UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 3, 2018 at 10:00 a.m.

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1. 18-26910-A-7 ZERNICED GIBSON — ORDER TO SHOW CAUSE 11-16-18 [25]

Tentative Ruling: The case will be dismissed.

The debtor did not pay the filing fee as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. The filing fee of $335 was due on November 1, 2018.

2. 18-26910-A-7 ZERNICED GIBSON — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-13-18 [18]
EJS-1
CARMEL POINTE SACRAMENTO, L.L.C. VS.

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

The motion will be granted.

The movant, Carmel Pointe Sacramento, L.L.C., seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the owner of the property and the debtor declared her occupancy of the property in connection with the eviction and unlawful detainer action against the tenant on the property, Linda Harrell. After Ms. Harrell defaulted on the lease, the movant filed an unlawful detainer action against her on August 17, 2018. In response to the unlawful detainer complaint, the debtor filed on October 1, 2018 a prejudgment claim of right to possession of the property. On October 12, 2018, the state court entered a judgment for possession of the property, naming the debtor as a judgment defendant. The debtor filed this case on November 1, 2018.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is an occupant of the property, the tenant has defaulted on the lease

agreement and there is a judgment for possession against the debtor entered by the state court. Also, the debtor has no tenancy interest in the property, as she was never a party to the lease agreement.

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

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

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

3. 18-20314-A-7 MARGARET TOPETE — MOTION TO APPROVE COMPENSATION OF AUCTIONEER
DMW-3 — 11-1-18 [20]

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.

NorthState Auctions, Inc., auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,919.49 in fees and $892.50 in expenses, for a total of $2,811.99. This motion is for a sale completed on August 1-3, 2018. The court approved the movant's employment as the trustee's auctioneer on April 3, 2018. The requested compensation is based on a 12% commission and reimbursement of asset moving, storing, and securing expenses.

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

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

4. 18-26820-A-7 FELICISIMO/LUZVIMINDA MOTION FOR
JDM-1 SAWYER RELIEF FROM AUTOMATIC STAY
MERIWEST CREDIT UNION VS. 11-7-18 [11]

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

The motion will be dismissed as moot.

The movant, Meriwest Credit Union, seeks relief from the automatic stay with respect to a 2015 Nissan Pathfinder 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 October 30, 2018 and a meeting of creditors is to be held on December 17, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 29. 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.

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

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

Here, although the debtor indicated an intent to retain the vehicle, 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 November 29, 2018, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

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

Therefore, without this motion being filed, the automatic stay terminated on November 29, 2018.

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.

5. 18-26021-A-7 KENNETH/SUSAN RODGER — MOTION TO SELL FREE AND CLEAR OF LIENS 11-9-18 [20]
SCB-2

Tentative Ruling: The motion will be denied.

The trustee requests authority to sell "as is" and free and clear of liens for $160,000 a real property in Petersburg, Illinois, to Equity Trust Company Custodian FBO Matthew C. Crowl IRA. The trustee also requests authority to sell "as is" to the same buyer personal property (including furnishings, equipment, supplies, and intellectual property pertaining to a bed and breakfast operation) located at the real property for $3,500. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee does not anticipate any tax liabilities from the sale.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The real property is subject to the following encumbrances:

1) a $297,000 mortgage claim of Alliance Community Bank, based on a mortgage by National Bank of Petersburg, now merged into Alliance Community Bank,

2) a $101,116 mortgage claim of Alliance Community Bank, based on a mortgage by Athens State Bank, now merged into Alliance Community Bank,

3) a $60,959.41 claim of Alliance Community Bank, based on tax claims purchased from JICTB, Inc. ($19,199) and Realtax Developers, Ltd. ($23,305), and satisfying a claim held by Menard County Collector ($12,872), and

4) a $30,223 claim held by Unifund CCR Partners.

The real property is not subject to exemption claims. Alliance has agreed to the following distribution of the sale proceeds:

i) $60,959.41 to Alliance,
ii) prorated property taxes,
iii) $15,000 to the estate,
iv) the remainder to Alliance.

The sale can be approved free and clear of Alliance's encumbrances, given Alliance's consent to the sale.

However, the sale cannot be approved free and clear of Unifund's lien.

First, the court is not convinced that Unifund received proper notice of this motion, in accordance with Fed. R. Bankr. P. 7004(b)(3), which requires service "*Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.*"

The proof of service for the motion notes serving Unifund twice, once by addressing service to "Unifund CCR Partners" and another time by addressing service to "Unifund CCR Partners c/o Drew T. Erwin, Ltd." Docket 25 at 3. The court does not know who is Drew Erwin, Ltd. As a result, the court is not convinced that Rule 7004(b)(3) has been satisfied.

Second, even if Rule 7004(b)(3) was satisfied, the court disagrees that failure to file opposition to the sale can be construed as a consent to the sale. The requirement for consent under 11 U.S.C. § 363(f)(2) is not based on the passivity of the creditor in failing to respond. The trustee has the evidentiary burden under 11 U.S.C. § 363(f)(2) to establish that Unifund consents to the sale. This means that the motion should establish the consent of the creditor by including evidence of the consent, which should consist of a statement of consent from the creditor. 11 U.S.C. § 363(f)(2) does not allow the consent to be satisfied merely by the expectation of non-opposition from the creditor. There is no consent to the sale from Unifund in the record.

11 U.S.C. § 363(f)(5) is unhelpful either. It compels an entity to accept a money satisfaction of its lien and it requires the court to find the existence of a mechanism via which the lien or interest can be extinguished without paying it in full. See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42-43 (B.A.P. 9th Cir. 2008).

"*We assume that paragraph (5) refers to a legal and equitable proceeding in which the nondebtor could be compelled to take less than the value of the claim secured by the interest.*"

PW at 42.

"*The question is thus whether there is an available type or form of legal or equitable proceeding in which a court could compel Clear Channel to release its lien for payment of an amount that was less than full value of Clear Channel's claim.*"

PW at 45-46 (Emphasis added).

The trustee proposes only foreclosure under Illinois law as the legal or equitable proceeding in which a court could compel Unifund to release its lien for payment of an amount less than full value of Unifund's claim.

The court disagrees that foreclosure qualifies as an acceptable proceeding under section 363(f)(5). The section 363(f)(5) standard is not about whether there is a proceeding where the creditor's lien could be extinguished without paying anything to that creditor. This is what foreclosure does.

The standard is whether there is a proceeding where the creditor could be compelled to accept "*less than the value of the claim secured by the interest.*" PW at 42. Less than the value of the claim is more than not being paid anything on the claim. Section 363(f)(5) requires a proceeding where the creditor could be compelled to accept at least some of (*i.e.*, less than) the value of its claim.

Under the facts here, there is no foreclosure proceeding where Unifund could be compelled to accept less than the value of its claim because the property has a value of less than what is owed even to the senior claimants. The property is being sold for $160,000, whereas Alliance is owed in excess of $400,000. In other words, no foreclosure proceeding could yield anything to Unifund on account of its junior involuntary lien.

Moreover, section 363(f)(5) could not have contemplated foreclosure, judicial or non-judicial, as a proceeding where the creditor could be compelled to accept a money satisfaction of the lien. "*The question is . . . whether there is an available type or form of legal or equitable proceeding in which a court could compel Clear Channel to release its lien for payment of an amount that was less than full value of Clear Channel's claim.*" PW at 45-46 (Emphasis added).

Thus, the proceeding must be a mechanism by which the creditor could be compelled to accept consideration that is less than the full value of its claim in exchange for the release of its lien on the property.

Foreclosure proceedings do not provide such a mechanism because, many times, as in this case, the junior claims are wiped out completely without receiving any payment, when the senior claim forecloses.

And, even when a sale generates proceeds in excess of what is owed on the senior claims and some of the junior claim is paid, the junior claim is not receiving payment in exchange for the release of its lien. Its lien is wiped out whether or not it receives any payment. This is a far cry from what section 363(f)(5) contemplates of a proceeding where the junior claim could be compelled to accept some, even partial money satisfaction in exchange for the release of its lien.

Finally, to authorize the sale free and clear of Unifund's junior mortgage interest under the facts of this case would be the equivalent of stripping off Unifund's lien on the property. There is no legal authority, in or outside the

Bankruptcy Code, for permitting the stripping off of a lien in a chapter 7 proceeding. The court is not prepared to extend Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1227 (9th Cir. 2002) and Lam v. Investors Thrift (In re Lam), 211 B.R. 36, 40-41 (B.A.P. 9th Cir. 1997) to the chapter 7 context, where the checks and balances of plan confirmation do not exist. See also Dewsnup v. Timm, 502 U.S. 410 (1992) (holding that the stripping down or stripping off of liens in a chapter 7 is impermissible). There is no authority for such a drastic result under section 363(f)(5). The motion will be denied as the sale cannot be approved free and clear of Unifund's lien.

6. 15-26125-A-7 EDUARDO VELIS
KWS-3

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
10-3-18 [47]

Tentative Ruling: The motion will be denied.

The debtor seeks sanctions against Shellpoint Mortgage Servicing, a dba of New Penn Financial, L.L.C., a subsidiary of Shellpoint Partners, L.L.C., for alleged discharge injunction violations.

The debtor filed this chapter 7 case on July 31, 2015. His discharge was entered on November 12, 2015. The case was closed on December 4, 2015. Docket 29. On January 11, 2017, a deed was recorded transferring title to real property from the debtor to Silver Bullet, L.P. Docket 47 at 3.

This case was reopened on May 29, 2018, in order for this motion to be heard. This is the second motion by the movant seeking relief for the alleged discharge injunction violations. The first motion was filed on May 29, 2018 but it was dismissed without prejudice on July 17, 2018. Dockets 42 & 44.

In this motion, the debtor complains that starting January 2016 and proceeding until 2018, Shellpoint Mortgage Servicing sent him 12 letters, "seeking payment or some other work out option" on account of a debt owed to Shellpoint.

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:

(a) knew the discharge injunction was applicable, and
(b) 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. The movant's counsel obviously failed to read the court's ruling on the movant's prior motion seeking the same relief, where the court outlined serious deficiencies with the motion. Docket 42. This motion contains identical or similar deficiencies.

This motion gives no background concerning Shellpoint's claim, including when it was incurred, whether it is secured by anything, the collateral, if any, for the claim, whether it is over or under secured, who has possession of the collateral, who owns the collateral, etc.

The motion suggests in several places that Shellpoint's claim is based on a mortgage, but it does not indicate when the mortgage was incurred, the property securing the claim, what happened with the property since the case was filed

(was it surrendered? was it transferred?), whether the debtor occupies the property, etc.

The debtor's schedules, which are not part of the record on the motion and are not themselves admissible evidence, indicate that Shellpoint's claim is secured by real property located in Sacramento, California. The property is scheduled as having a value of $210,882, with two encumbrances: a senior claim for $235,384 held by Select Portfolio Servicing and a junior claim for $10,639 held by Shellpoint. Docket 1, Schedules A & D.

The motion says that the debtor transferred some interest in an unidentified real property in January 2017 to an entity named Silver Bullet, L.P. But, the motion says virtually nothing about the transaction. For instance, it does not say whether the property transferred was Shellpoint's collateral, whether the debtor sold the property, whether it was a short sale, what happened with Shellpoint's claim when the debtor's interest in the property was transferred, whether Shellpoint consented to the transfer, whether Shellpoint was even apprised of the transfer (the opposition denies that Shellpoint was notified of the January 2017 transfer), how much Silver Billet paid for the property, if anything, whether the senior mortgage was paid off, whether and how much Shellpoint received on account of its claim from the transfer, was the transfer conducted through an escrow, etc.

The court cannot determine that any of Shellpoint's contacts with the debtor constituted discharge violations without the foregoing information. In short, the debtor has not carried his burden of proof on establishing discharge injunction violations.

If the debtor still owns an interest in the property, for example, while the debtor may not have personal liability on Shellpoint's claim due to the discharge, Shellpoint may still send statements to the debtor as the owner of its collateral, without violating the discharge injunction. For instance, Cal. Civ. Code § 2920 et seq. imposes certain requirements on mortgagees to contact borrowers prior to foreclosure on their collateral real property. See also Cal. Civ. Code § 2920.5(c)(2)(C) (defining a "borrower" as an individual who has filed a chapter 7, 11, 12, or 13 case and the bankruptcy court has closed or dismissed the bankruptcy case, or has granted relief from stay of foreclosure).

Importantly, enforcing a secured claim against the property, and not a personal debt against the debtor, is precisely what the respondent creditor asserts it was doing. Docket 53.

And, to the extent any of the above missing information may be found in attachments to the motion, the information has not been properly presented to the court. All relevant information should be both in the motion and the evidentiary record. The court cannot be expected to peruse dozens of pages of attachments to determine the existence of basic background facts pertaining to the motion.

Further, the motion does not address important discrepancies in the record and the bankruptcy petition. While the schedules identify Shellpoint's collateral real property as located in Sacramento, California, Shellpoint's statements sent to the debtor refer to real property in Citrus Heights, California. See, e.g., Docket 51 at 72.

The court is unconvinced that Shellpoint received notice of the debtor's August

18, 2017 letter referencing the discharge injunction. Docket 51 at 71. The letter was addressed to PO Box 51850 Livonia, MI 48151-5850. But, this is not Shellpoint's address. The court does not see the address on any mortgage statements or bankruptcy case documents as belonging to Shellpoint. It is merely a "RETURN SERVICE REQUESTED" address, appearing at the top left hand corner of Shellpoint's envelopes carrying its statements to the debtor. See, e.g., Docket 51 at 72 (*the exhibits in Docket 51 are either not labeled or mislabeled and do not correspond to the exhibit table of contents on page one*). Return service addresses are not necessarily the correct addresses at which to contact the entities sending the envelopes.

Nor is the court able to confirm that Shellpoint received notice of this case and entry of the debtor's discharge. The Shellpoint addresses the debtor provided to the court when he filed this case are "PO Box 1410 Washington, MI 48094" and "55 Beattie Place Ste 600 Greenville, SC 29601." Docket 3 at 3. While the court sent notice of the case and entry of the discharge on Shellpoint to these addresses, the court has been unable to find these exact addresses anywhere on the correspondence from Shellpoint in the record of this motion. Dockets 10 & 26. Given these deficiencies, the motion will be denied.

7. 18-23727-A-7 JUDITH DAVENPORT
TBK-1
VS. COUNTY OF SAN JOAQUIN, TREASURER-TAX COLLECTOR

MOTION TO AVOID JUDICIAL LIEN
10-18-18 [14]

Final Ruling: The motion will be dismissed without prejudice because there is no proof of service with the motion indicating that it was served on the respondent creditor.

8. 17-22851-A-7 ABDUL/TAHMINA RAUF
BHS-6

MOTION TO APPROVE STIPULATION RE PROSECUTION OF ADVERSARY PROCEEDING
11-5-18 [102]

Tentative Ruling: The motion will be denied.

The trustee seeks approval of an agreement between the estate and Stohlman & Rogers, Inc. dba Lakeview Petroleum Company, whereby Lakeview will prosecute on behalf of the estate any avoidance actions of the estate it chooses to prosecute, in its discretion. Whatever actions Lakeview decides not to prosecute may be prosecuted by the trustee. Lakeview reserves all its rights as a creditor in the case.

Gross recovery from the avoidance actions prosecuted by Lakeview will be paid to the estate, for the benefit of creditors. Lakeview will prosecute avoidance actions in the name of the estate, at its own expense, with the right for Lakeview to recover fees and costs from the defendants to the actions. Lakeview and its professionals may also apply for administrative expense claims with the court.

Settlement or dismissal of any claims shall be subject to court approval. If the trustee disagrees with any settlements, Lakeview may still bind the estate, as long as the court approves any such settlements. The trustee reserves the right to oppose approval of any such settlements.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement agreement. 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 against approval of the compromise. Lakeview's right to be paid legal fees and costs for prosecuting avoidance actions from the defendants in those actions is not in the best interest of the estate, absent court approval of such fees and costs. The agreement does not require court approval or disclosure of any such compensation, even though it would have direct impact to decrease the likely recovery for the estate from defendants who are agreeing also to pay Lakeview's legal expenses. To the defendants, what matters is the total settlement amount and not necessarily how that amount is apportioned between the estate and Lakeview.

By excluding Lakeview's legal expenses from settlements with such defendants, the estate would not know the total benefit it is receiving from the settlements and it would not know the legal expense percentage of the total settlement amount paid by the defendants.

Without court oversight of Lakeview's compensation for prosecuting these actions, the subject agreement is tantamount to an employment agreement between the estate and a professional (*i.e.*, Lakeview's professional), without the obligation for court approval of the professional's compensation. Such an agreement is not in the best interest of the estate and it violates 11 U.S.C. § 330(a).

Finally, the provision that the estate may prosecute actions Lakeview has chosen not to prosecute is vague. The motion does not say when or how it must be decided who prosecutes what actions. What if Lakeview never decides whether to prosecute an action? How does Lakeview make a decision about whether to prosecute an action? How does the estate know when Lakeview has made a decision not to prosecute an action? What if Lakeview is undecided the day before the statute of limitations is to run? The agreement does not have answers to these and similar other questions. As such, it is not in the best interest of the estate.

9.	18-25966-A-7 JHW-1	FREDRICK/DONNA DE BENEDETTI	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-1-18 [17]
	FORD MOTOR CREDIT COMPANY, 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, Ford Motor Credit Company, seeks relief from the automatic stay with respect to a 2017 Ford Fusion. The movant has produced evidence that the vehicle has a value of $17,775 and its secured claim is approximately $28,147.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on October 31, 2018. Further, the movant recovered the vehicle pre-petition.

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

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

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

10. 17-27367-A-7 PETER/CARIDAD KOZAK — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SCB-3 — 11-2-18 [42]

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.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,525 in fees and $185.46 in expenses, for a total of $3,710.46. This motion covers the period from December 27, 2017 through November 19, 2018. The court approved the movant's employment as the trustee's attorney on January 8, 2018. In performing its services, the movant charged hourly rates of $150 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) evaluating interests in a law firm and referral fees, (2) assessing exemption claims, (3) analyzing payments made to

sons of the debtors, (4) negotiating compromise with the debtors over the estate's interests in the law firm, referral fees, and payments made to the sons, (5) preparing and prosecuting a motion for approval of the compromise, (6) assisting the trustee with the general administration of the estate, and (7) preparing and filing employment and compensation motions.

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

11. 17-22481-A-7 WILLIAM LANDES — MOTION TO SELL
MPD-2 — 10-29-18 [63]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $20,000 an art collection and firearms to the debtor's non-filing and estranged spouse, Marie Landes. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The property is subject to an $8,000 exemption claim.

The motion does not list any encumbrances and does not ask for sale free and clear of liens.

The debtor and Essex Bank have filed responses to the motion. The debtor does not oppose the sale but says he is not certain if all personal property items being sold are still in his possession, as him and his spouse (the buyer) are going through a contentious divorce and the items have been in the family's residence where only his spouse has lived for the last several years.

Essex Bank opposes the sale unless all gross proceeds are turned over to the bank. The bank asserts a security interest in the personal property items based on a money judgment against the debtor for $739,994.08 ($857,159.86 as of the petition date), a pre-petition notice of lien filed with the California Secretary of State, and a pre-petition notice of lien in the divorce proceeding involving the debtor and his spouse.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

As to the debtor's concerns about the sale, his lack of knowledge about the location of each personal property item being sold is not an obstacle to the sale because the sale agreement imposes on the buyer the obligation to obtain possession of the property.

As to the bank's opposition, the court is not satisfied that it has established a colorable security interest in the property being sold.

First, the scope of reach of the notice of lien in the divorce case is outlined in Cal. Civ. Proc. Code § 708.410(a):

"*(a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:*

"*(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.*

"*(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.*"

The court is not convinced that the above statute encompasses the property items being sold. The divorce action is not a "cause of action . . . for money or property." It is an action for the dissolution of marriage.

Second, the notice of judgment lien filed with the California Secretary of State pre-petition does not encumber the property being sold here either. On its face, the attached notice of judgment lien filed with the California Secretary of State prescribes that "a judgment lien on personal property may attach under section 697.530 of the code of civil procedure." Docket 70 at 22.

Cal. Civ. Proc. Code § 697.530 prescribes:

"*(a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time when the lien is created if the personal property is, at that time, any of the following:*

"*(1) Accounts receivable, and the judgment debtor is located in this state.*

"*(2) Tangible chattel paper, as defined in paragraph (79) of subdivision (a) of Section 9102 of the Commercial Code, and the judgment debtor is located in this state.*

"*(3) Equipment, located within this state.*

"*(4) Farm products, located within this state.*

"*(5) Inventory, located within this state.*

"*(6) Negotiable documents of title, located within this state.*"

The art collection and firearms are not receivables or chattel paper or equipment or farm products or inventory or negotiable documents.

Third, the bank recording an abstract of its judgment against the debtor in Butte County did not encumber the property here either. Docket 70 at 20-21. Recorded abstracts of judgment create liens only against real property. Cal. Civ. Proc. Code § 697.310(a) (providing that "[e]xcept as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder").

The court sees nothing grounded in law or in fact that gives Essex Bank a security interest in any of the assets being sold here. The bank has not established a colorable security interest in the art collection or firearms.

Finally, the court rejects the bank's assertion that the state court divorce action is where the debts and assets of the debtor and his spouse should be administered. This bankruptcy case is where the trustee administers all liabilities and assets of the debtor, including community debt and community property assets that are liable for the satisfaction of such debt. See 11

U.S.C. §§ 541(a)(2) & 726(c)(2).

Accordingly, the trustee may sell the art collection and firearms and pay the debtor's exemption. The sale will be approved pursuant to 11 U.S.C. §§ 363(b). The court will waive the 14-day period of Rule 6004(h).

12. 17-25481-A-7 JOHN ROSE
JMP-1
JPMORGAN CHASE BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-29-18 [64]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the trustee's attorney. See Docket 69.