UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 28, 2015 at 10:00 a.m.

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

5, 6, 8, 9, 12

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 OCTOBER 26, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 13, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 19, 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. 15-27004-A-7 ANETTE GUSTO — MOTION TO EXTEND AUTOMATIC STAY O.S.T. 9-15-15 [16]
MAC-1

Tentative Ruling: The motion will be denied.

The debtor asks the court to extend the automatic stay as to all creditors, given that she had her prior chapter 13 case, Case No. 15-26633-A-13, dismissed within one year of this case. It was dismissed due to the debtor's failure to file her all schedules, statements, and chapter 13 plan.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (11, 12 or 13) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

11 U.S.C. § 362(c)(3)(B) and (C) further provide that:

"(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed."

The motion is timely as it is being heard on September 28, 2015, within 30 days of the September 3, 2015 filing of this case. Nonetheless, the motion will be denied.

First, the motion says little or nothing about the history of the prior case. Did a creditor file a motion for relief from stay? Were any creditors prejudiced by the filing and dismissal of the case? The court should not have to speculate about this information, as it is relevant to the debtor's good faith in filing this case.

Second, the debtor has not rebutted the presumption of this case being filed not in good faith, under 11 U.S.C. § 362(c)(3)(C)(i), which provides that:

"*(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—*

"*(i) as to all creditors, if—*

"*(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;*

"*(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—*

"*(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);*

"*(bb) provide adequate protection as ordered by the court; or*

"*(cc) perform the terms of a plan confirmed by the court; or*

"*(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—*

"*(aa) if a case under chapter 7, with a discharge; or*

"*(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and*

"*(ii) as to any creditor that commented an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor.*"

As the prior case was dismissed because the debtor failed to file schedules, statements and a plan as required by 11 U.S.C. §§ 521 and 1321, there is a presumption that this case was not filed in good faith. See 11 U.S.C. § 362(c)(3)(C)(i)(II).

A presumption exists also under section 362(c)(3)(C)(i)(III) because the debtor has not established that there has been "a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case." The motion contains no evidence of any change in the financial or personal affairs of the debtor since the dismissal of the prior case.

Finally, the debtor acknowledges that the dismissal of the prior case was expected as the missing bankruptcy documents "were not readily available while a pending foreclosure necessitated the previous filing." Docket 16 at 2. In other words, the debtor has admitted to filing the prior case knowing that she could not timely file the required bankruptcy schedules and statements. Yet, the motion glosses over this point, as if it has no relevance to the filing of this case. As if, this case was filed in good faith because "[the missing] documents have already been filed in the current case." Docket 16 at 2.

The court disagrees. The debtor filed the prior case with no intention of prosecuting it in order to prevent a foreclosure. The prior case was filed in bad faith, to delay and hinder creditors from enforcing their claims against the debtor and the debtor's property. This also demonstrates absence of good faith in the filing of the present case. This case would have been unnecessary had the debtor filed the prior case in good faith, with the intent to prosecute it. Accordingly, the motion will be denied.

2. 13-35110-A-7 MARIO/BRISA LIMA — MOTION TO EMPLOY
SSA-2 — 8-31-15 [15]

Tentative Ruling: The motion will be conditionally granted.

The trustee seeks approval to employ Bob Brazeal of PMZ Real Estate, as a real estate broker for the estate, to assist the estate with the marketing and sale of a real property in Stockton, California. The property is unencumbered and has a value between $166,000 and $169,000. The debtors have claimed an exemption of $23,332.95 in the property. The debtors are co-owners of the property with the co-debtor Brisa Lima's parents.

The proposed compensation for Mr. Brazeal is a "customary commission based on a percentage of the gross purchase price of the [p]roperty." Docket 15 at 2.

The debtors oppose the motion, asking the court to deny a sale of the property because the non-debtor co-owners have not been notified of the sale.

However, this is not a motion seeking authority for a sale of the property. This is merely a motion for the estate to employ a real estate broker to assist the estate with the marketing and sale of the property, sometime in the future, if at all. The trustee is required to seek independent and further permission from the court when she wishes to actually sell the property.

And, if there are non-debtor co-owners of the property, as is the case here, the trustee cannot sell the property without filing an adversary proceeding. See Fed. R. Bankr. P. 7001(3) (requiring an adversary proceeding for a sale under 11 U.S.C. § 363(h)).

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 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 subject to the movant identifying at the hearing Mr. Brazeal's proposed compensation arrangement. While the court understands that a "customary commission" is 6% of the gross purchase price, this should be stated by the movant unequivocally and unambiguously.

3. 15-23821-A-7 THOMAS ESTERL — MOTION TO AVOID JUDICIAL LIEN
MOH-1
VS. UNIFUND CCR, L.L.C. — 8-31-15 [21]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Unifund CCR, LLC for the sum of $4,161.80 on September 9, 2014. The abstract of judgment was recorded with Butte County on November 3, 2014. That lien attached to the debtor's residential real property in Magalia, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied for two reasons. First, it will be denied because the debtor amended his Schedule C on August 31, 2015, increasing the exemption of the property from $0.00 to $1,000, but he did not serve the Amended Schedule C on any of the creditors, informing them of the amended exemption. Dockets 18 & 20. Only the United States Trustee and the chapter 7 trustee were noticed with the Amended Schedule C. Dockets 20 & 3. Parties in interest have 30 days from an exemption amendment to object to any added or amended exemption. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

Second, the motion will be denied also because the debtor's evidence of value for the property is inadmissible. Although the debtor purports to value the property himself, he unequivocally states that his valuation is based on values of the property provided to the debtor by Kent Ash of Timber Ridge Real Estate, "who gave [him] an estimate of value of $90,000. [*sic*] to $95,000. [*sic*] on 5/6/15 [and] [b]ased on that range [the debtor] estimated the value at the midpoint of $92,500 on [his] Schedule A." Docket 23 at 2; Docket 1, Schedules A & C; Docket 18, Amended Schedule C.

But, the statements of Mr. Ash about the value of the property are inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from Mr. Ash in this record. And, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). As such, the debtor's testimony cannot be based on scientific, technical or other specialized knowledge. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible.

4. 15-22632-A-7 JAMES/DIANA FARMER — MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
SJS-2 — 8-5-15 [203]

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

The debtors seek sanctions for violations of the discharge injunction by Radiological Associates Medical Group, Inc.

The debtors filed this chapter 7 bankruptcy case on March 31, 2015. On April 4, 2015, RAMG was served with the Notice of Chapter 7 Bankruptcy Case. Docket 10. The court entered the debtors' chapter 7 discharge on July 6, 2015. RAMG was noticed with the debtors' discharge on July 8, 2015. Docket 17.

The asserted violations are based on two collection letters sent by RAMG to the debtors, one dated July 3, 2015 and the other dated July 20, 2015. Both letters sought to collect $1,448.16 from the debtors. Docket 26, Exs. C & D.

The debtors are asking the court:

- to hold RAMG in contempt;

- to award them "compensatory damages" of $2,000 "for economic loss and emotional harm;"

- to award a "mild deterrent sanctions not to exceed $3,000;" and

- to award them reasonable attorney's fees and costs for the prosecution of this motion. Docket 23 at 2, 5.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The moving party must prove by clear and convincing evidence that the offending party violated the order. Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The violation must have been willful. The party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

"To be subject to sanctions for violating the discharge injunction, a party's violation must be 'willful.' The Ninth Circuit applies a two-part test to determine whether the willfulness standard has been met: (1) did the alleged offending party know that the discharge injunction applied; (2) and did such party intend the actions that violated the discharge injunction? In re Nash, 464 B.R. at 880 (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n. 7 (9th Cir. 2008), aff'd, --- U.S. ----, 130 S.Ct. 1367, 176 L. Ed. 2d 158 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir.2006). For the second prong, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue. Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002). 'A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt.' Jarvar v. Title Cash of Mont., Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009)(citing Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009-10 (Bankr. D. Minn. 1994)); see also In re Sanburg Fin. Corp., 446 B.R. 793, 804 (S.D. Tex. 2011)(that the offending party may have not understood its actions to violate the discharge injunction does not negate the willfulness finding, even if true)."

Rosales v. Wallace (In re Wallace), No. NV-11-1681-KiPaD, 2012 WL 2401871 at *5 (B.A.P. 9th Cir., June 26, 2012).

The court does not have the authority to award punitive damages for violations of the discharge injunction because civil contempt sanctions are only remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

The motion will be denied as to the July 3 letter because there was no discharge injunction when that letter was sent to the debtors by RAMG. Their discharge was not entered until July 6. While the July 3 letter may have violated the automatic stay, the debtors have not sought relief for its violation.

The July 20 letter was sent by RAMG after the discharge was entered already, thus violating the injunction. RAMG must have known that the discharge injunction was applicable because the debtors' discharge was sent to RAMG on July 8. Docket 17. The address to which the debtors' discharge was sent, 3075 E. Imperial Hwy, Suite 200, Brea, CA 92821-6753, is the address that appears on RAMG's July 20 letter. Dockets 17 & 26, Ex. D. Also, this is the address at which RAMG was notified with the Notice of Chapter 7 Bankruptcy Case. Docket 10.

The act of sending the July 20 letter was obviously intentional. The letter was sent for the purpose of collecting on RAMG's claim against the debtors. The July 20 letter is the second letter in this record, with which RAMG is seeking to collect on its claim. RAMG's knowledge of the applicability of the discharge injunction and RAMG's intent in violating the injunction have been established by clear and convincing evidence. RAMG's July 20 letter then violated the discharge injunction.

But, the court will deny the sought $2,000 of "compensatory damages" "for economic loss and emotional harm." The court has no evidence of any economic loss or emotional harm sustained by the debtors, as a result of RAMG's discharge injunction violation by the mailing of the July 20 letter. The only declaration in support of the motion is by the debtors' counsel, Scott Sagaria. Docket 25. The declaration says nothing about the debtors having sustained economic loss.

Also, there is no declaration from a physician or another medical professional, identifying what emotional harm, if any, the debtors have sustained from RAMG's collection activities.

Emotional distress is a scientific concept that defines a person's state of mind during a particular time period. Hence, determining the presence or absence of emotional distress requires specialized knowledge. Emotional distress damages require the testimony of an expert witness, who can render an opinion about the debtors' specific emotional distress resulting from a particular cause, in this case, namely, RAMG's collection efforts. Fed. R. Evid. 702(a).

The court will deny the request for $3,000 of "mild deterrent sanctions." Such sanctions are not compensatory in nature, nor are they designed to coerce compliance. RAMG is not in ongoing non-compliance, necessitating the issuance of coercive sanctions.

Nevertheless, as the court has found RAMG in contempt, RAMG shall be sanctioned

$500 for every future letter it sends to the debtors in an effort to collect its discharged claim after the entry of the order on this motion.

The court will deny the requested attorney's fees and costs for the prosecution of this motion, as there is no admissible evidence of the debtors having incurred such fees and costs.

Finally, the debtors' request for an evidentiary hearing "so they may prove liability and damages and justify mild sanctions," will be denied because the court's local rules require that:

"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)."

In other words, in a contested matter, evidence must be presented to the court in writing. The hearing on the motion is not for the moving party to request an evidentiary hearing. The court's local rules authorize an evidentiary hearing only when disputed material facts are present. Local Bankruptcy Rule 9014-1(f)(1). There are no disputed material facts identified in this motion. The motion will be granted in part and denied in part.

5. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO APPROVE COMPROMISE
SSA-2 — 9-4-15 [115]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 trustee requests approval of a settlement agreement between the estate, on one hand, and Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company and Farmers New World Life Insurance Company, on the other hand, resolving the estate's contract value payout claim against the foregoing entities.

The claim arose under the agency appointment agreement between the debtor Larry McCarren and the Farmers entities. The debtor served as a Farmers' insurance agent from 1992 until 2012, when he terminated the agency agreement, which provided for a contract value payout to him upon termination. When the agency terminated, although the Farmers entities paid $36,904.86 on account of the contract value payout obligation, another $67,000 remained owing.

In April 2013, the Farmers entities filed a state court action against the debtor, asserting breaches of the agency agreement, misappropriation of trade secrets, including allegations, among others, that the debtor downloaded

proprietary customer information for competitive use to improperly switch Farmers customers to another insurers.

After the case was removed to federal district court, Farmers sought and obtained a temporary restraining order against the debtor, establishing in the process that the debtor had solicited, while still an agent of the Farmers entities, a particular customer to switch insurance from Farmers to Allied Insurance. The debtor offered nothing to refute the evidence presented by the Farmers entities.

Further, when the debtor filed an answer to the Farmers' complaint, he did not assert a counterclaim for the outstanding contract value payout amount.

The debtor filed this bankruptcy case on March 5, 2014, scheduling the $67,000 outstanding contract value payout as an asset of the estate. The Farmers entities have asserted two principal defenses to the contract value payout claim: (1) excusal of obligation to pay the outstanding contract value payout due to failure of an express condition, namely, the debtor's breach of the agency agreement and (2) waiver of the outstanding contract value payout claim due to the debtor's failure to file a counterclaim along with his answer to the complaint.

Under the terms of the compromise, the Farmers entities will pay $10,000 to the estate in full satisfaction of the outstanding contract value payout 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 debtor's pre-petition failure to assert a counterclaim for the outstanding contract value payout, given the challenge that the Farmers entities were excused from paying the outstanding contract value payout, given the debtor's failure to refute evidence proffered in connection with the TRO request, 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.

6.	12-36347-A-7 CJO-2	ARNOLD THREETS AND TESSA BANUELOS-THREETS	MOTION FOR RELIEF FROM AUTOMATIC STAY
	BANK OF AMERICA, N.A. VS.		9-4-15 [252]

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 in part and dismissed as moot in part.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Fairfield, California (Toland Drive).

Given the entry of the debtor's discharge on April 15, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $224,245 and it is encumbered by claims totaling approximately $483,116. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

7. 14-32147-A-7 THOMAS/CHERYL BENNETT — MOTION TO AVOID JUDICIAL LIEN
AFL-3
VS. YELLOWSTONE CAPITAL WEST, L.L.C. — 5-11-15 [71]

Tentative Ruling: The motion will be denied.

A judgment was entered against Debtor Thomas Bennett in favor of Yellowstone for the sum of $76,394.72 on June 6, 2014. The abstract of judgment was recorded with Placer County on July 18, 2014. That lien attached to the debtor's residential real property in Roseville, California. The property is subject to one unavoidable lien, a mortgage in favor of Safe Credit Union, in the amount of $75,958.27 on the petition date. Docket 1, Schedule D.

The debtors are seeking to avoid the judicial lien, contending that - based on their opinion as owners of the property - the property had a value of $204,000 as of the December 16, 2014 petition date. Docket 74 ¶ 3. In addition to their opinion of value, the debtors have proffered an appraisal of the property by Ryan Lamb, valuing the property at $220,000 as of April 9, 2015, nearly four months after the petition date. Docket 73, Ex. 1.

Yellowstone opposes the motion, challenging the debtor's $204,000 valuation of the property by proffering its own expert-prepared appraisal of the property (by Jeffrey Hamric), valuing it at $257,000 as of the petition date. Docket 91 at 2.

In reply, the debtors seek an evidentiary hearing, contending that there is disputed material fact as to the value of the property. Docket 94. Also, the debtors argue that:

- their expert, Mr. Lamb, is more qualified than Yellowstone's expert,

- Mr. Lamb used general purpose residential appraisal forms and not lending purpose appraisal forms, used by Mr. Hamric,

- the difference in the square footage between the two valuations (1,245 by Mr. Lamb and 1,475 by Mr. Hamric for Yellowstone) is an unpermitted enclosed formerly covered patio,

- the property is in "inferior condition" thus requiring repairs, and

- Mr. Hamric's appraisal for Yellowstone relies on "closed sales that were far superior in quality and updating."

Docket 94 at 1-2; Docket 95.

First, the court will strike any pleadings filed by the debtors or Yellowstone, after the respective August 31, 2015 and September 14, 2015 deadlines set by the court at the June 15 hearing on this motion. This means that dockets 97 (filed September 18), 98 (filed September 18), 99 (filed September 23), 100 (filed September 23), and 101 (filed September 23) will be stricken.

Second, the debtors' reply is not supported by admissible evidence. Dockets 94 & 95. It is supported by an exhibit consisting of a letter prepared by Mr. Lamb, outlining his objections to Mr. Hamric's appraisal. But, the letter is inadmissible hearsay, as it contains out of court statements sought to be admitted for the truth of the matter asserted therein. Fed. R. Evid. 801(c) & 802.

Also, there is no declaration or affidavit by Mr. Lamb authenticating the letter. Fed. R. Evid. 901(a) (requiring that "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is").

And, the statements of Mr. Lamb do not establish his personal knowledge of Mr. Hamric's appraisal, to which his letter is addressed. Fed. R. Evid. 602. For instance, Mr. Lamb does not say that he has actually reviewed Mr. Hamric's appraisal. Docket 95 at 2.

Third, the court is unpersuaded that there is a disputed material fact as to the value of the property, warranting an evidentiary hearing. See Local Bankruptcy Rule 9014-1(f)(1) (allowing an evidentiary hearing only when there is a disputed material fact). The court cannot compare the appraisal of Mr. Lamb - as urged by the debtors - with the appraisal of Mr. Hamric for Yellowstone, for one simple reason. Mr. Lamb's appraisal of the property is not as of the petition date. It is as of April 9, 2015, approximately four months after the December 16, 2014 petition date. Docket 73, Ex. 1.

The debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. 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). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the date of the petition and not some time post-petition as the creditor suggests.

The court cannot tell, as a result, whether Mr. Lamb's objections to Mr. Hamric's appraisal are consequential, as the differences between the appraisals are obviously tainted by the difference in value of the property and its attributes between the two appraisal dates, December 16, 2014 and April 9, 2015.

Fourth, even if Mr. Lamb's letter is admitted, the court is unconvinced by his objections to Mr. Hamric's appraisal. The objection relating to the included square footage for an unpermitted living area is not helpful because Mr. Hamric noted the discrepancy in square footage, indicating that the area was added about 25 to 30 years ago, that the absence of a permit "is not atypical for permits dating back this far in time," that the "addition is not distinguishable from the rest of the house and [that] any work completed has been completed in a workmanlike manner." Docket 90 at 3.

In other words, the fact that the added square footage is unpermitted, per county records, does not mean that the space has no value, as Mr. Lamb has essentially concluded by failing to include it in his calculation of value.

Without explanation, Mr. Lamb does not take into account the above considerations in determining the value of the property.

Using the added space in calculating the property's total square footage of 1,475 also explains Mr. Hamric's comparables being higher in square footage than the 1,269 square footage used by Mr. Lamb.

Further, while Mr. Lamb has been appraising properties for nearly 33 years, and Mr. Hamric has been an appraiser only for 11 years, does not make Mr. Hamric's appraisal less persuasive. His 11 years of experience in appraising properties qualify him to render an opinion of value for the property.

The same is true about Mr. Hamric's use of the lending and not general purpose residential forms. The debtors point to no specific relevance of these differences to the value of the property. Yes, there are differences between the appraisals, but the debtors' failure to identify how the differences are

consequential to the value of the property makes them questionable, irrelevant, and without probative value.

Next, Mr. Lamb's complaint about the property being in inferior condition is based on vague and ambiguous comments, including that he "noted a black substance on the bathrooms [*sic*] ceiling as well as several areas of wood damage on the exterior of the home." Docket 95 at 2. Yet, he says nothing about the extent or nature of the "wood damage" and does not elaborate about why he was concerned with the black substance on the ceiling.

In fact, Mr. Lamb states that "repairs *could* be costly," thus merely speculating about the "inferior conditions" of the property.

More, while Mr. Lamb "recommended an inspection by a professional in that field to determine the cause and extent of the damage," the debtors have done nothing to inspect the purported inferior conditions, much less seek an estimate of what it would cost to have the conditions rectified. The debtors have had since early May 2015, when they filed this motion, to do this.

Another vague and ambiguous conclusory comment by Mr. Lamb is that Mr. Hamric's appraisal relies on "sales that were far superior in quality and updating." Docket 95 at 2. The court does not know what "superior in quality and updating" means, with respect to the subject property and Mr. Hamric's appraisal. Mr. Hamric's appraisal assesses three comparable properties, with 0.29 miles, 0.40 miles and 0.19 miles in proximity to the subject property. The comparables are 1,389 square feet, 1,286 square feet, and 1,652 square feet. The functional utility for all properties is average. The quality of construction for all properties is good and their design style, bungelow, is like the subject property. Given these considerations, the court is unconvinced of the "far superior in quality and updating" of the comparable properties.

Mr. Lamb's statements of objection are not admissible, probative, or adequate evidence to rebut the appraisal of Mr. Hamric for Yellowstone.

As the court has no expert evidence from the debtors about the value of the property as of the petition date, this leaves them only with their lay opinion of value, which, when compared to Yellowstone's appraisal, is a mere conjecture, devoid of basis in fact or specialized knowledge.

As lay witnesses, the debtors' opinion of value for the property can be based solely on the fact that they own the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Yet, the debtors' opinion of value in this case is not based on their ownership of the property. In his declaration in support of this motion, Mr. Bennett states that he "believed that the fair market value of the Property was $204,000, and [he] disclosed such information on Schedules A, C and D." Docket 74 at 2. Although he does not provide the basis for his opinion of value in the declaration, in Schedule A and in both the original and amended Schedule C (Dockets 1 & 29), the debtors state that their valuation of the property is "per zillow."

In other words, the debtors' opinion of value is not based just on their ownership. Rather, it is based on what a website, zillow.com, says is the value of the property. But, zillow.com's opinion of value is inadmissible hearsay and it is inadmissible expert opinion. Fed. R. Evid. 702, 703, 802.

The court does not have evidence of zillow.com's qualifications to render an opinion of value for the property, much less about zillow.com's basis and methodology in arriving at its conclusion.

Accordingly, the court adopts the $257,000 valuation of Mr. Hamric for Yellowstone.

A judgment was entered against Debtor Thomas Bennett in favor of Yellowstone for the sum of $76,394.72 on June 6, 2014. The abstract of judgment was recorded with Placer County on July 18, 2014. That lien attached to the debtor's residential real property in Roseville, California.

The subject real property had an approximate value of $257,000 as of the petition date. Docket 91. The unavoidable liens totaled $75,958.27 on that same date, consisting of a single mortgage in favor of Safe Credit Union. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended Schedule C. Docket 29.

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 sufficient equity to support the judicial lien in its entirety ($257,000 value - ($100,000 exemption + $75,958.27 unavoidable lien) = $81,041.73, an amount sufficient to satisfy Yellowstone's $76,394.72 judicial lien). Therefore, the fixing of this judicial lien does not impair the debtors' exemption of the real property and its fixing will not be avoided subject to 11 U.S.C. § 349(b)(1)(B). Accordingly, the motion will be denied.

8.	09-27252-A-7 SLC-13	SIERRA PACIFIC MOBILE HOME SERVICES, INC.	MOTION FOR ADMINISTRATIVE EXPENSES 9-3-15 [102]

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

The motion will be granted.

The trustee requests the allowance of payments of 2009 through 2015 post-petition estate income tax liability to the California Franchise Tax Board in the amount of $5,888.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam,

or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on April 17, 2009. The tax liability in question was incurred for tax years 2009, 2010, 2011, 2012, 2013, 2014 and 2015. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

9. 09-27252-A-7 SIERRA PACIFIC MOBILE HOME SERVICES, INC. — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
SLC-14 — 9-3-15 [106]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's accountant, 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 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.

Gonzales & Sisto, accountant for the estate, has filed its second and final motion for approval of compensation. The requested compensation consists of $2,560.45 in fees and $0.00 in expenses. This motion covers the period from December 18, 2014 through August 13, 2015, after the trustee received some unanticipated funds into the estate, requiring further tax advice and services. The court approved the movant's employment as the estate's accountant on March 21, 2010. In performing its services, the movant charged hourly rates of $200, $325 and $330.

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: (1) preparing a 2014 tax return, necessitated by the receipt of unanticipated funds into the estate, (2) preparing payroll returns for the estate, given the unanticipated payment of wage claims, and (3) communicating with the trustee about tax-related issues.

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

10. 11-40155-A-7 DWIGHT BENNETT — MOTION TO ABANDON
HSM-3 — 9-10-15 [293]

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

hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Lassen County, California.

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 property has been embroiled in a messy and drawn out litigation both in Northern and Southern California, involving banks, the foundation that cared for horses that had occupied the property, a receiver and the debtor. The trustee's investigation has revealed that the property's value is not in excess of $250,000.

On the other hand, an equitable lien has been granted to Wells Fargo Bank, securing a debt of more than $600,000. Further, the property is in disrepair, requiring much update and/or renovation to bring it to a marketable condition. The property also requires ongoing expenses, including insurance, taxes and maintenance. The estate does not have the funds to litigate, maintain the property or update the property, even if there is equity in it. Given this, the court concludes that the property is burdensome and of inconsequential value to the estate. The motion will be granted.

11. 15-22661-A-7 LUCKSON EMMANUEL — MOTION TO RECONSIDER DISMISSAL OF CASE 9-2-15 [25]

Tentative Ruling: The motion will be denied.

The debtor asks the court to vacate the August 25, 2015 dismissal of the case. This case was filed on April 1, 2015 and the court dismissed the case on August 25 due to the debtor's failure to appear at the third continued meeting of creditors on June 29, 2015. Docket 20. The debtor did not appear at the initial meeting of creditors on May 4, did not appear at the continued meeting on May 18, appeared at the June 15 meeting of creditors, and once again did not appear at the June 29 meeting. The trustee's motion to dismiss and corresponding notice were filed on June 30. Dockets 19 & 20. After the debtor failed to serve an opposition to the motion, an order was entered on August 25 dismissing the case. Docket 22.

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

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has

been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

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

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

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

The motion is timely, as it was filed on September 2, 2015, just approximately a week after the August 25 order dismissing the case.

After this case was filed, the debtor's son was born on May 4 with serious health issues. This placed the debtor under severe stress, including him spending much time in the hospital.

While the court is sympathetic to the debtor's situation, the motion is devoid of specifics about why the debtor did not attend the June 29 meeting of creditors, which is what led to the dismissal of the case. Even if the court were to reconsider the dismissal order, given the debtor's overlooking the requirement for an opposition to the trustee's dismissal motion, the court has no information from the debtor about why he missed the June 29 meeting of creditors. This is especially important as the trustee set the June 29 meeting date at the June 15 meeting of creditors, at which the debtor was present.

12. 14-31178-A-7 JOHN HARRITT — MOTION TO AVOID JUDICIAL LIEN
EJS-2
VS. LEGACY VILLAS AT LA QUINTA — 9-14-15 [30]

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 debtor in favor of Legacy Villas at La Quinta Homeowners Association for the sum of $21,140.45 on June 25, 2010. A judicial lien attached to the debtor's residential real property in Sacramento, 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 $700,000 as of the petition date. Dockets 32 & 1. The unavoidable liens totaled at least $735,212.46 on that same date, consisting of a first mortgage in favor of Wachovia Mortage for $623,085.82 and a tax lien in favor of the California Franchise Tax Board for

$112,126.64. Docket 32. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Dockets 32 & 1.

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).

THE FINAL RULINGS BEGIN HERE

13. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-8 8-31-15 [193]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $102,094.50 in fees and $4,827.96 in expenses, for a total of $106,922.46. This motion covers the period from March 15, 2013 through July 31, 2015. The court approved the movant's employment as the trustee's attorney (as the Suntag Law Firm) on April 9, 2013. The movant's employment as HCS was approved on August 25, 2014. See also Docket 73, Order Authorizing Initial Employment of HCS. In performing its services, the movant charged hourly rates of $90, $125, $225, $250, $295, $315 and $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) reviewing and analyzing petition documents to assist the trustee with the administration of the estate,

(2) assisting the estate with the complex sale of an approximately 71-acre over-encumbered real property in Tracy, California;

(3) negotiating a carve-out agreement with the secured creditor,

(4) preparing and filing a motion for approval of the sale and approval of the carve-out agreement,

(5) communicating extensively with the initial buyer of the property to accomplish close of escrow,

(6) instituting an adversary proceeding against the initial buyer, who failed to perform, to recover the $328,500 deposit,

(7) preparing and filing a request for entry of default,

(8) preparing and filing a motion for default judgment and then a motion for additional attorney's fees based on the sale and purchase agreement,

(9) negotiating an amendment to the carve-out agreement,

(10) preparing and filing a motion for approval of another sale of the property and approval of the amended carve-out agreement,

(11) analyzing 10 complex executory contracts,

(12) preparing and filing five motions for extension of the deadline to assume the contracts, and

(13) 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.

14. 12-40820-A-7 DANNIKA BARNETT
DNL-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-25-15 [127]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $23,372.70 in fees (reduced from $25,916.50) and $1,627.30 in expenses, for a total of $25,000. This motion covers the period from February 1, 2015 through August 17, 2015. The court approved the movant's employment as the trustee's attorney on February 11, 2015. In performing its services, the movant charged hourly rates of $150, $175, $195, $275 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) analyzing the debtor's schedules and pre-conversion (from chapter 13) actions,

(2) propounding discovery from the debtor, her mother, a friend of the debtor and several banks, to investigate what happened with the proceeds from the sale of the debtor's real property, pre-conversion,

(3) reviewing discovered documents,

(4) researching bad faith issues,

(5) preparing and prosecuting a motion for turnover,

(6) preparing stipulation for the granting of the turnover motion,

(7) negotiating, preparing, and filing stipulations for extension of the time to object to the debtor's discharge,

(8) preparing and filing a section 727 complaint,

(9) preparing and filing stipulation and judgment denying the debtor's discharge, and

(10) 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.

15. 15-25830-A-7 DARREN/MARY MELVILLE — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
FIRST TECH FEDERAL CREDIT UNION VS. — 8-31-15 [14]

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, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2005 Ford F250 vehicle.

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

The petition here was filed on July 23, 2015 and a meeting of creditors was first convened on August 25, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than August 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 August 22, 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. The court also notes that the trustee filed a "no-asset" report on August 26, 2015, indicating an intent not to administer the vehicle or any other assets.

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

16. 15-25733-A-7 JENNIFER KEMP — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
WELLS FARGO BANK, N.A. VS. — 8-18-15 [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 granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Plumas Lake, California. The property has a value of $345,889 and it is encumbered by claims totaling approximately $358,205. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 20, 2015.

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.

17.	14-29045-A-7 BLL-4	WILLIAM/GERALDINE ACKERMAN	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 8-25-15 [55]

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.

Attorney Byron Lynch, counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,110 in fees and $517.29 in expenses, for a total of $5,627.29. This motion covers the period from January 20, 2015 through the present. The court approved the movant's employment as the trustee's attorney on January 23, 2015. In performing its services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the sale of a real property in Arizona, (2) correcting escrow issues, (3) advising the trustee about abandonment and other estate administration issues, and (4) 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.

18. 15-25247-A-7 BENJAMIN HARTZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 8-27-15 [19]
U.S. BANK, N.A. VS.

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The movant has produced evidence that the property has a value of $220,000 and it is encumbered by claims totaling approximately at least $259,609. The movant's deed is in first priority position and secures a claim of approximately $259,609.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 6, 2015. And, both the debtor and the trustee have filed non-oppositions to this motion.

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

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

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

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

19. 12-29961-A-7 PAUL DOSCHER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
PLC-2 — 8-19-15 [44]

Final Ruling: The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the amended notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 52. 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.

20. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
BLL-5 — 8-21-15 [257]

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.

Attorney Byron Lynch, counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,500 in fees (reduced from $15,400) and $478.29 in expenses, for a total of $7,978.29. This motion covers the period from June 6, 2013 through the present. The court approved the movant's employment as the trustee's attorney on June 5, 2013. In performing its services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the investigation, assessment and sale of several real properties; (2) reviewing schedules and other petition documents, (3) negotiating with secured creditors about carve-out, waiver of tax penalties, release of an income tax lien, and release of

judicial liens, (4) advising the trustee about the general administration of the estate, and (5) 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.

21. 12-33467-A-7 RONALD DUNCAN — OBJECTION TO CLAIM
DNL-17
VS. LB CONSTRUCTION, INC. — 8-13-15 [335]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On February 4, 2014, Lancaster Burns Construction, Inc. filed a general unsecured proof of claim in the amount of $52,401.95 (claim no. 25), based on a "Breach of Contract." The trustee objects to the proof of claim, arguing that the debt on which the claim is based is not an obligation of the debtors of this now consolidated estate, but that it is an obligation of Carmichael Construction Company, Inc.

The agreement and mechanic's lien attached to the proof of claim indicate that its contract LB claims to have been breached was with Carmichael Construction Company, Inc. and not with the debtors, Ronald Duncan and Kathleen Duncan. While the debtors may have acted for Carmichael Construction, there is nothing in or appended to the proof of claim to indicate that the debtors agreed to guarantee the corporate debt or are otherwise liable for that debt. Accordingly, the objection will be sustained.

22. 14-31178-A-7 JOHN HARRITT — MOTION TO AVOID JUDICIAL LIEN
EJS-1
VS. COMERICA BANK — 9-14-15 [25]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Comerica 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 solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Managing or General Agent." Docket 29. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

And, while the debtor served Comerica'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).

23. 15-24880-A-7 WAYNE HUNTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 8-19-15 [30]
BMW FINANCIAL SERVICES, N.A., L.L.C. VS.

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

The motion will be granted.

The movant, BMW Financial Services, seeks relief from the automatic stay with respect to a leased 2014 BMW 528i. The outstanding debt under the lease agreement totals approximately $50,728. The debtor also has not made four pre-petition and two post-petition payments under the lease agreement. And, the movant has possession of the vehicle already. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee has filed non-opposition to this motion.

The court concludes that the above is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of the vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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) is ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

24. 15-26185-A-7 MARISELA SILVA — MOTION FOR DENIAL OF DISCHARGE
UST-1 — 8-20-15 [11]

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 debtor, the 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 U.S. Trustee moves for denial of the debtor's discharge pursuant to 11 U.S.C. § 727(a)(8), which provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

An objection to discharge pursuant to section 727(a)(8) does not require an adversary proceeding. See Fed. R. Bankr. P. 7001(4).

The debtor filed a chapter 7 case, Case No. 10-22464-C-7, on February 1, 2010 and she received a discharge in that case on May 17, 2010. The debtor filed the subject bankruptcy case, Case No. 15-26185, on August 3, 2015, approximately five and one-half years after the filing of Case No. 10-22464. Docket 13, Morgan Decl.; Docket 15, Exs. A & B. As the debtor filed the instant bankruptcy case less than eight years after the filing of the bankruptcy case in which she received a discharge, she is not eligible to receive a discharge in the instant bankruptcy case. Accordingly, the motion will be granted.

25. 15-22990-A-7 XTREME ELECTRIC, INC — MOTION TO APPROVE COMPROMISE
JRR-2 — 8-19-15 [30]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and American Express, resolving $44,620.80 in preferential transfers made by the debtor pre-petition. Under the terms of the compromise, AE will pay $34,620.80 to the estate in full satisfaction of the estate's preference claims.

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 settlement is for 77.5% of the aggregate amount of preferential payments 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. 15-26397-A-7 SHAWN SHAW — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 8-28-15 [15]

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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2004 Acura MDX.

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 August 12, 2015 and a meeting of creditors was first convened on September 16, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than September 11. The debtor filed a statement of intention on the petition date and filed an amended statement of intention on September 7, 2015. Dockets 1 & 21. The debtor did not list the vehicle in either statement, however.

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 vehicle in either 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 September 11, 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. The court also notes that the trustee filed a "no-asset" report on September 16, 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 11, 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.