F.2d 128 (2nd Cir. 1976). Substantiality is present if the factual contexts of the two representations are similar or related.*

"*Perhaps the most important facet of the professional relationship served by this rule of disqualification is the preservation of secrets and confidences communicated to the lawyer by the client. If there is a reasonable probability that confidences were disclosed which could be used against the client in later, adverse representation, a substantial relation between the two cases is presumed. Confidentiality, however, is not the only aspect of the professional tie preserved by the disqualification rule.*

"*Both the lawyer and the client should expect that the lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation on the client's behalf. That professional commitment is not furthered, but endangered, if the possibility exists that the lawyer will change sides later in a substantially related matter. Both the fact and the appearance of total professional commitment are endangered by adverse representation in related cases. From this standpoint it matters not whether confidences were in fact imparted to the lawyer by the client. The substantial relationship between the two representations is itself sufficient to disqualify.*

"*The rule we state is necessary to implement the following canons of professional ethics: Canon 1 (maintaining integrity and confidence in the legal profession); Canon 4 (preserving confidences and secrets of a client); Canon 5 (exercise of independent professional judgment); Canon 6 (representing a client competently); Canon 7 (representing a client zealously within bounds of the law); Canon 9 (avoiding even the appearance of professional impropriety).*

"*As we have stated, the underlying concern is the possibility, or appearance of the possibility, that the attorney may have received confidential information during the prior representation that would be relevant to the subsequent matter in which disqualification is sought. The test does not require the former client to show that actual confidences were disclosed. That inquiry would be improper as requiring the very disclosure the rule is intended to protect. See Westinghouse Electric Corp. v. Gulf Oil Corp., 588 F.2d at 224 and n.3. The inquiry is for this reason restricted to the scope of the representation engaged in by the attorney. It is the possibility of the breach of confidence, not the fact of the breach, that triggers disqualification.*"

Trone v. Smith, 621 F.2d 994, 998-99 (9th Cir. 1980).

The motion contends that the $90,941.50 held by the trustee is the separate property of Mrs. Herrera which is not liable for the separate debt of Mr. Garza which comprises the bulk of the claims against the bankruptcy estate.

However, if this were true, Mr. Walsh is no longer ablr to represent either of the debtors. The interests of Mrs. Herrera and Mr. Garza have diverged.

Although the debtors received their discharge on April 28, 2017, the trustee has filed a complaint seeking revocation of that discharge. See Adv. Proc. No. 17-2147.

If the $90,941.50 is separate property of Mrs. Herrera and if the trustee is successful in vacating Mr. Garza's bankruptcy discharge, his separate debt will not be satisfied and it will survive the bankruptcy, while Mrs. Herrera will receive the $90,941.50 and a discharge.

On the other hand, if the money is determined not to be Mrs. Herrera's separate property, and the $90,941.50 is used to satisfy the remaining claims against the estate, even if his discharge is revoked, $90,941.50 of Mr. Herrera's debt will be satisfied.

Mr. Walsh is taking a position in this motion that is directly adverse to Mr. Garza's interests.

And, Mr. Walsh cannot represent Mrs. Herrera any longer and especially in connection with this motion because the representation of Mr. Garza thus far has been 'substantially related' to the current representation of Mrs. Herrera.

Third, even if the court were to ignore the foregoing, the motion will be denied because it seeks declaratory relief as to the validity, priority, or extent of an interest in property by motion. An adversary proceeding is required. See Fed. R. Bankr. P. 7001(2) and (9).

The request for s determination of the debtors' separate and community interests is the sale proceeds requires an adversary proceeding.

Finally, the evidence in support of the motion is inadequate. For example, there is no declaration from Mr. Garza establishing with convincing evidence that the bulk of the remaining claims against the estate are his separate obligations. And, the sole declaration from Mrs. Herrera in support of the motion merely makes conclusory assertions about the issue. For instance, she says that "*Separate property debts of debtor Robert Garza total $74,167.47, These separate property claims include the following: DCSS claim for child support in the amount of $33,594.26: a separate debt of debtor Robert Garzal Franchise Tax Board, in the amount of $1,560.23: a separate debt of debtor Robert Garza[.]*" Docket 144 at 3. Neither Mrs. Herrera, nor the motion explains why these debts are separate debts of Mr. Garza.

3.	16-27489-A-7 SCB-6	PALMER COOKE	MOTION FOR TURNOVER OF PROPERTY 1-24-18 [133]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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 in part.

The trustee asks the court to order the debtor to turn over to the trustee (1) real property located at 19238 Jayhawk Drive in Penn Valley, California, and (2) a copy of the death certificate of Robert Cooke, a joint tenant of the property whose died before this case was filed.

The court previously approved the trustee's motion to sell the real property, and the trustee reports that the property has been sold and a copy of the death certificate is needed to close the sale. Dockets 132 & 136. The trustee also requests that the court to authorize the Arizona Department of Health Services to issue to the trustee a copy of the death certificate of the Robert Cooke. In the alternative, the trustee asks the court to order the debtor to turn over to the trustee a copy of the debtor's birth certificate and order the debtor and his counsel, Stephen Murphy, to obtain a certified copy of the death certificate of Robert Cooke. The trustee has made demands for turnover of the foregoing assets from the debtor, at no avail.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

"If a debtor demonstrates that [he] is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman at 202 (quoting Rynda v. Thompson (In re Rynda), Case Nos. NC-11-1312-HDoD, 09-41568, 2012 WL 603657, at *3 (B.A.P. 9th Cir. Jan. 30, 2012)).

This case was filed on November 10, 2016, and the debtor has not received his discharge.

Even though the court approved the trustee's motion to sell the real property (docket 132) and the trustee reports the property has been sold, the debtor has refused to provide to the trustee a copy of the death certificate of the joint tenant. Dockets 136 & 138. Throughout the month of December, 2017, the trustee communicated with counsel for the debtor who assured the trustee that the debtor had requested a copy of the death certificate. Docket 136. Then, on December 27, 2017, counsel for debtor told the trustee that counsel's attempts at communicating with the debtor had been unsuccessful. Docket 136. Later, on January 3, 2018, counsel for the debtor told the trustee that the debtor still had not received the death certificate because the vital records office needed a copy of the debtor's birth certificate before it would issue the death certificate. Docket 136. On January, 22, 2018, counsel for the debtor provided the trustee with a confirmation number for the order of the death certificate. Docket 136.

The motion states that the Arizona Department of Health Services vital record department is aware of this bankruptcy case, is aware the trustee's need for the death certificate, and is awaiting a court order authorizing it to issue the death certificate to the trustee.

In addition, the debtor has been uncooperative with the trustee's realtor with regard to allowing access to the real property. Docket 138. The trustee's realtor made several attempts to contact the debtor for entry into the real property, however the debtor failed to respond. Docket 138. On a few occasions, the realtor was able to get through to the debtor, but the debtor failed to meet the trustee at the property on three occasions as planned. Docket 138.

For the forgoing reasons, the motion will be granted in part. Specifically, the court will order the debtor to turnover over the real property and the death certificate of Robert Cooke. The evidence establishes that the debtor is in possession of the death certificate, or will soon be, as confirmed by counsel for the debtor providing the trustee with a confirmation number for the debtor's order of the death certificate. Further, the debtor has not submitted any evidence to establish that he is not (or will not soon be) in possession of the death certificate.

Notwithstanding the order for the debtor's turnover of the death certificate, the court will also authorize the Arizona Department of Health to issue a copy of the death certificate to the trustee to assure and/or expedite the trustee's reception of it. This given, the court sees no reason to order the debtor to turnover to the trustee the debtor's birth certificate or to require the debtor to order a certified copy of the death certificate of Robert Cooke. The motion is granted in part.

FINAL RULINGS BEGIN HERE

4. 17-23509-A-7 JESSEE NAYLOR — AMENDED MOTION TO COMPEL ABANDONMENT 1-16-18 [40]
NF-2

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. See Docket 44. Nevertheless, the amended notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 41. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

5. 17-23510-A-7 KEVIN NAYLOR — AMENDED MOTION TO COMPEL ABANDONMENT 1-16-18 [39]
NF-2

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. See Docket 43. Nevertheless, the amended notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 40. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

6. 17-27136-A-7 ERIN JONES — MOTION FOR RELIEF FROM AUTOMATIC STAY 1-5-18 [25]
MSK-2
CONSUMER PORTFOLIO SERVICES, INC. VS.

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

The motion will be dismissed as moot.

The movant, Consumer Portfolio Services, Inc. seeks relief from the automatic stay with respect to a 2008 Chevrolet Impala 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 October 30, 2017 and a meeting of creditors was first convened on December 6, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 29. The debtor filed a statement of intention on the petition date, without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed or surrendered.

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, the debtor did not indicate whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed or surrendered. 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 November 29, 2017, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on December 7, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 29, 2017.

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.

7. 17-27552-A-7 RYAN TRASPORT
APN-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-8-18 [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 dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2012 Toyota Camry vehicle.

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

The petition here was filed on November 16, 2017 and a meeting of creditors was first convened on December 26, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 16. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on January 25, 2018, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on January 17, 2018, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on January 25, 2018.

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.

8. 17-27953-A-7 SALINA RAMIREZ
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-8-18 [11]

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

The motion will be granted.

The movant, Santander Consumer USA, Inc., seeks relief from the automatic stay with respect to a 2015 Dodge Dart. The vehicle has a value of $11,600 and its secured claim is approximately $27,436.

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 statement of nonoppostition to the motion on January 10, 2018. Further, the debtor has not made fifteen pre-petition and one post-petition payments to the movant. And, the debtor is also not maintaining insurance coverage on the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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.

9. 17-26958-A-7 PEDRO/MARIA JIMENEZ — MOTION TO COMPEL ABANDONMENT
TOG-1 — 12-29-17 [14]

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in the debtor's sole proprietorship trucking business, Jimenez Trucking.

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 desktop computer, a 2000 Peterbilt Diesel Truck and a business entitled "Jimenez Trucking", as listed in Schedule B. The assets have a value of $1,150 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.

10. 17-21995-A-7 JASVINDER CHAHAL — MOTION TO APPROVE COMPROMISE
SCB-12 — 1-5-18 [151]

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 on one hand and Optima Tax Relief, LLC on the other, over whether the debtor's pre-petition transfer to Optima constituted an avoidable transfer. The dispute was precipitated by the debtor's transfer of $40,000 to Optima in 2016 in exchange for its promise to resolve the IRS tax debt of the debtor's wife. The trustee unsuccessfully requested that Optima turnover the funds received

alleging that the debtor did not receive reasonably equivalent value from the transaction. The parties have now reached a written settlement after several exchanges of offers and counter-offers. Under the terms of the compromise, Optima will pay $30,000 to the estate and will retain $10,000.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bank. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the parties vehement disagreement over whether the debtor received reasonably equivalent value from the transaction, the inherent costs, risks, delay and inconvenience of further litigation and judgment collection, and the significant benefit of the settlement proceeds towards the payment of estate 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.

11. 10-24097-A-7 KRISTEN ROBBINS — MOTION TO AVOID JUDICIAL LIEN
TJW-3
VS. CITIBANK (SOUTH DAKOTA), N.A. — 1-10-18 [29]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Citibank South Dakota N.A. for the sum of $15,627.48 on August 28, 2009. The abstract of judgment was recorded with Solano County on September 10, 2009. That lien attached to the debtor's interest in a residential real property in Vallejo, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $200,000 as of the petition date. Docket 12. The unavoidable liens totaled $346,879 on that same date, consisting of a single mortgage in favor of Bank of America. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.140 in the amount of $100 in Schedule C. Id.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).