UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 26, 2015 at 10:00 a.m.

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

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When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON NOVEMBER 23, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 9, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 16, 2015. 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. 15-23101-A-7 GREGG/KAREN RAMPENTHAL — MOTION TO AVOID JUDICIAL LIEN
MOH-2
VS. DISCOVER BANK — 9-16-15 [31]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Karen Rampenthal in favor of Discover Bank for the sum of $3,506.88 on September 6, 2013. The abstract of judgment was recorded with Butte County on October 7, 2013. That lien attached to the debtor's residential real property in Oroville, California. The debtors are seeking avoidance of the lien.

The motion will be denied without prejudice because the evidence of value for the property in the motion is inadmissible hearsay. It consists of statements made by Mark Wisterman, a real estate broker, about the value of the property. Docket 33. The motion does not include declaration by Mr. Wisterman giving this opinion. Therefore, his statements are hearsay as they are merely repeated by the debtor in her declaration. Docket 33.

Moreover, there is nothing in the motion about Mr. Wisterman's qualifications or the basis for his opinion of value. As such, the debtors have not carried their burden of persuasion on the value of the property. Accordingly, the motion will be denied without prejudice.

2. 11-37803-A-7 ALAN/SABRINA TANNER — MOTION TO AVOID JUDICIAL LIEN
SPB-1
VS. BENEFICIAL CALIFORNIA, INC. — 10-7-15 [25]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Sabrina Tanner in favor of Beneficial California, Inc. for the sum of $10,887.94 on October 27, 2008. The abstract of judgment was recorded with Butte County on February 10, 2009. That lien attached to the debtor's residential real property in Oroville, California. The debtor asks for avoidance of the lien.

The motion will be denied. The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Yet, the motion contains no reference or admissible evidence of the debtor's exemption in the property. The motion contends that the lien impairs the debtors' "interest" in the property. Docket 25 at 3. This is not a basis for avoiding a judicial lien under 11 U.S.C. § 522(f).

Furthermore, the motion contains no admissible evidence of value for the property. There is no declaration establishing the value of the property. The only declaration in support of the motion is that by the debtors' counsel, which merely authenticates the attached exhibits in support of the motion. Docket 27. Even the motion itself makes no mention of the value of the

property. The only place where the property's value is referenced is Schedule D, attached as Exhibit 3 to the motion. Docket 28. But, simply attaching the debtor's schedules to the motion does not establish the value of the property. The debtor's schedules are not evidence. At best, the schedules are out of court statements asserted for the truth of the matter asserted therein, *i.e.*, inadmissible hearsay. Fed. R. Evid. 801(c).

Finally, service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Beneficial 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." Docket 33.

And, although the motion was served on CT Corporation System as agent for service for Beneficial, the court is not persuaded that CT Corporation is an agent for service of process for Beneficial. The records with the California Secretary of Estate indicating that CT Corporation is an agent for Beneficial are outdated because they list Beneficial as "merged out," meaning that Beneficial merged out of existence in California into another business entity. Docket 33 at 3.

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

3. 11-37803-A-7 ALAN/SABRINA TANNER — MOTION TO AVOID JUDICIAL LIEN
SPB-2
VS. DIRECT MERCHANTS CREDIT CARD BANK, N.A. — 10-7-15 [29]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Sabrina Tanner in favor of Direct Merchants Credit Card Bank for the sum of $3,224.88 on April 1, 2009. The abstract of judgment was recorded with Butte County on November 16, 2010. That lien attached to the debtor's residential real property in Oroville, California. The debtor asks for avoidance of the lien.

The motion will be denied. The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The motion contains no reference or admissible evidence of the debtor's exemption in the property. The motion contends that the lien impairs the debtors' "interest" in the property. Docket 29 at 3. This is not a basis for avoiding a judicial lien under 11 U.S.C. § 522(f).

Finally, the motion contains no admissible evidence of value for the property. There is no declaration establishing the value of the property. The only declaration in support of the motion is that by the debtors' counsel, which merely authenticates the attached exhibits in support of the motion. Docket 31. Even the motion itself makes no mention of the value of the property. The only place where the property's value is referenced is Schedule D, attached as Exhibit 3 to the motion. Docket 32. But, simply attaching the debtor's schedules to the motion does not establish the value of the property. The debtor's schedules are not evidence. At best, they are out of court statements asserted for the truth of the matter asserted therein, i.e., inadmissible hearsay. Fed. R. Evid. 801(c).

4. 15-27322-A-7 WILLIAM MYER — MOTION FOR RELIEF FROM AUTOMATIC STAY
STS-1 — 10-9-15 [23]
BOARD OF TRUSTEES OF THE KEN LUSBY CLERKS & LUMBER HANDLERS PENSION FUND VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 and denied in part.

The movant, Board of Trustees of the Ken Lusby Clerks and Lumber Handlers Pension Trust Fund, seeks relief from the automatic stay to proceed with federal district court litigation against the debtor, the debtor's sister, Wendy Oliver, and their corporation, Piedmont Lumber and Mill Company, Inc. The district court entered a summary judgment on September 16, 2015, holding the debtor, Ms. Oliver and Piedmont jointly and severally liable for Piedmont's withdrawal liability under ERISA. The debtor filed this chapter 7 case on the next day, September 17, 2015. Only a motion for attorney's fees and costs remains to be prosecuted and adjudicated by the district court.

First, the court will deny as unnecessary the request for relief from stay for the district court action to proceed against Ms. Oliver and Piedmont. There is no co-debtor stay in this case because it is a chapter 7 proceeding. The co-debtor stay applies only in chapter 13 cases. See 11 U.S.C. § 1301(a).

Second, the motion will be denied as to the debtor. The movant's claim is a pre-petition claim that will be discharged when the debtor's discharge is entered, on or soon after December 18, 2015.

The movant has filed no nondischargeability complaint under 11 U.S.C. § 523(a), nor does the motion say that it plans to file one.

Consequently, no purpose would be served by permitting the movant to continue against the debtor.

As to the estate, however, there is cause to lift the stay under 11 U.S.C. § 362(d)(1) for the movant only to liquidate its claim against the estate. The initial meeting of creditors was held on October 19, 2015 but the trustee appears not to have determined yet whether there are any assets to administer in this case. The movant is authorized only to finalize the amount of the district court's judgment by filing and prosecuting its motion for attorney's fees and costs. No other relief is awarded.

The stay is not lifted to allow the movant to enforce or collect on the judgment - or any other judgment or order in the district court action, from the debtor or the bankruptcy estate.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

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

5. 15-26946-A-7 JERICO/LIZA PUNO — MOTION TO VACATE DISMISSAL 9-22-15 [16]
CLS-1

Tentative Ruling: The motion will be denied.

The debtors are asking the court to vacate its September 21, 2015 dismissal of the case.

This case was filed on September 1, 2015. On both September 1 and September 3, the court issued notices of incomplete filing, apprising the debtors that they had not filed their master address list, the statement of social security numbers, and the means test form. Dockets 3 & 10. The case docket indicates that although the debtors filed their master address list and statement of social security numbers, the means test form was not filed until after the case was dismissed on September 21. Dockets 6 & 7. The means test form was filed on September 22. Docket 15.

The motion will be denied for several reasons.

First, the motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. For example, there is no evidence establishing the factual assertion in the motion that the debtors' counsel "attempted to file" the means test form. Docket 16 at 1. There is no declaration or other admissible evidence proffered in support of the motion.

This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Second, the motion will be denied because it says nothing about any legal authority permitting vacating of the dismissal. For instance, the motion does not mention, much less brief the Fed. R. Civ. P. 60(a) and/or (b) standard for reconsideration of court orders or judgments, made applicable here by Fed. R. Bankr. P. 9024. The court should not have to speculate about the proper legal basis, if any, for vacating its dismissal order.

Finally, even if the debtors had proffered admissible and probative evidence in

support of the motion and had invoked Rule 60, there is no basis in the motion's unsubstantiated factual assertions for reconsideration the dismissal.

Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave."

There are no facts in the motion tending to indicate that the entry of the dismissal order was due to a clerical mistake or a mistake on the part of the court. Conversely, the motion states that "[d]ue to a problem with attorney's software program, there were issues uploading the entire voluntary petition package."

The motion asserts that "[o]n September 2, 2015, counsel for debtors contacted the court clerk to confirm all of the required forms were received . . . [t]he clerk assured counsel that everything was received and to disregard the notice. On September 21, 2015, counsel received a Notice to Dismiss the case. Docket 16 at 1.

It is the debtors' responsibility to ascertain which forms are "required" to be filed and to make certain that all documents the debtors wanted to file were filed. Case clerks do not provide legal advice to anyone about which forms must be filed with the court.

Importantly, despite the September 1 notice of incomplete filing, the motion does not say that the case clerk told the debtors' counsel that the master address list, statement of social security numbers, and means test form were filed. This is substantiated by the September 3 notice of incomplete filing. Docket 10.

After the debtors' counsel apparently contacted the case clerk on September 2, the court issued another notice of incomplete filing on September 3, telling the debtors once again that the master address list, statement of social security numbers, and means test form were missing. Docket 10. That notice was mailed to the debtors and the debtors' counsel on September 5. Docket 13.

Also, when the case clerk told the debtors' counsel on September 2 to disregard the notice of incomplete filing, the clerk could not have been referring to the September 3 notice, as that notice had not been issued. The clerk was referring to the September 1 notice.

Nevertheless, the motion says nothing about the September 3 notice of incomplete filing and the debtors' failure to respond to it. Accordingly, there was no clerical mistake as to the debtors' failure to file the means test form.

Further, 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."

"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).

Given the debtors' failure to address their failure to comply with the September 3 notice of incomplete filing, as described above, there was no mistake, inadvertence, surprise, or excusable neglect warranting Rule 60(b) relief. Accordingly, the motion will be denied.

6. 14-28852-A-7 JOHN LIVINGSTON — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER
DNL-3 — 10-2-15 [35]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $70,000 the estate's interest in a real property in Tuolomne, California (18355 & 18365 Chestnut Avenue) to John Feriani and Daniel Clark. The trustee also asks for approval of the payment of the real estate commission, 6% of the gross purchase price or $4,200. The real property is in a deteriorated condition due to fire and weather damage.

The trustee anticipates generating approximately $39,800 from the sale for the estate, after paying a $20,000 property tax lien and the debtor's $6,000 exemption claim. The lien will be paid from escrow.

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 broker's terms of employment.

7. 15-23876-A-7 RUBEN REYNOSO — MOTION TO EMPLOY, AUTHORIZING SALE OF PROPERTY AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
PA-7 — 9-28-15 [44]

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

The chapter 7 trustee requests authority to expand the employment of West Auctions, Inc., as auctioneer for the estate, allowing him to sell additional

items that were not scheduled by the debtor, including:

- a 2007 Triton Elite Snowmobile trailer (valued by West at $2,500 to $3,000),
- a Pipe Triplane (valued by West at $3,000 to $4,000), and
- a Hydro 100 International Harvester (valued by West at $8,000 to $10,000).

West's employment was approved by the court on September 18, 2015, to sell other personal property items. Docket 41.

In connection with this motion, West will assist the estate with the sale of the above items at a public auction. The property items are unencumbered and they are not subject to exemptions. The proposed compensation arrangement is a 20% commission along with reimbursement of expenses incurred in: securing, transporting and storing the items; and transferring title of the property, expenses not to exceed $200.

The movant asks the court to approve West's employment, approve the sale of the items, and approve West's compensation, without further court order.

The debtor has filed a response, while not opposing the sale, disputing the trustee's position about the disclosure and turnover of the subject personal property.

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. West is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Docket 34. Its expanded employment will be approved.

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 waive the 14-day period of Rule 6004(h), as requested.

The court will deny approval of West's compensation and reimbursement of expenses at this time. The court cannot assess the reasonableness and necessity of compensation until it knows what is the compensation. Because the sale has not taken place yet, the court cannot make a Section 330(a) determination of the requested compensation for West. In addition, until the sale takes place, West cannot execute a Rule 6004(f) statement. The court cannot authorize a non-flat fee compensation for a professional prior to the performance of services by that professional.

In granting this motion, the court makes no determinations of any issues pertaining to the debtor's disclosure and/or turnover of the subject personal property items. Such determinations are unnecessary for adjudication of this motion.

8. 15-27399-A-7 DALJIT/HARMANDEEP SIDHU
HRH-1
TRANSPORTATION TRUCK AND TRAILER SOLUTIONS, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-8-15 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 dismissed as moot.

The movant, Transportation Truck and Trailer Solutions, L.L.C., seeks relief from the automatic stay with respect to a 2009 Freightliner tractor truck and 2006 utility refrigerated van.

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

The petition here was filed on September 21, 2015 and a meeting of creditors was first convened on October 21, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 21. The debtor filed a statement of intention on the petition date, but without listing the vehicles in the 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 did not list the vehicles in the 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 October 21, 2015, 30 days after the petition date.

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

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

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

Therefore, without this motion being filed, the automatic stay terminated on October 21, 2015.

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 FINAL RULINGS BEGIN HERE

9. 15-27004-A-7 ANETTE GUSTO — ORDER TO SHOW CAUSE 10-1-15 [35]

Final Ruling: The order to show cause will be discharged.

The debtor filed an amended master address list on September 17, 2015, but did not pay the $30 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2). However, after the order to show cause to issued the fee was paid. No prejudice resulted from the late payment.

10. 15-20611-A-7 JASON/JENNIFER HILL — MOTION TO COMPEL ABANDONMENT 7-31-15 [15]
AFL-1

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The hearing on this motion was continued from September 14 in order for the trustee to determine whether he wished to oppose this motion. The trustee has indicated that he will not oppose the motion.

The debtors seek to compel the trustee to abandon the estate's interest in a real property in Mountain House, California. The debtors assert that the value of the property is $446,000, whereas it is subject to a mortgage for $331,688 in favor of MB Financial, N.A. and an exemption claim for $100,000.

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.

Although there is approximately $14,300 of equity in the property, after accounting for the mortgage and exemption claim, the sale costs and other administrative expenses associated with the estate's administration of this property (approximately 8% to 10%) make the property of inconsequential value to the estate. Accordingly, the motion will be granted and the property will be ordered abandoned.

11. 15-25231-A-7 LEONA COMBS — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-22-15 [12]
APN-1
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 in part and dismissed as moot in part.

Given the entry of the debtor's discharge on October 14, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2012 Nissan Frontier. The movant has produced evidence that the vehicle has a value of $20,450 ($16,000 per Schedule B) and its secured claim is approximately $22,002. Docket 14.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on August 6, 2015.

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

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

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

12. 11-34464-A-7 STUART SMITS — MOTION TO ABANDON
TGM-14 — 9-18-15 [331]

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.

With the exception of "funds, proceeds and/or monies held by the bankruptcy estate," the trustee wishes to abandon the estate's interest in:

- Smits/Azevedo Placer Vineyards Investors, L.L.C.,

- Placer 290 Investors, L.L.C.,

- real property owned by Placer 290 Investors, L.L.C.,

- Placer Vineyards, L.L.C., and

- real property owned by Placer Vineyards, L.L.C..

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

Although the debtor has identified in his schedules owning interests in the Smits/Azevedo L.L.C. and the Placer Vineyards L.L.C., the trustee has discovered that the debtor mistakenly identified the Placer 290 L.L.C. as the Placer Vineyards L.L.C. In other words, either there is no Placer Vineyards, L.L.C. or the debtor does not own interest in an entity with that name. The debtor owns interest in the Placer 290 L.L.C., which owns approximately 290 acres of undeveloped land in Placer County.

The trustee has also discovered that the Smits/Azevedo L.L.C. was formed for the purpose of owning member interest (from approximately 14% to 20%) in the Placer 290 L.L.C. The Smits/Azevedo L.L.C. operating agreement states that the Placer 290 L.L.C. is 50% owner in 11 Centro, L.L.C., which in turn owns and has the purpose of developing a real property in Placer County commonly known as Placer Vineyards.

Even though the real property was originally designated as a possible environmental mitigation bank, its development for such a purpose has been scrapped due to reduction of the demand for such use. The property is being farmed at this time and is being marketed for sale as an agricultural land.

While the trustee explored selling the estate's interest in the Smits/Azevedo L.L.C., she realized that such a sale would generate "phantom income" for the estate, resulting in "mid-six figure adverse tax liability to the estate." The trustee also explored selling the estate's interest in the Smits/Azevedo L.L.C. for a price that would allow the estate to pay the taxes and generate a modest return for creditors. But, the trustee has been unable to reach an agreement with the other members of the Smits/Azevedo L.L.C., interested in purchasing the estate's interest.

The trustee has determined that the litigation risks associated with a sale of the estate's interest in the Smits/Azevedo L.L.C. outweigh the small expected return from the sale. Importantly, the estate has spent much already in attorney's fees and costs, attempting to administer the above assets. The court also notes that the estate is currently administratively insolvent. Thus, the estate's interests are burdensome and/or of inconsequential value to the estate. Accordingly, the court will order their abandonment. The motion will be granted.

13. 11-34464-A-7 STUART SMITS — MOTION TO ABANDON
TGM-15 — 9-18-15 [336]

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.

With the exception of funds, proceeds and/or monies held by the bankruptcy estate, the trustee wishes to abandon the estate's interest in:

(a) Opaque Investors I, L.L.C.,

(b) Opaque Investors II, L.L.C.,

(c) working interests in oil and gas lease in Kern County, California (including Oil and Gas Lease dated March 11, 2008, between Aera Energy and Pacific Coast Exploration),

(d) Oil and Gas Lease dated March 11, 2008, between Aera Energy and Pacific Coast Exploration,

(e) Operating Agreement dated July 24, 2008 for Operator Pacific Coast Exploration, L.L.C.,

(f) Opaque Project,

(g) Pacific Coast Drilling, L.L.C.,

(h) Pacific Coast Exploration, L.L.C.,

(i) claims against Pacific Coast Exploration, L.L.C., Lester Cufaude, Kevin Weddle, Golden State Natural Gas System, Keith Nickel, Snows Oil Field Service, Inc., DSR, Opaque Investors I, Opaque Investors II, and

(j) the claims against Pacific Coast Exploration, L.L.C. and Lester Cufaude in a Sacramento County Superior Court action.

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

The debtor formed the Opaque I and Opaque II limited liability companies for investing in the oil and gas project in Kern County, which project was operated by Pacific Coast Exploration, L.L.C. PCE holds the March 11, 2008 Oil and Gas Lease between Aera and PCE.

PCE's members were involved in disputes. Although the trustee attempted to resolve the disputes and sell the working interests in the oil and gas project, she was ultimately unsuccessful at consummating the transaction. PCE members signed the trustee's distribution and settlement agreement. But, some PCE members were set on derailing the sale, even at the expense of their own economic interests. Such members stipulated to judgments in favor of third parties, resulting in liens against PCE's assets, including the working opil and gas interests, and refused to cooperate with the potential buyer and PCE's

managing member. This scared off potential buyers and the sale failed.

Additionally, the price of oil has decreased dramatically since the attempted sale in May 2014. This alone has made the value of the above assets inconsequential to the estate.

Alternative attempts to administer the above assets have also failed. Such attempts have included an auction of the oil and gas lease interests, the appointment of a receiver, and sale of the interests to Elias Bardis, the estate's principal creditor. The trustee has been unable to realize a benefit for the estate with those attempts either.

Importantly, the estate has spent much already in attorney's fees and costs, attempting to administer the above assets. The court also notes that the estate is currently administratively insolvent, meaning that the trustee has no funds to initiate or continue litigation of existing claims. Thus, the estate's interests in the above assets are burdensome and/or of inconsequential value to the estate. Accordingly, the court will order their abandonment. The motion will be granted.

14.	14-31077-A-7	VINCENT LO FRANCO AND	MOTION TO
	MDA-1	MISTI SMITH	AVOID JUDICIAL LIEN
	VS. VINCENT/JOYCE LOFRANCO		9-28-15 [18]

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 debtors in favor of Vincent Lo Franco and Joyce Lo Franco for the sum of $11,022.50 on October 15, 2012. The abstract of judgment was recorded with El Dorado County on March 12, 2014. That lien attached to the debtor's residential real property in Placerville, 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 $126,000 as of the petition date. Dockets 20, 21, 1. There are no unavoidable liens against the property. Dockets 21 & 28. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Amended Schedule C. Dockets 20, 21, 28.

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).

15. 14-31077-A-7 VINCENT LO FRANCO AND MISTI SMITH — MOTION TO AVOID JUDICIAL LIEN
MDA-2
VS. GE CAPITOL RETAIL BANK AND PORTFOLIO RECOVERY ASSOC.
9-28-15 [23]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondents, Portfolio Recovery Associates, L.L.C. and Synchrony Bank, in accordance with Fed. R. Bankr. P. 7004(b)(3) and 7004(h).

Rule 7004(b)(3) requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Portfolio Recovery Associates, L.L.C. 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." Docket 27. Accordingly, notice is defective.

Rule 7004(h) requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

While the bank was noticed by certified mail, the notice was not addressed to an officer of the bank. It was not addressed to anyone. Docket 27. Accordingly, the motion will be dismissed.

16. 15-25591-A-7 DONALD LUKE — MOTION TO APPROVE COMPROMISE
DMW-1
9-30-15 [22]

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 Capital City Hot Tubs, Inc., resolving a $5,000 preference transfer claim. Under the terms of the compromise, Capital will pay $2,500 to the estate in full satisfaction of the claim.

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 small amount at stake, given Capital's challenge of the claim, 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.

17. 15-26291-A-7 SCOTT ESPEDAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 9-23-15 [9]
VW CREDIT, 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, VW Credit, Inc., seeks relief from the automatic stay with respect to a 2013 VW Jetta. The vehicle has a value of $17,681 (per Schedule B) and its secured claim is approximately $21,220.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on October 6, 2015.

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

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

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

18. 15-25293-A-7 VINCENT ISLAS
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-28-15 [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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2004 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 June 30, 2015 and a meeting of creditors was first convened on August 4, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 30. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so within the 30-day period of the initial meeting of creditors. 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 September 3, 2015, 30 days after the initial meeting petition date.

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

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on August 5, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on September 3, 2015.

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. 15-20394-A-7 GARY SCHNEIDER — MOTION TO APPROVE COMPROMISE
HCS-2 — 9-25-15 [21]

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 Lily Schneider, the debtor's 74-year old mother, resolving a $48,000 avoidance claim, based on 11 U.S.C. §§ 547 and 548. Under the terms of the compromise, Ms. Schneider will pay $20,000 to the estate in full satisfaction of the claim.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given Ms. Schneider's inability to pay the full transfer amount 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.

20. 15-27094-A-7 FRANK VERGARA — MOTION TO COMPEL ABANDONMENT 9-22-15 [10]
DBJ-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the 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 seeks an order compelling the trustee to abandon the estate's interest in a real property in Paradise, California. The entire equity in the property is exempt.

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

The property has a value of $150,000. The property is encumbered by a single deed of trust in favor of JPMorgan Chase Bank in the amount of $85,000. The debtor exempted $65,000 in the property under Cal. Code Civ. Proc. § 704.730.

Given the scheduled value of and encumbrances against the property, and the debtor's exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

21. 12-37695-A-7 JEFFERY/ADRIENNE COFIORI — MOTION TO AVOID JUDICIAL LIEN 9-16-15 [20]
MBS-1
VS. CAPITAL ONE BANK, (USA), N.A.

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

The proof of service accompanying the motion indicates that the notice was not served by certified mail and was not addressed to an officer of the respondent.

It was not addressed to anyone. Docket 25.

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

Finally, in the event the motion is reset for a hearing, the debtors should note several deficiencies. Their evidence of value with the motion is inadmissible. Opinions on value based on Internet valuations, such as zillow.com, are inadmissible hearsay under Fed. R. Evid. 802 and violate Fed. R. Evid. 701, 702 and 703. Also, although the motion asserts that the property is subject to two voluntary encumbrances, the debtors' Schedule D lists only one encumbrance against the property. Docket 1, Schedule D. And, the unavoidable lien amounts in the motion are not as of the petition date, October 2, 2012. The debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. Culver, L.L.C. v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).