UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 2, 2014 at 10:00 a.m.

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

1, 2, 11, 13, 14, 15, 16, 18, 19

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

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

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

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 30, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 16, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 23, 2014. 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 called beginning at 10:00 a.m.

1. 11-47505-A-7 PAUL NIEMANN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-3 — 5-12-14 [85]

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $6,000 in fees and expenses (reduced from $18,099.50 in fees and $593.99 in expenses). This motion covers the period from December 6, 2011 through the present. The court approved the movant's employment as the trustee's attorney on December 19, 2011. In performing its services, the movant charged hourly rates of $195, $250, $295 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) investigating a potential objection to the debtor's discharge, (2) preparing stipulation for extension of the time to object to discharge, (3) addressing insurance coverage concerns, (4) reviewing a stay relief motion, (5) assisting the trustee with the sale of a real property, (6) renegotiating purchase price of real property in light of interim vandalism of the property, and (7) preparing and filing employment and compensation motions.

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

2. 12-39319-A-7 JULIAN/SANDRA TORRES — MOTION TO COMPEL ABANDONMENT
HLG-2 — 5-19-14 [96]

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

the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Rancho Cordova, 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 debtors have scheduled the value of the property at $200,000. The property is encumbered by a single deed of trust in favor of U.S. Bank in the amount of $152,000. The debtors have exempted $48,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

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

3. 13-31219-A-7 DUSTIN SIEPERT — MOTION TO SELL
JRR-2 — 5-5-14 [37]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and without warranties for $643,000 in cash a commercial real property in Loomis, California to Chris Vieira. The estate owns 50% interest in the property. The other 50% interest is owned by Dianne Kniep (f.k.a. Dianne Lauwers). The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for authority to pay the 6% real estate commission, 3% to the estate's broker, Keller Williams Realty, and 3% to the buyer's broker, Jones Lang of LaSalle Brokerage, Inc.

All encumbrances will be paid from escrow. They include:

- a first mortgage for $138,839.22 held by Umpqua Bank, successor in interest to Auburn National Bank,

- the judicial lien for $8,670.53, held by Kaiser Foundation Health Plan, Inc., has been paid in full,

- unpaid property taxes in the amount of $44,949.63,

The buyer will not be assuming a leasehold estate held by Western Construction Supply Company, a dba of the debtor.

The net sales proceeds will be split evenly among the estate and Dianne Kniep. The estate is expecting to net approximately $198,952.12.

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 substantial 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) and will authorize the payment of the real estate commissions.

4. 11-45927-A-7 RICHARD/TERESA KOOI — OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION 4-23-14 [71]

Tentative Ruling: The objection will be overruled.

Creditor Clarence Kooi individually and as trustee of the Kooi 1996 Trust for Claire-Marie Kooi and the Kooi 1996 Trust for Lynda Content Kooi objects to the trustee's report of no distribution filed on March 26, 2014.

Clarence Kooi contends that the debtors have not disclosed all of their assets, including proceeds from the sale of homes Richard Kooi was "flipping" with other persons. Clarence Kooi claims that Richard Kooi was "flipping" homes under the names of persons such as M&R Enterprises, KPG Partners, Inc., KPG Fund, L.L.C., and Michael Gorenberg. Clarence Kooi contends that Richard Kooi flipped 33 houses in the two years prior to declaring bankruptcy. Clarence Kooi complains that even though he submitted information about Richard Kooi's assets four times to the trustee, the trustee has failed to investigate Richard Kooi's financial affairs and has failed to account for all of Richard Kooi's missing property.

The objection will be overruled to the extent it is complaining that the trustee failed to account for the debtor's property. Clarence Kooi asserts that the trustee should have accounted for real properties Richard Kooi flipped pre-petition and funds Richard Kooi received pre-petition from sales. Specifically, the property includes $895,031 in proceeds from the sale of nine real properties pre-petition, a real property in Elk Grove, California (on Livorno Way), a real property in Elk Grove, California (on Bobbell Drive), $245,686.45 in proceeds from the October 5, 2010 sale a real property in Sacramento, California, and $239,040.57 in proceeds from the October 18, 2010 sale a real property in Elk Grove, California. Docket 71 at 7-9.

Nothing requires the trustee to account for property that has not come into the estate. The court is unaware of any legal authority requiring the trustee to account for property not received into the estate. 11 U.S.C. § 704(a)(2) states that the trustee should only "be accountable for all property *received*." Yet, all property Clarence Kooi is claiming the trustee should account for is property the trustee obviously has not recovered for the estate and has not sought to recover for the estate. Because the property in question was not received into the estate, the court will not require the trustee to account for such property. This part of the objection will be overruled.

As to the contention that the trustee has not investigated the debtors' financial affairs with respect to the homes sold pre-petition, the court disagrees with Clarence Kooi. The trustee in this case, Thomas May, resigned from the case on April 28, 2014, after serving two and one-half years as trustee. Docket 80. The current trustee, Douglas Whatley, was appointed on May 9, 2014. Mr. May's notice of voluntary resignation was filed on April 29, 2014. In his notice of resignation, Mr. May states unequivocally that "I previously investigated all the alleged asset [*sic*] referred to in Mr. Kooi's motion, and found nothing that I could administer." Docket 80.

Based on the above, the court concludes that the debtors' financial affairs with respect to the homes sold pre-petition were investigated by the trustee, but he discovered no assets he could administer for the benefit of the

creditors and the estate. Accordingly, the objection will be overruled.

5.	14-21231-A-7 DMR-3	VICTOR MENDEZ-GONZALEZ AND RUTH MENDEZ	MOTION TO CONVERT TO CHAPTER 13 AS TO DEBTOR VICTOR MANUEL MENDEZ-GONZALEZ ONLY 4-11-14 [29]

Tentative Ruling: The motion will be denied without prejudice.

The debtor Victor Mendez-Gonzales requests conversion from chapter 7 to chapter 13. Although the motion does not state when, Victor Mendez-Gonzales and the co-debtor Ruth Mendez have separated.

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©. See Marrama, 127 S. Ct. at 1112.

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

While the debtor has now submitted evidence that he owes as of the petition date less than $383,175 in noncontingent, liquidated, unsecured debts and less than $1,149,525 in noncontingent, liquidated, secured debts, the motion is still devoid of evidence of regular income. In the supplemental declaration, the debtor states only that "I am employed and have disposable monthly income to fund a Chapter 13 Plan."

However, stating that he has disposable income to fund a plan is a legal conclusion for the court to make and not the debtor. The debtor does not disclose what is the disposable income (*e.g.*, $5, $50, $100, $1,000) and does not identify the source of income (*e.g.*, part time contract work, steady employment, etc.). The court cannot determine whether the debtor's income is sufficient to fund a plan and whether his income is regular.

More, the only Schedules I and J filed in the case (Docket 22) list income only for the debtor (net monthly income of $1,931.92) and list no income for the co-debtor, while the family's expenses exceed the income by $1,853.08. The debtor and co-debtor have two of their four children, ages 16 and 22, still living with them. The motion does not state whether the debtor will continue to support those children and the co-debtor with his income during his chapter 13 case. Based on the only Schedule J on the docket, however, it appears that he will continue supporting his children and the co-debtor, resulting in a negative monthly disposable income of $1,853.08.

In other words, the court has no evidence that the debtor will have less expenses than the expenses listed in Schedule J. The court then is not convinced that the debtor has disposable income to fund a plan. The motion will be denied.

Finally, while the motion does not indicate when the debtor and co-debtor

separated, if the separation took place during their counsel's representation of them both, their counsel cannot continue to represent either of the debtors, given that representation of one will violate his ethical obligations to the other. As the debtor and co-debtor have separated, they are now adverse to one another.

6. 11-21932-A-7 CYRISHJADE DISCIPULO — MOTION TO AVOID JUDICIAL LIEN
TJW-5 — 5-19-14 [40]
VS. MAGDALENA CASUGA

Tentative Ruling: The motion will be denied.

The debtor is asking the court to avoid a judicial lien held by Magdalena Casuga on a real property in Vallejo, California.

The motion will be denied. The only evidence of the lien is a title report indicating that Magdalena Casuga holds a judicial lien for $19,472 against the property. The lien is based on a judgment entered on September 14, 2009. The abstract of judgment was recorded with Solano County on November 9, 2009.

However, the title report does not identify the debtor in this case as the judgment debtor in the judgment. The debtor in this case is Cyrishjade Discipulo, whereas the debtor in the judgment giving rise to the lien is someone named Karen Galzote. The motion says nothing about Karen Galzote and makes no effort to explain the discrepancy.

The foregoing is important because Schedule A states that the debtor is only on the title of the property and not on the loan secured by the property. This implies that the property was either transferred to the debtor or that there are other persons on title with the debtor.

In any event, the court will not permit the debtor to avoid a judicial lien arising from a judgment entered against anyone other than the debtor. The motion will be denied.

7. 13-34136-A-7 JENNIFER ELLIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JB-2 — 4-28-14 [26]
JENNIFER ELLIS VS.

Tentative Ruling: The motion will be granted in part and denied in part without prejudice.

The debtor asks the court to modify the automatic stay to permit the state court to proceed with her marital dissolution action and, among other things, allow the state court to divide the debtor's and her estranged spouse's community property assets.

The debtor's discharge was entered on February 18, 2014.

The court will modify the automatic stay to permit the continuation of the marital dissolution proceeding, except the court will not permit the division of the community property assets not abandoned by the bankruptcy estate, and will not allow the collection or enforcement of any orders or judgments against property of the bankruptcy estate.

The motion does not explain how the division of the community property in the state court action will affect the administration of this bankruptcy estate. The trustee has filed a notice of assets and this court will not allow the

state court proceeding to interfere with the trustee's administration of community property assets that can be liquidated and administered to satisfy community property obligations that are part of this bankruptcy case. This court has sole jurisdiction over the administration of estate property, including even community property assets that may be awarded by the state court to the debtor's soon to be former spouse.

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

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

8. 11-41338-A-7 ERNESTO CABALLERO — MOTION TO SELL
HMS-2 — 4-28-14 [121]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $35,000 the estate's one-third interest in a real property in Walnut Creek, California to the debtor. The property has a value of approximately $400,000 and it is subject to encumbrances totaling approximately $282,000. The debtor's non-exempt one third interest in the property is valued by also taking into account sales costs of 5% or $20,000.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate, without the trustee having to incur the costs of selling the entire property. 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.

9. 14-21862-A-7 ADRIAN DELGADILLO — MOTION TO AVOID JUDICIAL LIEN
VS. CAPITAL ONE BANK (USA), N.A. — 4-23-14 [25]

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from May 19. The debtor has filed additional motion papers. An amended ruling from May 19 follows below.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,455.92 on September 15, 2011. The abstract of judgment was recorded with Yolo County on January 10, 2012. That lien attached to the debtor's residential real property in Woodland, California. The debtor is asking the court to avoid the lien.

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)).

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $200,000 as of the date of the petition. The unavoidable

liens total $269,902 on that same date, consisting of a mortgage for $227,690 in favor of Green Tree Servicing and another mortgage for $42,212 in favor of Bank of America.

The motion will be denied because the debtor has not claimed an exemption in the property. Schedule C lists no exemption claims against the property. Yet, the formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." If the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. The motion will be denied.

10. 12-41763-A-7 ANTHONY/SANDY GRECO — MOTION TO COMPEL ABANDONMENT
AGT-1 — 5-2-14 [46]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to order the abandonment of the estate's interest in Car Cage, Inc. (purported 36% interest) and Greco Partners, L.L.C. (purported 50% interest).

The trustee opposes the motion.

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

The motion will be denied. The debtors have not carried their burden of persuasion that the business interests are of inconsequential value or burdensome to the estate. The only basis cited by the debtors for the abandonment of the assets is that "[t]he Entities own three (3) rental properties which have lost money during the pendency of these proceedings, and continue to do so, through 2013." Docket 46 at 2.

The motion says nothing about the values of those properties and the equity available for liquidation of the three properties. While the ongoing operation of the properties may be relevant to a reorganization estate, this is a chapter 7 proceeding and the trustee is concerned solely with the liquidation of assets. As the debtors offer no evidence of the net liquidation value of those properties, the motion will be denied.

Further, the motion will be denied because the trustee has submitted evidence tending to show that the motion misidentifies the debtors' interests in the two entities and the real properties. According to the trustee, her interest in the entities and real properties is as follows: 100% interest in Greco Partners, which in turn owns 36% interest in Car Cage Motors and 50% interest in the real properties. Docket 53 at 2. This means that the estate has far more direct interest in the real properties than represented by the motion. The court is surprised that the representations of the debtors are so far apart from the estate's actual interest in the entities and real properties.

The motion will be denied also because the trustee has submitted evidence that the properties have sizeable equity that can be liquidated for the benefit of creditors. There is approximately $240,500 of equity in the real properties for the estate. Docket 53 at 2.

Additionally, the trustee has produced evidence of a $150,000 offer for the purchase of the estate's interest in Greco Partners. Docket 54. This obviously makes Greco Partners of consequential value to the estate.

Finally, the trustee has produced evidence that Car Cage Motors has had significant retained earnings and shareholder equity in the recent past. At the least, this warrants a further investigation of the value of Car Cage Motors to the estate. The motion will be denied.

11. 11-34464-A-7 STUART SMITS — MOTION TO APPROVE COMPROMISE
TGM-13 — 5-5-14 [261]

Tentative Ruling: The motion will be granted.

The trustee seeks approval of a compromise. The agreement is among the following parties:

- the trustee of the bankruptcy estate of Stuart Smits,
- the trustee of the bankruptcy estate of Opaque Investors II, L.L.C.,
- Stuart Smits,
- Pacific Coast Exploration, L.L.C.,
- Lester Cufaude,
- Dale Hankins,
- Kevin Weddle (including Golden State Natural Gas Systems, Inc.), and
- Keith Nickell (including Snows Oil Filed Service, Inc. and D.S.R.).

The agreement resolves claims among the parties and settles the distribution of proceeds from the anticipated sale of the Working Interests in the Opaque Project oil field in Kern County, California. This motion is not seeking approval of that sale.

The Working Interests in the Opaque Project oil field are held by the following persons:

- 42.45% by Pacific Coast Exploration, L.L.C.,
- 27% by Keith Nickell (including Snows Oil Filed Service, Inc. and D.S.R.),
- 11.25% by Opaque Investors I, LLC,
- 10% by Kevin Weddle (including Golden State Natural Gas Systems, Inc.),
- 2.0% by Ken Young/KDY, Inc.,
- 1.5% by Johnny Valensin,
- 5.3% by the bankruptcy estate of Opaque Investors II, L.L.C., and
- 0.5% by the Stuart Smits bankruptcy estate.

In addition to its direct interest in the Working Interests of the Opaque Project oil field, the Stuart Smits bankruptcy estate also owns 35% interest in PCE, 100% membership interest in Opaque Investors II, L.L.C. (subject to its own pending chapter 7 case), 9.33% membership interest in Opaque Investors I, L.L.C., all of Michael Phillips' unspecified interest in PCE, and Michael Phillips' 3.333% interest in Opaque Investors I.

The proposed buyer for the Working Interests of the Opaque Project oil field, GTherm, Inc., has offered to pay $17 million for the Working Interests in their entirety, by making an initial payment of $7 million. The remaining $10 million in payments will be made out of future oil production at a 5% royalty rate.

Under the settlement agreement, assuming a sale of the Working Interests takes

place, the initial payment of $7 million from GTherm will be distributed as follows:

(1) PCE will receive $2,521,500, which will be utilized to pay: $1.8 million to Keith Nickell (including Snows Oil Filed Service, Inc. and D.S.R.), $250,000 to Johnny Valensin, $250,000 to Ken Young/KDY, Inc., $75,000 to Dale Hankins, $51,500 to Lester Cufaude, $50,000 to Ben Fitzgerald, $25,000 to Dan Karalash, and $20,000 to Mike Reed.

(2) PCE will receive credit for $450,000 that will be paid directly to the Opaque Investors II, L.L.C., bankruptcy estate. PCE has represented that it owes no further debt.

(3) Keith Nickell (including Snows Oil Filed Service, Inc. and D.S.R.) will receive $1,440,000. In conjunction with this distribution, the parties to the agreement agree not to contest PCE's transfer of 22% of the Working Interests to Mr. Nickell in exchange to his agreement to take a lesser distribution from GTherm's initial payment. Mr. Nickell will be entitled to 27% of the royalty payments, with the first $450,000 being paid at a preference over any royalty payments due to the Stuart Smits estate. Mr. Nickell will release his, Snow's and D.S.R.'s claims against PCE and the bankruptcy estates.

(4) Kevin Weddle (including Golden State Natural Gas Systems, Inc.) will receive $350,000. In conjunction with this distribution, the parties to the agreement agree not to contest PCE's transfer of 10% of the Working Interests to Mr. Weddle in exchange to his agreement to take a lesser distribution from GTherm's initial payment. Mr. Weddle will be entitled to 10% of the royalty payments plus an additional $50,000 that would be due to the Stuart Smits bankruptcy estate, with the first $500,000 being paid at a preference over any royalty payments due to the Stuart Smits estate. Mr. Weddle will release his and Golden State's claims against the estates.

(5) The Stuart Smits estate will receive $800,000.

(6) Opaque Investors I, L.L.C. will receive $787,500 or 11.25% of the $7 million initial payment.

(7) The Opaque Investors II, L.L.C. bankruptcy estate will receive $371,000 representing its 5.3% interest in the Working Interests.

(8) The Opaque Investors II, L.L.C. bankruptcy estate will receive an additional $35,000 representing the 0.5% interest in the Working Interests previously owned by Elias Bardis.

(9) KDY, Inc. will receive $140,000 or 2.0% of the $7 million initial payment.

(10) Johnny Valensin will receive $105,000 or 1.5% of the $7 million initial payment. As Mr. Valensin is not a party to this agreement and there is a pending adversary proceeding against him and the entity he represents, the Smits estate is anticipating entering into a separate settlement agreement with him. That agreement will be the subject of a separate motion.

Under the settlement agreement, assuming a sale of the Working Interests takes place, the $10 million royalty payment from GTherm will be distributed subject to the preferences in favor of Mr. Nickell and Mr. Weddle identified above, as follows:

- 35.5% to the Smits estate and its successors,

- 27% to Mr. Nickell and the entities he represents,
- 11.25% to Opaque Investors, L.L.C.,
- 10% to Mr. Weddle and the entities he represents,
- 7.45% to PCE,
- 5.3% to the Opaque Investors II estate and its successors,
- 2.0% to KDY, Inc., and
- 1.5% to Johnny Valensin.

For further details of the distribution schedule for the royalty payments, interested parties should review the motion papers.

In addition to the foregoing, the agreement provides that:

- Dale Hankins will transfer his 3.333% ownership interest in Opaque Investors I to the Smits estate;

- Mr. Smits will withdraw as member of PCE, while in exchange PCE will transfer to the trustee of his bankruptcy estate 35% of the royalty payments (subject to the foregoing preferences); this will allow PCE to retain 7.45% of the royalty payments with now only two members, Mr. Cufaude and Mr. Hankins;

- PCE will withdraw all of its claims in bankruptcy court except for claims previously asserted on behalf of Mr. Nickell; PCE will be allowed to file amended claims, but the trustees are not waiving any defenses to such claims;

- the bankruptcy trustees will dismiss their claims against Mr. Cufaude and Mr. Hankins in the state court action initiated by Elias Bardis;

- the parties agree that the Sacramento County Superior Court will retain jurisdiction to resolve any disputes pertaining to the interpretation of the agreement.

Creditor Elias Bardis has filed a response, disputing that he actively participated in the negotiations leading to the subject agreement. Mr. Bardis, however, does not oppose approval of the settlement.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. The settlement will bring substantial proceeds into the two bankruptcy estates, assuming consummation of the sale ($800,000 from the initial payment and 35.5% of the last $8.385 million in royalty payments to the Smits estate and $856,000 from the initial payment and 5.3% of the royalty payments to the Opaque Investors II estate). The settlement resolves the claims against the estates of the other parties to the agreement. It resolves Mr. Smits' indemnity claims with respect to the Elias Bardis litigation. The Smits trustee is uncertain about the collectibility of any judgment that may be obtained on account of the indemnity claims. The Opaque Investors II estate will receive at least its share of the initial and royalty payments. Given the

foregoing, given the comprehensiveness of the settlement, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the settlement 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.

12. 11-41264-A-7 JONATHAN ENGLAND — MOTION TO SELL
SCF-1 — 4-28-14 [15]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $6,500 the non-exempt equity in the proceeds from a one-half interest in a $40,000 promissory note, to the debtor. The debtor's interest in the note proceeds is $20,000 and he is currently receiving one-half of the payments under the note. The debtor claimed an exemption of $11,797.82 in his interest in the note.

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. Selling the non-exempt $8,202.18 interest in the note for $6,500 eliminates the risk of non-payment uncertainty under the note and allows the trustee to receive value for the note without delay. 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.

13. 10-48569-A-7 KEVIN/BONNIE LINCOLN — MOTION TO AVOID JUDICIAL LIEN
DED-4 — 5-8-14 [44]
VS. DONAHUE SCHRIBER REALTY GROUP, L.P.

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

The motion will be granted.

A judgment was entered against the debtors in favor of Donahue Schriber Realty Group L.P. for the sum of $178,223.65 on October 1, 2010. The abstract of judgment was recorded with San Joaquin County on October 18, 2010. That lien attached to the debtors' residential real property in Mountain House, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtors' Second Amended Schedule A (Docket 43), the subject real property has an approximate value of $369,500 as of the date of the petition. The unavoidable liens total $375,493 on that same date, consisting of a single

mortgage in favor of Wells Fargo Home Mortgage. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 24.

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).

14. 11-34469-A-7 OPAQUE INVESTORS II, L.L.C. MOTION TO
HSM-4 APPROVE COMPROMISE
5-5-14 [140]

Tentative Ruling: The motion will be granted in accordance with the ruling on the nearly identical motion in the Stuart Smits bankruptcy case, Case No. 11-34464, DCN TGM-13. That ruling is incorporated here by reference.

15. 14-21874-A-7 JANIS STARKEY MOTION FOR
DVW-1 RELIEF FROM AUTOMATIC STAY
21ST MORTGAGE CORPORATION VS. 5-12-14 [12]

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

The motion will be granted.

The movant, 21st Mortgage Corporation, seeks relief from stay as to a real property in Tracy, California. The property is not listed in the debtor's Schedules as the debtor transferred her interest in the property as part of a marital settlement agreement in August 2013, before this case was filed on February 26, 2014. See Statement of Financial Affairs, item 10.

The movant contends that the value of the property is $425,000, whereas the only encumbrance against the property - its claim - totals $570,272.

The court does not have admissible evidence of value for the property. The only evidence of value in the record is from the movant. The evidence proffered by the movant is an exhibit labeled as a broker's price opinion, consisting of a printout from a database called Altisource. The broker's price opinion is inadmissible hearsay and is not authenticated to be what the movant purports it to be, *i.e.*, a broker's price opinion. Fed. R. Evid. 802, 901(a). The opinion is not supported by a declaration executed by the person who prepared the opinion.

On the other hand, the trustee filed a report of no distribution on April 10, 2014. This is cause for the granting of relief from stay as to the estate.

The debtor's transfer of her interest in the property pre-petition to her now former spouse is cause for the granting of relief from stay as to the debtor. See Statement of Financial Affairs, item 10.

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

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

Because the movant has not produced admissible evidence of value for the property, the movant has not established that the value of its collateral exceeds the amount of its secured claim. Hence, 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 waived, given that the debtor holds no interest in the property any longer.

16. 14-23675-A-7 MATTHEW FREESEHA — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1
WELLS FARGO BANK, N.A. VS. — 5-14-14 [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 offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2007 Chevrolet Suburban. The movant has produced evidence that the vehicle has a value of $19,550 ($20,276 in Schedule B) and its secured claim is approximately $21,803.

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 May 28, 2014.

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.

17. 13-23380-A-7 DOUGLASS DUNN — MOTION TO RECONSIDER
DEF-6 — 4-22-14 [61]

Tentative Ruling: The motion will be denied.

The debtor is once again asking the court to reconsider its June 3, 2013 ruling granting in part a motion to avoid a lien held by Sequoia Concepts, Inc. The debtor asked the court to reconsider the June 3 ruling in a motion filed on October 24, 2013 and heard on December 16, 2013. Dockets 48 & 55. The court denied that motion in a detailed ruling. Docket 55. The debtor is asking once again the court to reconsider the motion on the same basis, that the debtor has changed his mind about the value of the property. The court will not adjudicate the same motion for reconsideration once again. The ruling of December 16, 2013 on the prior reconsideration motion stands.

The court understands that the debtor may have serious difficulties keeping his home if somehow the ruling on the lien avoidance motion is not reconsidered and vacated. However, this is not basis for reconsideration of the lien avoidance. As pointed out by the court in the December 16, 2013 ruling on the prior reconsideration motion, there was no mistake as to the value of the property. The debtor had an opinion of value which was admissible and adequate evidence to support the requested lien avoidance.

More, the court issued its June 3, 2013 ruling on the lien avoidance motion ahead of the June 3 hearing and the debtor's counsel, appeared at the hearing, accepting the ruling, even though the ruling provided that the lien would not be avoided in its entirety even though the motion had requested such relief.

Further, the debtor's "limited resources that he has to live on compared to the costs of this case and the additional costs of obtaining an expert" is not excusable neglect warranting reconsideration. Docket 61 at 4. As mentioned in the ruling on the prior reconsideration motion, "A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004)." And, "[t]he debtor had an opinion regarding the value of the property. The debtor did not make an error when writing down that opinion in the schedules and the declaration. His opinion may be now different, but, at that time, the debtor's opinion of value for the property was admissible and sound evidentiary basis for granting in part the lien avoidance motion." Docket 55 at 2.

The debtor's desire to save money and not retain an appraiser is not excusable neglect warranting reconsideration. There was adequate evidence of value for the property with the lien avoidance motion and the court relied on that evidence to adjudicate the lien avoidance motion.

Finally, the challenge to the amount of the lien is not helpful either. The debtor complains that the subject lien was not $28,835.12 as the court found in

its lien avoidance motion ruling but was actually $47,158.45 as of the petition date. Docket 55.

The debtor stated in his Schedule D that as of the petition date the lien was $28,835.12. Docket 1. Schedule D has not been amended to reflect the higher lien amount. With Schedule D still representing that the lien amount is $28,385.12, the court will not revisit the amount of the lien.

On the other hand, even if the court were to increase the lien amount to $47,158.45, the lien avoidance analysis will not change, warranting reconsideration of the lien avoidance ruling. The equity in the debtor's interest in the property available to satisfy the lien remains the same and the unavoidable portion of the lien remains the same even if the lien secured a larger original amount.

The court has no basis to reconsider its lien avoidance ruling. The motion will be denied.

18. 13-28491-A-7 JAMES ENGLISH — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-2
ALLY FINANCIAL, INC. VS. — 5-8-14 [92]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Ally Financial, seeks relief from the automatic stay with respect to a 2011 Chevrolet Express 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 25, 2013 and a meeting of creditors was first convened on July 30, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 25. The debtor filed a statement of intention on the petition date, but he did not list the subject vehicle in the statement.

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

Here, although the debtor filed a statement of intention on the petition date, the debtor did not list the subject vehicle in the statement. 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 25, 2013, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is

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

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

Therefore, without this motion being filed, the automatic stay terminated on July 25, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362©. See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362©. 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. 14-22097-A-7 JUSTIN ELLIOTT — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1
SETERUS, INC. VS.
5-15-14 [26]

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

The motion will be granted.

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $75,300 and it is encumbered by claims totaling approximately $96,180. The movant's deed is the only encumbrance against the property.

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

Thus, the motion will be granted 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.

20. 14-20399-A-7 ROBIN/TRAVIS PARKER — MOTION TO SELL
BLL-2 — 4-21-14 [40]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $70,000 the estate's interest in a 3.6 acre parcel of land in Palo Cedro, California to Nouvant Homes, Inc. The trustee also asks for authority to pay a 6% real estate commission to Stephanie Niles from Wolf Properties Realty Services.

The property is subject to outstanding property taxes: $1,121.10 for 2013-14 and $11,782.32 for 2007-08. The taxes will be paid from escrow, along with the estate's 50% share of the escrow expenses, estimated at $414, and the real estate commission.

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 the payment of the real estate commission.

THE FINAL RULINGS BEGIN HERE

21. 09-44202-A-7 JACOB SCHILDGEN — MOTION TO AVOID JUDICIAL LIEN
GJS-2
VS. PACIFIC BELL DIRECTORY — 5-1-14 [18]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(2).

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

The debtor served the motion on Pacific Bell Directory, a corporation, without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 22.

Finally, the motion refers to the respondent creditor's judgment, abstract of judgment, recordation and/or lien without attaching the recorded abstract of judgment. Such references in the record are inadmissible hearsay evidence. Fed. R. Evid. 802. In the event the motion is reset for a hearing, it should include admissible evidence of the subject abstract of judgment.

22. 09-44202-A-7 JACOB SCHILDGEN — MOTION TO AVOID JUDICIAL LIEN
GJS-3
VS. SYSCO FOOD SERVICES OF SACRAMENTO, INC. — 5-1-14 [20]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(2).

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

The debtor served the motion on Sysco Food Services of Sacramento, 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."

Finally, the motion refers to the respondent creditor's judgment, abstract of judgment, recordation and/or lien without attaching the recorded abstract of judgment. Such references in the record are inadmissible hearsay evidence. Fed. R. Evid. 802. In the event the motion is reset for a hearing, it should include admissible evidence of the subject abstract of judgment.

23. 11-47505-A-7 PAUL NIEMANN
GR-2

MOTION TO
APPROVE COMPENSATION OF ACCOUNTANT
4-22-14 [79]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,400 in fees and expenses (reduced from $1,890 in fees and $81.05 in expenses). This motion covers the period from January 24, 2012 through April 21, 2014. The court approved the movant's employment as the estate's accountant on February 9, 2012. In performing its services, the movant charged hourly rates of $325 and $345.

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 preparation of estate tax returns and analysis of tax impact from sale of assets, and researching prior tax year filings and property financial records.

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

24. 14-22706-A-7 DAVID/BARBARA BAXTER
NBC-1
VS. PACIFIC SERVICE CREDIT UNION

MOTION TO
AVOID JUDICIAL LIEN
4-8-14 [11]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Pacific Service Credit Union, 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.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

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 15. And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

25. 11-47630-A-7 FOR BABIES TO TEENS INC. MOTION TO APPROVE COMPROMISE
HSM-10 4-21-14 [78]

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 trustee requests approval of a settlement agreement between the estate and Citibank, resolving a preference claim resulting from the debtor's transfer of $10,562.46 in net preferential payments to Citibank within 90 days before the petition filing. The debtor made $61,034.59 in gross payments to the bank.

Under the terms of the compromise, Citibank will pay $10,000 to the estate in full satisfaction of the claim. In addition, Citibank waives all claims against the estate pertaining to the account at issue. The settlement also incorporates mutual releases between the parties.

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 that the estate is recovering nearly all preferential transfers, given that Citibank is waiving its claim against the estate arising from the transfer(s), 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.

26. 11-47630-A-7 FOR BABIES TO TEENS INC. MOTION TO APPROVE COMPROMISE
HSM-9 4-21-14 [86]

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 trustee requests approval of a settlement agreement between the estate and American Express Centurion Bank, resolving $34,323.31 in preferential transfers.

Under the terms of the compromise, American will pay $27,500 to the estate in full satisfaction of the claim. American does not waive the filing of a proof of claim against the estate. The settlement incorporates 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 that the estate is recovering approximately 80% of the preferential transfers 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.

27. 14-24531-A-7 JEFFREY COLE — ORDER TO SHOW CAUSE 5-14-14 [11]

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 order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. The fee was paid on May 16, 2014.

The debtor's counsel has filed a declaration explaining why the fee was paid late. Her debit card had been placed on a "fraud hold" due to out of area charges and unknown to her the fee had not been paid even though the card had been charged. Exacerbating the delay in payment of the fee was the fact that the debtor's counsel left on vacation two days after the petition was filed on April 30, 2014. The fee was paid in full on May 16, 2014, after she returned from vacation.

No prejudice has resulted from the delay. The order to show cause will be discharged and the petition will remain pending.

28. 14-24537-A-7 JOSHAUA/HAYLEY HUGHES ORDER TO SHOW CAUSE 5-14-14 [12]

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 order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. The fee was paid on May 16, 2014.

The debtor's counsel has filed a declaration explaining why the fee was paid late. Her debit card had been placed on a "fraud hold" due to out of area charges and unknown to her the fee had not been paid even though the card had been charged. Exacerbating the delay in payment of the fee was the fact that the debtor's counsel left on vacation two days after the petition was filed on April 30, 2014. The fee was paid in full on May 16, 2014, after she returned from vacation.

No prejudice has resulted from the delay. The order to show cause will be discharged and the petition will remain pending.

29. 13-36238-A-7 DENNIS/SUZANNE MARIN MOTION TO APPROVE COMPENSATION OF AUCTIONEER JRR-1 5-1-14 [28]

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 $690 in fees and $380 in expenses, for a total of $1,070. This motion is for a sale completed on April 17, 2014. The court approved the movant's employment as the trustee's auctioneer on March 13, 2014. The requested compensation is based on a 12% commission and reimbursement of transportation, storage and preparation of assets for sale expenses (estimated at $500).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of a 1966 Ford Mustang vehicle.

The court concludes that the compensation is for actual and necessary services

rendered in the administration of this estate. The compensation will be approved.

30. 14-24540-A-7 CARMINA DENIS — MOTION TO COMPEL ABANDONMENT 5-2-14 [5]
JMC-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 Fairfield, 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 debtors have scheduled the value of the property at $167,808. The property is encumbered by a first deed of trust in favor of Loandepo.co for $99,248 and two deeds of trust in favor of the City of Fairfield, for $18,289 and $25,000, with all encumbrances totaling $142,537. The debtors have exempted $25,271 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(1).

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

31. 13-23544-A-7 MICHAEL/ULANDA WILLIAMS — MOTION TO EMPLOY REAL ESTATE BROKER 5-2-14 [20]
SSA-2

Tentative Ruling: The motion will be granted in part.

The trustee requests approval to employ Bob Brazeal of PMZ Real Estate as a real estate broker for the estate. Mr. Brazeal will assist the estate with the valuing, marketing and sale of a real properties in Stockton, California. The proposed compensation for Mr. Brazeal is a six percent (6%) commission of the gross sales price. The trustee is asking to pay Mr. Brazeal's commission without further court order.

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. Mr. Brazeal is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved, with one exception. The court will not authorize payment of the proposed 6% commission without further court order. The court cannot assess the reasonableness and necessity of compensation until it knows what is the compensation and what are the services rendered by Mr. Brazeal. Because no sale has taken place yet, the court cannot make a section 330(a) determination of the requested compensation for Mr. Brazeal.

32. 14-22946-A-7 NATALIE SMYERS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 5-1-14 [14]
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Americredit Financial Services, seeks relief from the automatic stay with respect to a 2008 GMC Acadia 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 March 23, 2014 and a meeting of creditors was first convened on April 23, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 22. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 22, 2014, 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 April 24, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 22, 2014.

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.

33. 14-21753-A-7 JENNIFER ROBINS — ORDER TO SHOW CAUSE 5-2-14 [22]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor filed an Amended Schedule D on April 18, 2014, but did not pay the $30 filing fee.

However, the debtor paid the fee on May 14, 2014. No prejudice has resulted from the delay.

34. 13-34461-A-7 KATHLEEN DUNCAN — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-24-14 [65]
PD-1
CITIMORTGAGE, INC. VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the debtor, Michael Dacquisto. Docket 71.

35. 14-21586-A-7 GOLD LINE LAND, L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-7-14 [10]
KAS-1
STERLING PACIFIC FINANCIAL, INC. VS.

Final Ruling: The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

36. 10-30993-A-7 LEONARD/NELLIE GABBUAT — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 5-5-14 [73]
NATIONSTAR MORTGAGE, L.L.C. VS.

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

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

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on August 16, 2010, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $224,000 and it is encumbered by claims totaling approximately $307,287. The movant's deed is in first priority position and secures a claim of approximately $233,787.

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

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

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

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

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