UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 13, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	15-29103-D-7 17-2053 SMITH V. PARK POINT, INC.	ROCK RIDGE PROPERTIES, INC. DNL-1	MOTION FOR ENTRY OF DEFAULT JUDGMENT 8-10-17 [25]

Final ruling:

This is the trustee's motion for entry of default judgment against Park Point, Inc. pursuant to the trustee's complaint to recover certain real property based on actual and constructive fraudulent transfers. The default of defendant has already been taken and the trustee has made a sufficient evidentiary record to support the relief requested in the complaint. Accordingly, the motion for entry of default judgment will be granted by minute order and the trustee is to submit a form of judgment consistent with the prayer in the complaint. No appearance is necessary.

2. 17-22810-D-7 RAEID BARAKAT
17-2131 MAS-1
ANWAR ET AL V. BARAKAT

MOTION FOR REMAND AND/OR MOTION FOR ABSTENTION
8-15-17 [11]

Tentative ruling:

This is the plaintiffs' motion "for abstention and remand to state court." The defendant has filed opposition and the plaintiffs have filed a reply. For the following reasons, the court will construe the motion as a motion for relief from the automatic stay and grant it as such, with limitations.

The plaintiffs' complaint in this adversary proceeding refers to a Sacramento County Superior Court action brought by the plaintiffs against the defendant and others prior to the defendant's filing of the chapter 7 case in which this adversary proceeding is pending. The defendant filed his bankruptcy case shortly before a scheduled trial date in the state court action.[1] In the adversary proceeding, the plaintiffs seek damages and a determination that the damages are nondischargeable pursuant to § 523(a)(4) and/or (a)(6) of the Bankruptcy Code. By this motion, the plaintiffs seek "an order under 28 U.S.C. § 1334(c) for abstention regarding this adversary proceeding together with an order directing that all matters raised in this adversary proceeding be tried in the civil division of the Sacramento County Superior Court." Plaintiffs' Motion, DN 11, at 1:24-26. The plaintiffs seek this relief on the ground that "all of the issues to be litigated are state law issues . . . ." Id. at 1:26-27.

That statement is not entirely accurate because "'Bankruptcy Courts have exclusive jurisdiction over nondischargeability actions brought pursuant to 11 U.S.C. § 523(a)(2), (4), (6) . . . .'" Lakhany v. Khan (In re Lakhany), 538 B.R. 555, 560, n.10 (9th Cir. BAP 2015), quoting Rein v. Providian Fin. Corp., 270 F.3d 895, 904 (9th Cir. 2001). Because the plaintiffs here are seeking a determination of nondischargeability, it would be inappropriate for the court to abstain from hearing the adversary proceeding. Further, there is nothing to remand, as the state court action has not been removed to this court.

The court does conclude, however, that the motion should be construed as a motion for relief from the automatic stay to permit the state court action to proceed, with limitations. "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." Kronemyer v. Am. Contrs. Indem. Co. (In re Kronemyer), 405 B.R. 915, 921 (9th Cir. BAP 2009) (citations omitted). Here, given the commonality of the facts as alleged in the state court action and the adversary proceeding – the alleged conversion of at least $72,000 by the defendant from the plaintiffs, the state law nature of the claims, the presence in the state court action of non-debtor defendants, and the procedural posture of the state court action as being ready for trial, the court concludes relief from stay should be granted, as limited below.

In fact, the defendant, in his answer to the complaint in this adversary proceeding, has expressly not consented to this court "hearing and entering final orders in non-core matters in this adversary proceeding." Defendant's Answer, DN 9, at 3:21-22. And in his opposition to this motion, he states that '[t]o the extent that Plaintiffs are requesting the Court to abstain from merely hearing the merits of Plaintiffs' state court civil action, Defendant would not necessarily oppose that

request." Defendant's Opp., DN 16, at 1:27-2:1. The defendant's concern is with the state court determining the dischargeability issues. The court will lift the automatic stay to permit the parties to proceed in the state court and will stay this adversary proceeding, with the parties to return to this court for a determination of the dischargeability issues in the event the plaintiffs obtain a monetary award in the state court or some other award that would fall within the scope of a chapter 7 discharge.[2] No enforcement action may be taken against the defendant or the defendant's property without further order of this court.

The court will hear the matter.

---

1 According to the declaration supporting this motion, the state court action was commenced on April 17, 2015 and trial was set for June 13, 2017. The defendant filed his chapter 7 petition on April 26, 2017.

2 The plaintiffs contend that "[w]ith respect to Plaintiffs' claims, whatever findings of fact and conclusions of law are made by the civil division of the Sacramento County Superior Court will, of course, have preclusive effect as to the non-discharge proceeding under 11 U.S.C. § 523(a)(4)." Motion at 2:26-2:1. So the parties are clear on the matter, the preclusive effect of a state court judgment, if any, will depend on the specific findings of fact and conclusions of law entered in the state court action. That is, whether those findings and conclusions will have preclusive effect is a matter that will be determined if and when the plaintiffs prevail in the state court action.

3.	17-20731-D-11	CS360 TOWERS, LLC	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 2-3-17 [1]

4.	17-23436-D-7 ALL-2	RENEE DRUSYLLA	MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT 8-14-17 [54]

Tentative ruling:

This is the motion of Carmen Torres, dba Alliance Financial ("Ms. Torres"), for an extension of time to January 28, 2018 to object to the debtor's discharge. The debtor has not filed opposition. The motion will be granted in part.

First, as to the relief sought, the motion is entitled "Motion by Judgment Creditor Carmen Torres for Order Extending Time to Object to Discharge of Claims Arising Under 11 U.S.C. §§ 523 and 727," but the motion itself refers only to "the time to object to the discharge of the Debtor," and not to a determination of nondischargeability. Further, on August 25, 2017, Ms. Torres filed a complaint for a determination of nondischargeability under § 523(a)(6). Thus, it appears Ms. Torres seeks only an extension of time to object to discharge, under § 727, and not an extension of time to object to the dischargeability of her claim, under § 523, and the court will so construe the motion.

As to the amount of time sought, an extension of five months beyond the original bar date is unsupported, at least at this time. The court will grant the motion in part and extend the bar date for Ms. Torres to object to the debtor's discharge for 60 days, or until October 27, 2017. The order will be without prejudice to Ms. Torres seeking an additional extension upon an appropriate showing. The court will hear the matter.

5. 17-23436-D-7 RENEE DRUSYLLA — MOTION TO QUASH
FF-1 — 8-11-17 [48]

Tentative ruling:

This is the debtor's motion to quash three subpoenas obtained by creditor Carmen Torres, dba Alliance Financial ("Ms. Torres"), pursuant to this court's orders authorizing examinations pursuant to Fed. R. Bankr. P. 2004. The debtor also seeks a protective order. Ms. Torres has filed opposition and the debtor has filed a reply. For the following reasons, the motion will be granted in part and denied in part.

The subpoenas directed the debtor and individuals named Priscilla Loriga and Maria Escobar to appear and testify at Rule 2004 examinations at the courthouse (in fact, in the courtroom of this department) and to produce documents by mail to what appears to be an office address, all on dates that have already passed.[1] The court will hear from the parties as to the whether the examinations and document productions proceeded on those dates or whether they have been continued. If they have been concluded, which, in light of the parties' arguments, seems doubtful, the court will deny the motion as moot. If they have not been concluded, the court will rule as follows.

The debtor makes three arguments. First, the debtor has filed as exhibits copies of a blank form of proof of service of a subpoena, as to which she claims: "None of the Proofs of Service were complete of who was served, their address and dates of service. See Exhibits F, G and H. As such, counsel for the debtor does not have the addresses of Maria Escobar and Priscilla Loriga to serve this motion on them and as such is denying the Debtor the proper due process." Motion to Quash, DN 48 ("Mot."), at 2:15-18. Assuming without deciding that third parties Loriga and Escobar were not properly served, the debtor has provided no authority for the proposition that this is a ground for quashing the subpoenas directed to them or the subpoenas directed to the debtor.

Second, the debtor charges Carlos Gonzales, the father of the debtor's child, with an eight-year pattern of stalking and harassing the debtor, and attempts to equate him with Ms. Torres, claiming he lives with, works with in Alliance Financial, and has children with Ms. Torres. (Mr. Gonzales was also the original

holder of the judgment that is the basis of Ms. Torres' claim against the debtor. At some point, Mr. Gonzales assigned the judgment to Ms. Torres.) The debtor testifies Mr. Gonzales served jail time for extortion and has been convicted of possession of methamphetamine; that she obtained a restraining order against him for slashing her tires and breaking windows in her apartment and car; that she believes he and Ms. Torres and others are working together to stalk, harass, and defame her on the Internet; and that she "is scared to death of him and anyone that helps him." Drusylla Decl., DN 50, at 2:25-26. The debtor concludes she "fears for her life having to attend any kind of proceeding with [Ms.] Torres without having some sort of safety protection." Mot., at 2:25-26.

Thus, the debtor seeks a protective order that (1) "suspends Court Call for all proceedings . . . to ensure that only Carmen Torres is addressing the Court and is not being coached by 3rd persons while on Court Call, such as Carlos Gonzales" (id. at 3:15-17); (2) requires courthouse security or the U.S. Marshal's office to "provide security for the Debtor while attending any hearing or proceeding at the Courthouse" (id. at 3: 18-19); and (3) provides that "[a]ll discovery requiring the personal attendance by the Debtor be conducted at the Courthouse with security." Id. at 3:20-21.

Mr. Gonzales, in support of Ms. Torres' opposition to the motion, claims matters have been the other way around – that the judgment he obtained against the debtor, which is now held by Ms. Torres, was in an action for defamation, civil harassment, stalking, and identify theft. He denies the debtor's stalking and harassment charges against him.[2] The exhibits in support of and in opposition to the motion include copies of civil harassment restraining orders against both Mr. Gonzales (in favor of the debtor) and the debtor (in favor of a third party, alleged to be an ex-girlfriend of Mr. Gonzales).

There is no basis here on which to quash the subpoenas directed to the third parties, Ms. Escobar and Ms. Loriga. Further, given that the document production is to be by mail, there appears to be no threat there to the debtor's safety. Finally, in that the examinations themselves are to take place in the courthouse, the debtor will already have the protections available to all persons entering the courthouse. (The court leaves it to Ms. Torres to arrange for the examinations to take place other than in the courtroom itself, which is unavailable for use by members of the public except when appearing at scheduled hearings.) The court is not persuaded Ms. Torres' examination of the debtor pursuant to Rule 2004 poses a risk of harm to the debtor that would warrant the additional protections she seeks.

Third, the debtor contends the subpoenas are not appropriate because they were issued pursuant to the court's orders for Rule 2004 examinations, whereas there is a pending adversary proceeding between the debtor and Ms. Torres.[3] The debtor cites the general rule that where there is an adversary proceeding or contested matter pending between the parties, the parties should pursue discovery pursuant to Fed. R. Bankr. P. 7026, et seq., rather than through a Rule 2004 exam. See In re Dinubilo, 177 B.R. 932, 941 (E.D. Cal. 1993). The debtor mistakenly assumes, however, that her adversary proceeding against Ms. Torres, for a declaration of the rights of the parties regarding Ms. Torres' judgment against the debtor (and for a variety of other relief), concerns "the very issues" for which Ms. Torres sought the Rule 2004 orders and obtained issuance of the subpoenas. That is only partly true.

Ms. Torres' application for a Rule 2004 order directed to the debtor stated she was seeking "documents related to proving the debtor's willful and intentional conduct in the underlying state court action," which indeed pertains to the issues

in her newly-filed § 523(a)(6) adversary proceeding. To the extent Ms. Torres seeks information or documents concerning the issues in the adversary proceedings, the motion to quash will be granted and she will not be permitted to seek such information or documents through Rule 2004, but only via the discovery procedures in Rules 7026, et seq.

However, the application also stated she was seeking to explore the debtor's employment, the facts concerning payments apparently made on a vehicle that had been repossessed, and the acts, conduct, property, or liabilities and financial condition of the debtor or the debtor's right to a discharge, all as permitted under Rule 2004. And the documents itemized in the lists attached to the document production subpoenas suggest the requests are directed to the debtor's right to a discharge rather than to issues of nondischargeability. To the extent Ms. Torres seeks, by way of the subpoenas, information or documents concerning those matters, the motion will be denied, as there is no pending litigation between the parties concerning those issues; that is, no pending litigation other than concerning Ms. Torres' state court judgment and the facts underlying it.

Having said that, the court is not impressed by the debtor's suggestions, set forth in her reply to Ms. Torres' opposition, that Ms. Torres is unnecessarily wasting the court's time and that of the debtor's counsel by filing her own § 523(a)(6) complaint instead of filing an answer and counterclaim in the debtor's declaratory relief action against her, or the debtor's claim that Ms. Torres and Carlos Gonzales are vexatious litigants or her implication that they have violated Rule 9011. It is clear from the pleadings on both sides of these disputes that the debtor, on the one hand, and Ms. Torres and Mr. Gonzales, on the other hand, have an extremely contentious relationship. It is of no help to the court for one side to indulge in inflammatory conclusions about the other.[4]

Finally, the court denies the debtor's request, made in her reply, to consolidate the two adversary proceedings. Ms. Torres has filed a motion to dismiss the debtor's adversary complaint pursuant to Fed. R.Civ. P. 12(b)(6), set for hearing on September 27, 2017, which the court will consider in due course.

For the reasons stated, the motion will be granted in part and denied in part. The court will issue an order from chambers. The court will hear the matter.

---

1 There are six subpoenas in all – one to each of the three directing them to appear and testify and another to each of the three directing them to produce documents.

2 Much of the testimony in the declarations on both sides is hearsay, conclusory, or otherwise inadmissible. The court has considered the testimony only to the extent necessary to resolve this motion; no party should take this as a determination of admissibility of any of the testimony for future purposes.

3 By the time this motion was filed, the debtor had filed a complaint for declaratory and other relief against Ms. Torres. Since the motion was filed, Ms. Torres has filed a complaint against the debtor to determine that the debt evidenced by her judgment against the debtor is nondischargeable, pursuant to § 523(a)(6) of the Bankruptcy Code. Thus, there are now two adversary proceedings pending between the parties.

4 For example, the debtor states:

In the Debtor's mind, there is no question where this is all going. She has been given three choices by Carlos Gonzales, (1) go back to him and his abusive lifestyle or (2) she can spend the rest of her life being harassed by him or (3) leave the United States and go back to Ecuador. The debtor has filed for bankruptcy in the hope of creating a fourth option, a fresh start free from the harassment by Carlos Gonzales and Carmen Torres.

Reply at 5:1-5.

6.	17-24444-D-11	RAMON LOPEZ	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 7-5-17 [1]
7.	17-22145-D-7 DMW-2	ELIAKIM FRANK	MOTION TO SELL 8-16-17 [20]
8.	17-23151-D-7 MG-1	MIGUEL MARTINEZ AND IRMA GUZMAN DE MARTINEZ	MOTION TO COMPEL ABANDONMENT 8-9-17 [16]

9. 17-22056-D-11 JAMES MCCLERNON — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
3-29-17 [1]

10. 17-24156-D-7 GREGORY/MELINDA GOODWIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1
WELLS FARGO BANK, N.A. VS.
8-11-17 [20]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

11. 16-21659-D-7 TRONG NGUYEN — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DUC NGO
NOS-4
8-15-17 [130]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

12. 15-27561-D-7 SIMONAE BARRY — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
15-2244 TJP-5
GATEWAY ONE LENDING & FINANCE V. BARRY
8-17-17 [87]
ADVERSARY PROCEEDING CLOSED: 12/02/2016

13. 09-29162-D-11 SK FOODS, L.P. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GERALD ROSE
09-2543 TJD-9
SHARP ET AL V. CSSS, LP
8-11-17 [724]

Tentative ruling:

This is the motion of Bank of Montreal ("BMO"), as Administrative Agent and as successor by assignment to the former chapter 11 trustee in this case, for approval of its compromise with Gerard Rose, who is a respondent to a motion for an order of contempt in this adversary proceeding. Larry Lichtenegger, another such respondent, has filed opposition and BMO has filed a reply. For the following reasons, the motion will be granted in part.

First, the court questions whether this is a compromise that is subject to approval under Fed. R. Bankr. P. 9019. The rule applies to compromises by a chapter 11 trustee or debtor-in-possession acting on behalf of a bankruptcy estate, whereas here, BMO acquired the claims in this adversary proceeding by assignment from the chapter 11 trustee during his tenure. A chapter 11 plan of liquidation was confirmed three years ago and the settlement will not impact in any way the liquidating trust created under the plan.

However, it appears what BMO is really interested in here is a finding, pursuant to Cal. Code Civ. Proc. §§ 877 and 877.6, that this is a good faith settlement, such that the other contempt respondents, Frederick Scott Salyer; CSSS, L.P., dba Central Valley Shippers; Monterey Peninsula Farming, LLC; and Lichtenegger are barred from pursuing any claims against Rose for indemnity or contribution. The court is very familiar with the facts and issues in this adversary proceeding, and in particular, the contempt motion, as well as the outcome of the subsequent appeals. Based on that familiarity, and especially in light of the thorough manner in which the issues were developed on BMO's motion for summary judgment against Rose and Lichtenegger and on appeal,[1] as well as the length of time this matter has been pending, the arguments set forth in BMO's moving papers, the testimony of BMO's counsel that BMO and Rose engaged in arms' length and good faith negotiations, and the lack of opposition by Lichtenegger to this aspect of the motion, the court has no hesitation in concluding that this is a good faith settlement, within the meaning of Cal. Code Civ. Proc. § 877.6(a), such that §§ 877.6(c) and 877(b) will apply.

Finally, in the motion, BMO requested that the court authorize it to return $75,005.80 to Rose, pursuant to the compromise, and to return $175,005.80 to

Lichtenegger, and that is the way the relief is phrased in the proposed order BMO submitted. Lichtenegger, in turn, asks that the court order BMO to return the $175,005.80 to him, and in reply, BMO asks that the court direct the return of the funds, to both Rose and Lichtenegger. Thus, it appears both parties are now requesting the same form of relief. At this point, the court is prepared to issue an order authorizing the release of the funds.

The court will hear the matter.

---

1 Final judgment was entered against the other contempt respondents before the time BMO filed its motion for summary judgment against Rose and Lichtenegger. BMO served the present motion on the other contempt respondents, as well as on Rose and Lichtenegger.

14.	17-23167-D-7 GR-1	WILLOUGHBY ARNESON	CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING 6-14-17 [13]

Final ruling:

The court docket indicates that the debtor and counsel appeared at the Meeting of Creditors held on August 15, 2017 and the hearing was concluded. As such, this motion will be denied by minute order. No appearance is necessary.

15.	16-27672-D-11 DNL-5	DAVID LIND	MOTION TO APPROVE LOT LINE ADJUSTMENT AGREEMENT 8-16-17 [205]

16.	16-27672-D-11 17-2123 SPACONE V. LIND	DAVID LIND DNL-1 8-16-17 [20]	MOTION FOR ENTRY OF DEFAULT JUDGMENT

Final ruling:

This is the trustee's motion for entry of default judgment against Denielle Lind pursuant to the trustee's complaint seeking a sale of real property under Bankruptcy Code § 363(h). The default of defendant has already been taken and the trustee has made an evidentiary record showing that he is entitled to the relief requested in the complaint. Accordingly, the motion for entry of default judgment will be granted by minute order and the trustee is to submit a form of judgment consistent with the prayer in the complaint. No appearance is necessary.

17. 15-29890-D-7 GRAIL SEMICONDUCTOR
DB-1
RONALD W. HOFER VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-8-17 [681]

18. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-27

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AARONSON, SCHANTZ, BEILEY P.A. SPECIAL COUNSEL(S)
8-9-17 [818]

Tentative ruling:

This the trustee's first interim application for an allowance of compensation to special counsel. The proof of service is unsigned. If a corrected proof of service has been filed by the time of the hearing, the court will hear the matter.

19. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-30

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SCHWARTZ, RIMBERG & MORRIS, LLP
8-16-17 [837]

Tentative ruling:

This is the trustee's motion to approve a compromise with Schwartz, Rimberg & Morris, LLP (the "Schwartz Firm"). David Rothschild, Mishcon De Reya New York, LLP ("Mishcon"), and Sedgwick FundingCo, LLC ("Sedgwick") have filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted.

"The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). "Rather than an exhaustive investigation or a mini-trial on the merits, the bankruptcy court need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." Spirtos v. Ray (In re Spirtos), 2006 Bankr. LEXIS 4894 at *32 (9th Cir. BAP 2006). The court's "proper role is 'to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness.'" Id., quoting In re Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

Although the bankruptcy court has "great latitude in approving compromise agreements," it may approve a compromise only if it is "fair and equitable." In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988), citing A & C Properties, 784 F.2d at 1381. In making this determination, the court must consider:

> **(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.**

Id. "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." Greif & Co. v. Shapiro (In re Western Funding Inc.), 550 B.R. 841, 851 (9th Cir. BAP 2016). The proponent of the compromise – here, the trustee – has the burden of persuasion. A & C Properties, 784 F.2d at 1381.

The Schwartz Firm represented the debtor in pre-petition litigation against Mitsubishi Electric & Electronics USA, Inc. ("Mitsubishi") that concluded with a $55 million settlement, of which the trustee retains about $3.1 million (the "Segregated Funds") that is subject to unresolved disputed lien and ownership claims totaling about $12.3 million. In addition, she holds about $1.3 in unencumbered funds, expected to increase to about $2.7 million when payment under her recently-approved compromise with another of the debtor's former law firms, the Niro Firm, is received. The proposed settlement with the Schwartz Firm would resolve both the Firm's claim against the estate – a claim alleged to be secured by a charging lien against the Segregated Funds, in the amount of about $2.1 million plus a portion of the Mitsubishi settlement amount based on a contingency fee agreement with the debtor – and the estate's claims against the Schwartz Firm, including claims for legal malpractice and breach of fiduciary duty in connection with the Firm's representation of the debtor in the Mitsubishi litigation.

The settlement provides that (1) the estate will pay the Schwartz Firm $630,000 from the Segregated Funds; (2) the Schwartz Firm will pay the estate 26% of its gross recovery, if any, from an action the Schwartz Firm intends to file against Mitsubishi in state court, subject to a cap of $630,000 (in essence, repaying the settlement payment); (3) the Schwartz Firm will assign to the trustee all of its claims against the debtor's past and present officers, directors, shareholders, and attorneys; (4) the Schwartz Firm will have an allowed general unsecured claim of $1,467,109; (5) the Schwartz Firm will waive any statute of limitations or other time bar to an action to avoid its charging lien and will agree that the order approving the compromise will act as an order avoiding that lien under § 544(a) of the Bankruptcy Code; and (6) the trustee and the Schwartz Firm will exchange mutual general releases.

Three creditors have filed opposition or limited opposition. First, Mr. Rothschild has filed a 14-page opposition, an 8-page declaration, and 233 pages of exhibits.[1] The opposition and declaration recite Mr. Rothschild's version of the debtor's history going back as far as 1999, the Mitsubishi litigation, and the Schwartz Firm's role in it. The crux of the opposition is that the Schwartz Firm committed malpractice in many different ways that did serious damage to the debtor, that the trustee has not sufficiently investigated the malpractice claims, and that the Schwartz Firm should receive nothing on account of its claim. The opposition and declaration are full of hearsay, unqualified expert opinions, and unsupported conclusions. Perhaps even more conspicuous, as the trustee points out in her reply, the opposition itself suggests the complexity, expense, and delay that would be associated with pursuing or even further investigating the trustee's claims.

The court agrees litigation would require, as the trustee puts it, "huge expenditures of money," depleting and perhaps exhausting the remaining funds of the estate, and would entail risks not worth taking. It is especially significant that, as in virtually any legal malpractice claim, the trustee would need to conduct, in essence, a trial within a trial, and that the Schwartz Firm was succeeded by Mishcon, who was, in turn, succeeded by the Niro Firm as the debtor's counsel in the Mitsubishi litigation. The Schwartz Firm would almost certainly assign blame to one or both of them, which would render an apportionment of causation and damages difficult if not impossible.

The Schwartz Firm's successor, Mishcon, opposes the compromise on the ground it has a lien against the Segregated Funds securing its claim of about $1.9 million, a lien Mishcon claims is senior to any lien of the Schwartz Firm, and that the $630,000 payment to the Schwartz Firm from the Segregated Funds would deplete the fund by that amount, thus potentially impairing Mishcon's security. Mishcon observes that under the settlement agreement between the trustee and the Schwartz Firm, the Schwartz Firm agrees that the order approving the compromise "will act as a valid order/judgment avoiding the [Schwartz Firm's] charging lien under 11 U.S.C. §544(a)." Trustee's Ex. A, ¶ 7. Mishcon expects the trustee to argue that the compromise thus preserves the Schwartz Firm's charging lien for the benefit

of the estate and that the lien remains senior to Mishcon's lien claim, leaving only $370,000 available to secure Mishcon's claim.[2] According to Mishcon, "[t]his cannot be allowed to occur, and Mishcon de Reya hereby requests adequate protection to ensure that this does not occur." Mishcon's Opp., DN 857, at 4:6-7.

The trustee replies that she disputes Mishcon's lien claim and that "Mishcon's general request for adequate protection, without making a showing of the value of its lien claim, should be denied without prejudice." Trustee's Reply, DN 867, at 2:8-9. The trustee noted in her motion that the state court has determined Mishcon did not properly perfect its lien in accordance with applicable law; thus, this court is not prepared to accord it the right to adequate protection as an undisputed secured creditor. The court, however, is prepared to include in its order approving the compromise a caveat: that nothing in the settlement agreement, the order, or elsewhere shall be binding on the issue of whether, as between the estate and Mishcon, the Schwartz Firm's charging lien is preserved for the benefit of the estate or on the issue of the relative priorities of Mishcon's lien, if any, and the Schwartz Firm's lien, if any, against the Segregated Funds.

Finally, Sedgwick, which asserts a lien against the Segregated Funds to secure its claim for repayment of litigation funding provided to the debtor, contends its cash collateral will be reduced by the amount of the $630,000 payment to the Schwartz Firm. Sedgwick does not seek additional protection at this time, but asks that the approval of the compromise be "without prejudice to Sedgwick seeking additional adequate protection for its collateral, to the same extent, validity and priority of Sedgwick's rights in any such collateral as of the date of the filing of the Debtor's bankruptcy petition." Sedgwick's Ltd. Opp., DN 860, at 3:14-17. The trustee has no opposition and the court is prepared to so limit its approval of the compromise and will provide the same for Mishcon.

To conclude, the trustee has made a very strong case for the conclusion that litigation against the Schwartz Firm, either over the validity of its charging lien or over the estate's malpractice claims against it or both, would be time-consuming, complex, very costly, and highly uncertain. Given all of these considerations, the court is persuaded the compromise is in the paramount interest of creditors and compares favorably with the likely rewards of litigation. On balance, the compromise is fair and equitable, and the motion will be granted.

The court will hear the matter.

---

1 Mr. Rothschild has filed a separate motion to be excused from the court's local rule which "requires filings to be mailed to those claimants who did not supply an email address." Rothschild Motion, DN 852, at 2:1-2. Apparently, the trustee's counsel informed Mr. Rothschild of the rule and told him he needed to file a motion for permission to serve his papers by email, although counsel himself agreed to accept service by email. Mr. Rothschild states his circumstances would make it difficult for him to arrange service by mail, and he requests permission to serve any future filings by email. The request is granted.

2 The calculation is as follows. The Segregated Funds now amount to $3.1 million. If the Schwartz Firm's lien is in senior position and is preserved for the benefit of the estate, we must deduct $2.1 million, which is the amount of the Schwartz Firm's charging lien, and then deduct the $630,000 to be paid to the Schwartz Firm under the compromise.

20. 17-23905-D-7 RODNEY/KATHLEEN COCKRUM — MOTION TO COMPEL ABANDONMENT
GMW-3 — 8-30-17 [49]

Tentative ruling:

This is the debtors' motion to compel the abandonment of certain real property. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has a preliminary concern. The proof of service evidences service of the motion, notice of hearing, and supporting declaration on the chapter 7 trustee and the United States Trustee. It also purports to evidence service of the notice of hearing by this reference: "SEE ATTACHED LIST." However, there is no list attached.[1] If an amended proof of service is on file by the time of the hearing, the court will hear the matter. If the notice of hearing was in fact not served on all creditors, the court will consider continuing the hearing to allow the moving parties to file a notice of continued hearing and serve them.

---

1 Fed. R. Bankr. P. 6007(a) requires the trustee or debtor-in-possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a). See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

21. 17-25352-D-7 BRETT/ALEXANDRA MEDICI — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRH-1 — 8-24-17 [22]
PACIFIC HERITAGE INN OF FOLSOM, LLC VS.

22. 17-25658-D-7 SCOTT/WENDY SANDSTEDT — MOTION FOR RELIEF FROM AUTOMATIC STAY
RTD-1 — 8-30-17 [8]
SCHOOLS FINANCIAL CREDIT UNION VS.

23.	17-25272-D-7 KH-1 SRPS, LP. VS.	PRINCESS/LEE EVANS	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-28-17 [23]

Final ruling:

This case was dismissed on August 28, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

24.	17-20689-D-11 ET-10	MONUMENT SECURITY, INC.	MOTION TO EMPLOY CAMPBELL TAYLOR AND COMPANY AS ACCOUNTANT(S) 8-30-17 [146]