UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 21, 2017 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 AUGUST 14, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 7, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 31, 2017. 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. 17-23115-A-7 JEFFERY HUTTON — MOTION TO AVOID JUDICIAL LIEN
ALF-1
VS. BUTTE COUNTY CREDIT BUREAU — 6-15-17 [13]

Tentative Ruling: The motion will be denied without prejudice.

A renewal of judgment was entered against the debtor in favor of Butte County Credit Bureau for the sum of $11,166.44 on January 13, 2016. The renewal of judgment was recorded with Butte County on February 9, 2016. The original lien, based on an abstract of judgment recorded in Butte County on May 20, 1996, continued to attach to the debtor's interest in a residential real property in Oroville, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of $147,455 as of the petition date. Dockets 15 & 1. The unavoidable liens totaled $0.00 on that same date. Dockets 15 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 15 & 1.

The motion will be denied because the debtor has not established entitlement to the $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 15.

2. 17-23115-A-7 JEFFERY HUTTON — MOTION TO AVOID JUDICIAL LIEN
ALF-2
VS. BUTTE COUNTY CREDIT BUREAU — 6-15-17 [19]

Tentative Ruling: The motion will be denied without prejudice.

A renewal of judgment was entered against the debtor in favor of Butte County Credit Bureau for the sum of $51,713.95 on January 13, 2016. The renewal of judgment was recorded with Butte County on February 9, 2016. The original lien, based on an abstract of judgment recorded in Butte County on September 16, 1996, continued to attach to the debtor's interest in a residential real property in Oroville, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of $147,455 as of the petition date. Dockets 21 & 1. The unavoidable liens totaled $0.00 on that same date. Dockets 21 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 21 & 1.

The motion will be denied because the debtor has not established entitlement to the $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 21.

3. 17-22836-A-7 LUEGENE SIMPSON
ETL-1
CITIBANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-13-17 [24]

Tentative Ruling: The motion will be granted.

The movant, Citibank, seeks relief from the automatic stay as to real property in Sacramento, California.

The debtor opposes the motion, contending that the movant approved a loan modification which it knew the debtor could not perform. He says, if the motion is granted, he will be homeless given his advanced age. If the motion is granted, the debtor is asking to stay on the property until November 1, 2017, when he is scheduled to leave California for Texas, where he will enter into a senior housing facility.

The property has a value of $220,000 and it is encumbered by claims totaling approximately $435,021. 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 May 31, 2017.

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

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

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

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

While the court is sympathetic to the debtor's situation, the court does not have discretion not to grant stay relief under 11 U.S.C. § 362(d)(2), where there is a lack of equity in the subject property. There is no dispute here that the debtor/estate has no equity in the property.

On the other hand, the court is not ordering the debtor to vacate the property. The movant must still complete its foreclosure and obtain possession of the property under California law.

4. 16-21545-A-7 ALANIE NONAN
RGJ-2

MOTION TO RECONSIDER
7-6-17 [73]

Tentative Ruling: The motion will be denied.

The debtor seeks reconsideration under Fed. R. Civ. P. 60(b) of the court's June 21, 2017 order (Docket 57) converting this case from chapter 13 to chapter 7. In the alternative, the debtor asks for reconversion back to chapter 13.

The debtor filed this case as a chapter 13 proceeding on March 14, 2016. On April 12, 2017, the chapter 13 trustee filed a motion for conversion to chapter 7 or dismissal. Docket 50. The hearing on the motion was set for May 22, 2017, Docket 51, using the court's 28-day procedure. Docket 54. This procedure requires that anyone wishing to oppose the motion to file written opposition at least 14 days prior to the hearing. Docket 51; see also Local Bankruptcy Rule 9014-1(f)(1).

No written opposition was filed and so the motion was resolved without hearing. The court granted the motion and converted the case to chapter 7. Id. In its ruling, the court held that:

"The debtor has failed to pay to the trustee approximately $800 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion, whichever is in the bests interests of creditors. See 11 U.S.C. § 1307(c)(1)."

Docket 56.

The court entered the order on the motion on June 21, 2017. Docket 57.

The debtor filed this motion on July 6, 2017, seeking reconsideration of the June 21 order or reconversion back to chapter 13.

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

"*(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.*"

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

Fed. R. Civ. P. 60(c).

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

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

This motion is timely as it was filed on July 6, within 15 days of entry of the June 21 order.

The debtor's basis for reconsideration is: "Due to a clerical oversight, I neglected to calendar the deadline to respond to the trustee's motion to dismiss or convert the case to chapter 7. No opposition was filed due to this oversight." Docket 76 at 1-2, Debtor's Counsel Decl.

This, according to the debtor, warrants reconsideration under Rule 60(b)'s excusable neglect prong. Docket 77. But, the court is not persuaded that the debtor has satisfied the excusable neglect standard of Rule 60(b) or any other prong of Rule 60(b).

While it may have been neglectful to not calendar "the deadline to respond to the trustee's motion", the debtor has not established that the neglect was excusable. The motion does not even discuss the law on excusable neglect.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]."

Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The debtor says nothing about whether she acted in good faith. Counsel's declaration states merely that he did not calendar the deadline for filing an opposition.

The debtor does not explain why she did not file at least a late opposition or file a motion for leave to oppose the trustee's motion, even though it was too late to file a written opposition. She does not say why she did not contact the chapter 13 trustee.

In short, the reason for the neglect given by the debtor for her failure to oppose the motion to convert or dismiss is inadequate.

Further, the debtor says nothing about the prejudice to the other parties in this proceeding, including the chapter 13 trustee and the creditors. Substantial time has passed since the debtor was current on her plan payments in the chapter 13 case. The last month for which the chapter 13 trustee and her creditors received a payment from the debtor was February 2017, approximately five months ago. Docket 53 at 2.

The risk of prejudice to the creditors is substantial, as they have not received payments for approximately five months now and the debtor does not say unequivocally whether she has the funds to catch up on plan payments.

She says only that she "has been able to catch up with the plan payments." Docket 76 at 2. "I have been able to catch up with my plan payments." Docket 75 at 1.

The court does not know what this means. Does she actually have the funds on hand to catch up with plan payments, if the court were to reconsider in her

favor the conversion to chapter 7?

Excusable neglect for reconsideration has not been established by the debtor. Nor has the debtor established other grounds under Rule 60(a) or 60(b) for reconsideration. The conversion was not a mistake by the court.

Mistake, inadvertence, surprise, newly discovered evidence, fraud, misrepresentation, misconduct by an opposing party, void judgment, satisfied judgment, released judgment, and discharged judgment are not implicated either. Other reasons justifying relief also do not exist.

Next, even if the court were to reconsider its ruling on the motion to convert or dismiss, it is not convinced that the outcome would be different. The debtor does not say that she has a basis to oppose the trustee's motion to convert or dismiss. The debtor admits missing two plan payments. This default was the reason the court converted the case to one under chapter 7 (along with the existence of non-exempt assets). Docket 75 at 1; Docket 56. This by itself is sufficient for the court to stand on its existing ruling on the motion to convert or dismiss.

Finally, the court will not reconvert the case back 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.

The debtor missed two plan payments when the case was in chapter 13 previously and she has not persuaded the court that this will not happen again, even if she were able to confirm a plan similar to the one on which she defaulted. The debtor has not established proper purpose for conversion, good faith, and eligibility for chapter 13 relief, such as sufficient regular disposable income to fund a plan. The motion will be denied.

5.	17-23555-A-7 JULIAN MILLER VVF-1 AMERICAN HONDA FINANCE CORP. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-20-17 [21]

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 2013 Honda Civic vehicle.

The debtor opposes the motion, contending that he has made payments to the movant, adequately protecting the movant's interest in the vehicle.

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

R. Bankr. P. 1019(1)(B).

The petition here was filed on May 26, 2017 as a chapter 13 proceeding. On June 9, 2017, the debtor converted the case to a chapter 7 proceeding, and a meeting of creditors was first convened on July 19, 2017. Docket 13. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 10 (as July 9 fell on a Sunday). See Fed. R. Bankr. P. 9006(a)(1)(C).

The debtor filed a statement of intention on the conversion date, June 9, indicating an intent to retain the vehicle and "[m]aintain payments current" but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. Docket 11 at 32.

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 July 10, 2017, 30 days after the conversion 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 July 10, 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.

The debtor's opposition to the motion will be overruled as moot.

6. 09-30470-A-7 SHAN FANG — MOTION FOR CONTEMPT
PGM-1 — 5-9-17 [19]

Tentative Ruling: The motion will be denied.

The debtor complains that creditor Stephen Opperwall has been violating the discharge injunction by attempting to collect a pre-petition debt against the debtor.

The response, filed by both Ocean Queen USA, Inc. and Stephen Opperwall, claims that the creditor did not know of the bankruptcy filing and subsequent September 8, 2009 chapter 7 discharge until December 2016.

The debtor's request to hold the creditor in contempt, for attorney's fees and costs as sanctions, and for relief based on violation of 11 U.S.C. § 1328, will be denied.

The motion is not a model of clarity. For instance, although the motion refers to Stephen Opperwall, it also refers to Ocean Queen USA, Inc. While the court understands that Ocean Queen assigned the judgment to someone else, the motion does not identify the assignee of the judgment. See Docket 19 at 5. The motion also refers to the discharge of a "chapter 7 plan," which makes no sense. Docket 19 at 9. The reference to a violation of 11 U.S.C. § 1328 also is perplexing as this case is a chapter 7 case. Docket 19 at 1, 2, 10.

The court will overrule the creditor's technical letter, font, margin, page (etc.) objections to the motion. Whatever the technical deficiencies of the motion they have not been an obstacle to a response.

The debtor admits to not giving the creditor timely notice of this bankruptcy case. The debtor does not deny that the creditor received notice only in December 2016. As such, assuming the debt at issue involves an intentional tort under 11 U.S.C. § 523(a)(2), as claimed by the creditor, and given that this was a no-asset and no claims bar-date case, the claim at issue is squarely one under 11 U.S.C. § 523(a)(3)(B). Section 523(a)(3) provides:

"*(a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—*

. . .

"*(3) neither listed nor scheduled under section 521 (a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—*

"*(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or*

"*(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.*"

In other words, 11 U.S.C. § 523(a)(3)(A) prescribes that a non-section 523(a)(2), (4) or (6) claimant must have had enough notice of the case to permit the timely filing of a proof of claim. As there was no claims bar-date set in this case, section 523(a)(3)(A) is inapplicable.

On the other hand, 11 U.S.C. § 523(a)(3)(B) precludes discharge in no asset

chapter 7 cases, where the claimant would have sought determination of non-dischargeability under section 523(a)(2), (4) and/or (6)). This is precisely what the creditor is alleging, that the debt in question should be nondischargeable under section 523(a)(2).

Accordingly, someone – either the creditor or the debtor – must file an adversary proceeding under section 523(a)(3)(B). The court will not adjudicate the merits of the section 523(a)(3)(B) claim in connection with this motion. See Fed. R. Bankr. P. 7001(6). An adversary proceeding is required. Id.

Moreover, this court does not have exclusive jurisdiction over section 523(a)(3) claims. See also Fidelity Nat'l Title Ins. Corp. v. Franklin (In re Franklin), 179 B.R. 913, 920 (Bankr. E.D. Cal. 1995). It can be adjudicated by the state court that entered the judgment against the debtor.

Finally, the court not hold the creditor in contempt for violating the discharge because the debt was not scheduled, the creditor did not receive notice of the bankruptcy in time to file a timely nondischargeability action, and the debtor himself may also file the section 523(a)(3)(B) claim. The motion will be denied. The parties shall bear their own fees and costs.

7. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID JUDICIAL LIEN
HLG-4
VS. PERSOLVE, L.L.C. — 7-5-17 [62]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker (the remaining debtor) in favor of Persolve, L.L.C. for the sum of $9,232.99 on September 3, 2015. The abstract of judgment was recorded with Sacramento County on February 2, 2016. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied because the debtor's evidence of the value of the property is inadmissible. Although the debtor values the property herself, she states that her valuation is based on "researching the comparable market prices of similar homes in my neighborhood." Docket 64 at 1. But, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). The debtor's lay witness testimony cannot be based on scientific, technical or other specialized knowledge, such as surrounding home values. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

8. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID JUDICIAL LIEN
HLG-5
VS. TARGET NATIONAL BANK — 7-5-17 [66]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker (the remaining debtor) in favor of Target National Bank for the sum of $3,648.65 on March 24, 2011. The abstract of judgment was recorded with Sacramento County on March 28, 2013. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied because the debtor's evidence of value for the property is inadmissible. Although the debtor values the property herself, she states that her valuation is based on "researching the comparable market prices of similar homes in my neighborhood." Docket 68 at 1.

But, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). The debtor's lay witness testimony cannot be based on scientific, technical or other specialized knowledge, such as surrounding home values. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

9. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID JUDICIAL LIEN
HLG-6
VS. UNIFUND CCR, L.L.C. — 7-5-17 [70]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker (the remaining debtor) in favor of Unifund CCR, L.L.C. for the sum of $14,160.98 on March 11, 2013. The abstract of judgment was recorded with Sacramento County on February 3, 2014. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied because the debtor's evidence of value for the property is inadmissible. Although the debtor values the property herself, she states that her valuation is based on "researching the comparable market prices of similar homes in my neighborhood." Docket 72 at 1.

But, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). The debtor's lay witness testimony cannot be based on scientific, technical or other specialized knowledge, such as surrounding home values. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

10. 14-30283-A-7 LARRY/VALERIE JONES — MOTION TO REDEEM
MRL-3 — 6-18-17 [56]

Tentative Ruling: The motion will be dismissed without prejudice.

The debtors wish to redeem a 2008 Cadillac CTS vehicle with 136,543 miles for $3,867. The vehicle is subject to a claim held by GM Financial for $18,650.53. The debtors seek to pay $600 to their attorney from the funds they intend to borrow, for the preparation and prosecution of this motion.

Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The vehicle must be valued at its replacement value. In the chapter 7 case of

an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The motion will be dismissed because service of it 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 debtors served the motion on GM Financial (General Motors Financial Company, Inc.) without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." See Docket 60.

Even in the absence of the service deficiency, however, the motion would have been denied for several reasons.

First, the court does not have evidence of the vehicle's replacement value, *i.e.*, the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined. The only evidence of value is in the sole supporting declaration, a declaration of Valerie Jones, stating that "[t]he replacement value of the Property considering the age and condition of the automobile is three thousand eight hundred and sixty-seven dollars ($3,867)." Docket 58 at 2.

However, Mrs. Jones is not providing a value based on what retail merchant would charge for the vehicle. She is merely giving her opinion about the value of the vehicle.

Mrs. Jones has not been qualified to provide a value based on what retail merchant would charge for the vehicle. Mrs. Jones is not a retail merchant or a vehicle appraiser. See Fed. R. Evid. 702 & 703. The declaration does not qualify the debtor as anything other than a lay witness. See Fed. R. Evid. 701.

To a retail merchant, the cost of correcting blemishes in the condition of the vehicle will be far less than what a consumer would have to pay to correct the blemishes.

Second, even if she were providing the correct replacement value for the vehicle and she were qualified to do so, Mrs. Jones does not provide information about the vehicle's condition in her declaration.

Although there is some information about the vehicle's condition in an attached valuation report (Docket 59 at 7), Mrs. Jones' declaration makes no mention of the report.

Nor has the report been authenticated. See Fed. R. Evid. 901(a). Nothing in the supporting declaration provides information about the valuation report.

Third, even if the vehicle's valuation report were admissible, the motion does not explain why the cost of the repairs is not already accounted for in the vehicle's "average" condition. Docket 59 at 7. The vehicle is already nine years old. For instance, is not the condition of the vehicle consistent with

its age? Would not any average nine-year old vehicle require $250 of dent repairs and $175 of interior reconditioning? Docket 59 at 7. The motion does not address this.

In short, the debtors have not carried their burden of persuasion on establishing the value of the vehicle for redemption purposes.

As a final note, the court will not approve attorney's fees for the debtor's counsel. The court does not approve compensation paid by chapter 7 debtors to their attorneys. If compensation is paid for services related to the bankruptcy filing, it is incumbent on counsel to comply with the disclosure requirements of Fed. R. Bankr. P. 2016(b). If the disclosed compensation is unreasonable, a party in interest may request a review of it.

11. 17-23186-A-7 RAQUEL MACK — MOTION TO AVOID JUDICIAL LIEN
PSB-1 — 5-23-17 [12]
VS. STANISLAUS CREDIT CONTROL SVC., INC.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Stanislaus Credit Control Service, Inc. for the sum of $5,868.84 on August 5, 2015. The abstract of judgment was recorded with Sacramento County on September 17, 2015. That lien attached to the debtor's interest in a residential real property in Orangevale, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of $377,000 as of the petition date. Dockets 16 & 1. The unavoidable liens totaled $219,501.28 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 16 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in Schedule C. Dockets 16 & 1.

The motion will be denied because the debtor has not established entitlement to the $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 14.

12. 15-22990-A-7 XTREME ELECTRIC, INC — MOTION TO APPROVE COMPROMISE
JRR-5 — 6-21-17 [95]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate on one hand and Segue Construction, Inc., The Ohio Casualty Insurance Company, and American Contractors Indemnity Company, on the other, resolving breach of contract and quantum meruit claims by the estate.

Under the terms of the compromise, the non-estate parties to the settlement will pay $55,000 to the estate and will withdraw any proofs of claim against the estate. In exchange, the estate will dismiss its causes of action. The parties will bear their own fees and costs in the litigation.

On a motion by the trustee and after notice and a hearing, the court may

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

The motion will be denied because the court cannot tell from the record whether the settlement is in the best interest of the estate and the creditors. For instance, the motion says nothing about what was at stake in connection with the claims asserted by the estate. The motion makes no effort to assign value to the estate's claims against the defendants. The motion also does not say what proofs of claim will be withdrawn and what will be the benefit to the estate from such withdrawal. In short, the court cannot ascertain the value of what the estate is giving up and what it is receiving in the settlement. As such, the motion cannot be granted. It will be denied.

13. 17-21995-A-7 JASVINDER CHAHAL
SCB-8

MOTION FOR DETERMINATION THAT VEHICLES ARE OF CONSEQUENTIAL VALUE OR BENEFIT TO THE ESTATE
6-16-17 [86]

Tentative Ruling: The motion will be denied.

The trustee seeks declaration that certain assets of the estate, including trucks and tanks, are of consequential value or benefit to the estate and should remain property of the estate subject to the automatic stay.

However, the court cannot award declaratory relief on a motion. Such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(9).

Moreover, the court will not determine that the assets outlined in the motion are of consequential value or benefit to the estate and that they should remain property of the estate because the court just ordered the sale of those assets. Dockets 111, 112, 121, 122. By now, the assets have been sold and are no longer property of the estate.

Further, the motion does not satisfy the case or controversy requirement of Article III of the United States Constitution. To establish standing under the case or controversy requirement, the movant (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

Here, the assets outlined in the motion were property of the estate, prior to their sale, and no one has challenged this. Under 11 U.S.C. § 541(a), all assets of the debtor became property of the estate when this case was filed. Also, in connection with the sales motions, the trustee represented that the assets are not subject to any exemption claims. Docket 62 at 2; Docket 69 at 3. In other words, there is no actual dispute over whether the assets belong

to the estate.

And, the court is not prepared to adjudicate this motion in an advisory fashion.

"'[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. at 96 ... (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97...."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001). The motion will be denied.

14. 15-27399-A-7 DALJIT/HARMANDEEP SIDHU — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER
DNL-5 — 6-30-17 [61]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $275,359 the estate's interest in real property in Fairfield, California to Clifford Tolbert and Brooke Welch. The trustee also asks for approval of the payment of the real estate commission.

The property is subject to a single mortgage in the amount of $99,474 and $9,000 in outstanding property taxes. The property was encumbered also by two judicial liens, but they were avoided by the trustee in two adversary proceedings. The property is not subject to an exemption claim.

The buyers will pay escrow fees, title insurance, and home warranty. The estate will pay county transfer taxes/fees.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

The motion will be granted, however, only upon the trustee clarifying the sale's tax consequences, if any.

15. 15-27399-A-7 DALJIT/HARMANDEEP SIDHU — MOTION TO APPROVE STIPULATION O.S.T. 7-17-17 [75]
DNL-7

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement between the estate and the debtors, resolving an anticipated exemption claim of the debtors in a real property the trustee is about to sell, resolving a pending motion by the debtors for conversion of the case to chapter 13, and resolving the estate's interest in a tax refund.

The trustee has a pending motion (DCN DNL-5), also being heard on this calendar, for the sale of the debtors' real property in Fairfield, California. Although Schedule C is devoid currently of any exemptions in the property, the debtors have expressed to the trustee that they will be amending Schedule C to assert a $175,000 exemption, on the basis of them suffering physical disabilities, as contemplated by Cal. Civ. Proc. Code § 704.730(a)(3)(B). The debtors have also filed a motion for conversion of the case to chapter 13. Docket 68. That motion has not been set for a hearing by anyone. The debtors have also received a 2015 tax refund in the amount of $7,772, $5,829 of which belongs to the estate.

Under the terms of the compromise, the debtors will be allowed a $90,000 exemption claim in the real property. The trustee will waive the reinvestment requirements of Cal. Civ. Proc. Code § 704.720(b), averting them for the debtors. The trustee will also relinquish any interest in the tax refund. In exchange, the debtors will vacate the property on or before August 10, 2017 and will cooperate in the estate's sale of the property. In addition, the debtors will voluntarily dismiss their conversion motion.

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 debtors would qualify for a $100,000 exemption claim even in the absence of their disability claims, given the uncertainties and risks associated with litigating disability issues under Cal. Civ. Proc. Code § 704.730(a)(3)(B), given that the estate still expects to generate at least approximately $70,000 from the sale, and given the inherent costs, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

FINAL RULINGS BEGIN HERE

16. 15-23802-A-7 LODI WINES, L.L.C. MOTION TO EMPLOY
ICE-1 6-15-17 [26]

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 chapter 7 trustee requests authority to employ Husiman Auctions, Inc. as auctioneer of the estate. Husiman will assist the estate with marketing, storing, preparing for sale, and eventual sale of a forklift. The proposed compensation arrangement is a 15% commission along with charging buyers a 10% buyer's premium.

As the motion mentions no reimbursement of expenses, the court surmises that Husiman will not be seeking reimbursement of expenses associated with its services.

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

The court concludes that the terms of employment and compensation are reasonable, especially given that Husiman will not be seeking reimbursement of expenses associated with its services. Husiman is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Its employment will be approved.

17. 15-23802-A-7 LODI WINES, L.L.C. MOTION TO SELL
ICE-2 6-15-17 [30]

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 chapter 7 trustee requests authority to sell a forklift at a public auction, on or after July 21, 2017.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The forklift is unencumbered. Docket 32 at 2. The sale then 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.

18. 17-23811-A-7 JANET GUNN
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-21-17 [29]

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2012 Ford Fiesta vehicle.

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

The petition here was filed on May 9, 2017 and a meeting of creditors was first convened on July 12, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 8. The debtor has not filed a statement of intention.

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 has not filed a statement of intention. 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 June 8, 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 July 13, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 8, 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.

19. 13-30212-A-7 ARMANDO/NORA COTA — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DMW-4 — 6-23-17 [60]

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

The motion will be granted.

The Law Offices of Joseph L. Alioto and Angela Alioto, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $83,076.93 in fees and $3,750.62 in expenses, for a total of $86,827.55. The services cover the period from November 12, 2013 through the present. The movant's employment as special counsel for the estate was approved on January 14, 2016. Docket 34. The requested compensation is based on a 40% contingency fee compensation arrangement.

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 consisted, without limitation, of:

(1) prosecuting discrimination and harassment claims against Sacramento Regional Transit,

(2) filing several amended complaints,

(3) conducting and defending over 25 depositions,

(4) propounding and responding to three sets of discovery,

(5) reviewing over 15,000 documents produced by SRT,

(6) responding to various dispositive motions (dismissal, summary judgment motions, etc.),

(7) preparing for and attending two days of mediation,

(8) negotiating $218,967.87 settlement of the claims for the estate and the debtor (claimed an exemption in the amount of $25,570),

(9) preparing the settlement agreement,

(10) assisting the trustee with obtaining bankruptcy court approval of the settlement, and

(11) preparing and filing papers in support of 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.

20. 16-23224-A-7 LORD ARIAS — MOTION TO APPROVE COMPROMISE
DNL-4 — 6-22-17 [36]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor and his non-filing spouse, Veronica Arias, resolving the estate's interest in real property in North Highlands, California. The debtor and Veronica Arias have contended that the property is separate property of Veronica Arias, while the trustee has contended that the estate owns the property jointly with Veronica Arias.

Under the terms of the compromise, Veronica Arias will pay $10,000 to the

estate in full satisfaction of the estate's interest in the property. The settlement amount will not be subject to an exemption claim by the debtor. The estate relinquishes its interest in the property "as is," "where is," and without representation or warranty. The parties will exchange mutual releases.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the property's approximate value of $150,000, given the property's approximately $118,075 in encumbrances, and given the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

21. 16-21029-A-7 LARA HATZENBILER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-2 — 6-19-17 [37]

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 $5,605 in fees and $6.26 in expenses, for a total of $5,611.26. This motion covers the period from August 14, 2016 through June 8, 2017. The court approved the movant's employment as the trustee's attorney on September 14, 2016. In performing its services, the movant charged hourly rates of $200, $225, $325, and $425.

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

included, without limitation: (1) reviewing petition documents, (2) assisting the estate with the administration of an IRA the debtor inherited from her father, (3) communicating with the debtor and the administrator of the IRA, (4) researching issues pertaining to the IRA, (5) assisting the estate with the liquidation of a portion of the IRA, 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.

22. 17-23136-A-7 ANNE WILLIAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-6-17 [10]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2013 Honda CR-V vehicle, repossessed pre-petition. The movant has produced evidence that the vehicle has a value of $20,200 and its secured claim is approximately $28,171. Docket 12 at 3. According to the debtor, the vehicle has a value of $12,189. Docket 1, Statement of Financial Affairs at 3.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, the movant obtained possession of the vehicle pre-petition.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

23. 17-23043-A-7 TOU YANG — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 6-16-17 [14]
PACIFIC UNION FINANCIAL, 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.

The movant, Pacific Union Financial, L.L.C., seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $120,000 and it is encumbered by claims totaling approximately $135,562. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 29, 2017 and has filed a non-opposition to this motion.

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

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

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

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

24. 17-22151-A-7 GURINDER SINGH
PPR-1
LAND HOME FINANCIAL SERVICES, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-17 [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 in part and dismissed as moot in part.

The movant, Land Home Financial Services, Inc., seeks relief from the automatic stay as to real property in Sacramento, California.

Given the entry of the debtor's discharge on July 13, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The trustee filed a report of no distribution on May 25, 2017. This is cause for the granting of relief from stay as to the estate.

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

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

The property has a value of $300,000 and it is encumbered by claims totaling approximately $289,014. The movant's deed is the only encumbrance against the property.

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

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the

amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

25. 16-22654-A-7 MARC LIM — MOTION TO APPROVE COMPENSATION OF AUCTIONEER
HSM-11 — 6-16-17 [154]

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 $15,255.96 in fees and $6,813.75 in expenses, for a total compensation of $22,069.71. The compensation is based on a 12% commission and reimbursement of reasonable expenses up to $9,500, incurred in preparing the property for sale (transportation, storage and vehicle document preparation expenses).

The court approved the movant's employment as the trustee's auctioneer on April 4, 2017. West rendered services to the estate in April and May 2017.

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 inventory, appraisal, securing, storage, and sale of two vehicles, a forklift, three pallet jacks, and a 2006 International truck. The sale generated $127,133 in gross proceeds.

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

26. 16-22654-A-7 MARC LIM — MOTION TO APPROVE COMPENSATION FOR SPECIAL COUNSEL
HSM-12

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.

Kahn, Soares & Conway, L.L.P., special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $8,490 in fees and $0.00 in expenses. The services, consisting of 26.4 hours, cover the period from October 22, 2016 through April 21, 2017. The movant's employment as special counsel for the estate was approved on November 2, 2016. Docket 104. The requested compensation is based on hourly rates of $225 and $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services consisted, without limitation, of: analyzing issues and disputes arising under California's Perishable Agricultural Commodities Act, advising the trustee about such issues and disputes, and assisting the trustee in settlement negotiations with creditors pertaining to the same.

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.

27. 16-22958-A-7 KELLY TIMOTHY
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-12-17 [94]

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2006 Ford Explorer vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a

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

The petition here was filed on May 5, 2016 as a chapter 13 proceeding. The case was converted to a chapter 7 proceeding on April 25, 2017 and a meeting of creditors was first convened on May 24, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 24. The debtor filed a statement of intention on the conversion date, April 24, 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 timely. 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 June 23, 2017, 30 days after the first meeting of creditors 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 May 25, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 23, 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.

28. 09-23465-A-7 MOORE EPITAXIAL, INC. MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
WFH-6 6-22-17 [284]

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.

Sensiba San Filippo, L.L.P., via the chapter 7 trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $4,095 in fees and $0.00 in expenses, with only $2,000 to be paid at this time. This motion covers the period from May 28, 2015 through May 31, 2017. The court approved the movant's employment as the estate's accountant on March 27, 2015. In performing its services, the movant charged hourly rates of $195, $235, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the review of prior tax returns and the preparation of 2012 estate tax returns. The movant also discussed tax issues with the trustee.

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

29. 15-22990-A-7 XTREME ELECTRIC, INC MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
JRR-6 6-21-17 [89]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the debtor.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service on the debtor's attorney to the exclusion of the debtor. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

30. 17-21193-A-7 WILLIAM BERNAL AND CELIA HAWKINS BERNAL MOTION TO CONVERT CASE
SDB-3

Final Ruling: The motion will be dismissed without prejudice.

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

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