

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

May 9, 2018 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.	17-26908-D-7 SCB-5	DONALD CARCARE	MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S) 4-3-18 [40]
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Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

2. 09-46625-D-7 VASCO/MICHELE DEMELLO MOTION TO EMPLOY BACHECKI,
DNL-12 CROM, AND CO., LLP AS
ACCOUNTANT(S)
4-11-18 [201]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ Bachecki, Crom and Co., LLP as accountant on a flat fee basis is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

3. 17-23626-D-7 PHYSICIANS SKIN AND MOTION FOR RELIEF FROM
JMB-1 WEIGHT CENTERS, INC. AUTOMATIC STAY
STEPHANIE ALLARD VS. 4-9-18 [56]

4. 18-20753-D-7 RAYMOND/KHRISTINA RAE MOTION FOR RELIEF FROM
APN-1 LEYBA AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 3-30-18 [14]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

5. 18-21960-D-7 MEGAN GIFFIN MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY
HERITAGE COMMUNITY CREDIT 4-11-18 [14]
UNION VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

6. 18-20865-D-7 KYLE/ALLISON CHANNING
JHK-1
ABNB FEDERAL CREDIT UNION
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-5-18 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 14-27267-D-7 SARAD/USHA CHAND
JES-2

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
4-11-18 [460]

Tentative ruling:

This is the motion of James E. Salven (the "Applicant") for a first and final allowance of compensation as accountant to the chapter 7 trustee in this case. For the following reasons, the motion will be granted in part.

Section 330(a)(3) of the Bankruptcy Code sets out the standards by which courts should determine the reasonableness of compensation of professional persons. Reasonableness is determined by looking at the nature, extent, and value of the services rendered. § 330(a)(3); In re Eliapo, 298 B.R. 392, 401 (9th Cir. BAP 2003). As pertinent here, relevant factors include the time spent; whether the services were necessary to the administration of, or beneficial at the time they were rendered toward the completion of, the case; and whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed. § 330(a)(3). The court shall not allow compensation for unnecessary duplication of services or services that were not reasonably likely to benefit the estate or necessary to the administration of the case. § 330(a)(4). The court has the authority to award compensation that is less than the amount requested. § 330(b)(2).¹ The applicant has the burden of demonstrating the reasonableness of the hours worked and the rates at which they were billed. Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007).

The Applicant requests fees of \$53,586 and reimbursement of costs of \$1,346.52 for accounting services rendered in this chapter 7 case. The fee portion of the request, \$53,586, is almost 38% of the total fees sought and approved for the trustee's counsel in the case and 57% of the total the trustee may expect to receive as her fee based on the § 326(a) formula, determined based on total receipts according to the most recent monthly operating report and assuming there will be no surplus to the debtors.² The court emphasizes that this was and is a chapter 7 case, not a chapter 11 case.³ There was good reason for the relatively extensive services performed by the trustee's counsel, but not for the extent of the time billed by the Applicant.

Of the hours billed by the Applicant, 305.5, the Applicant attributes 7.2 hours to administrative matters, 50.7 to tax services, and 247.6 to monthly operating reports.⁴ The only situation in which monthly operating reports are required in a chapter 7 case is where the trustee is operating a business. LBR 2015-1(a)(2). The only "business" operated by the trustee in this case was the "management" of the debtors' four rental properties - all single-family residences. There were no liens on any of those properties (except the IRS's tax lien), so the trustee's only concerns comprising the operation of a "business" were the collection of rents and the payment of property taxes, insurance, and maintenance costs. There is no suggestion in the Applicant's time sheets that he had anything to do with collecting rents or paying expenses - he only prepared the monthly operating reports, did tax work, and did "administrative" work, the latter limited to preparing his employment and fee applications and emailing the trustee "re rent issues," a total of 7.2 hours.

In her motion for an order authorizing her to manage the rental properties, the trustee acknowledged "it is not certain that the Debtors' pre-petition operations in this regard constitute a 'business' within the meaning of 11 U.S.C. § 721" (Trustee's Motion, DN 126, at 1:22-24), but stated she was filing the motion out of an abundance of caution. The court does not fault the trustee for filing the motion; indeed, the court granted the motion and the trustee "managed" the properties pending her marketing and sale of all four of them. The court does find, however, that the trustee's characterization of the rental activities as possibly not a "business" at all strongly suggests, and the court would conclude regardless, that the "business" did not require the amount of time the Applicant allegedly spent on the monthly operating reports.

First, after the motion to operate the business was granted, the Applicant's firm retroactively prepared reports for the preceding four months, May through August of 2015. An individual named Salem Michmali, presumably the enrolled agent the Applicant referred to in his employment application, did the "data gathering, analysis, and preparation" of the reports and, for those four months and every month thereafter, Mr. Salven "reviewed," "corrected," "finalized," and "processed" them. For those first four months, the only income reported was the gross rents and the only expenses reported were bank fees. Yet for those four months' reports, the enrolled agent billed 25.5 hours, an average of 6.4 hours per month, and Mr. Salven billed 6.9 hours, an average of 1.7 per month. The enrolled agent's time was billed at \$120 per hour and Mr. Salven's at \$250 per hour. Thus, for those first four operating reports, the Applicant billed the estate - and seeks approval of - \$4,785, which is 58% of the amount the trustee collected in rents in those four months. By the time all was said and done, the Applicant had billed the estate \$40,567 in fees for the monthly operating reports - \$19,692 for Salem Michmali and \$20,875 for Mr. Salven, more than the total rents the trustee collected during her tenure, \$39,156.⁵

On an ongoing basis, after the first four months, Salem Michmali billed at least 3.2 hours per month to "gather and analyze the data" and prepare the reports, for most months, more than four or five hours and, for the September and November 2017 reports, 7.6 and 8.8 hours, respectively. Mr. Salven generally billed between one and two hours per month, increasing to more than three hours in July of 2017 and as many as 8.3 and 6.6 in November and December of 2017.⁶ It is difficult for the court to justify this kind of time for an enrolled agent to receive and key fewer than ten figures, often fewer than five, into a computer program, which would then automatically update the various statements and schedules in the report. The court also cannot accept that a CPA would need to review the work of an enrolled agent on

this type of report.

To conclude with respect to the monthly operating reports, the time spent by the Applicant and his enrolled agent was clearly excessive. It was also clearly disproportionate to the complexity, importance, and nature of the task addressed - the reporting of the trustee's "operation of the business" of collecting rents and paying expenses for four single-family residences. And it was not commensurate with the benefit achieved for creditors; in fact, the Applicant's bill for the monthly operating reports alone exceeds the gross amount of rents the trustee collected.

The court recognizes the test is not whether a professional achieved an actual benefit to the estate; it is whether the services were reasonably likely to benefit the estate at the time they were performed. In re Mednet, 251 B.R. 103, 108 (9th Cir. BAP 2000). Even when all four properties were rented out, the trustee collected a total of \$3,743 in monthly rents. The only income ever reported was the rental income and the proceeds of vehicles and real properties; the only expenses reported that were not paid through the real property escrows were bank fees, professional fees (the trustee's counsel and the Applicant), the trustee's bond premium payments, a payment to a locksmith, a few property insurance payments, and a few large payments to the IRS pursuant to the trustee's stipulation. Considering that these activities were almost certainly all that was ever anticipated, in terms of necessary reporting, the court concludes the Applicant and his enrolled agent both failed to exercise good billing judgment in light of what they knew at the time about the likely benefit of their work to the estate. And the Applicant micromanaged the enrolled agent's work, leading to unnecessary fees.

A bankruptcy trustee has the obligation to oversee the professionals who work for him or her. Here, the trustee should have monitored the Applicant and his enrolled agent more closely and provided them the information necessary for them to understand that the time they were spending must be proportionate to the difficulty of the task and the benefit likely to be achieved for the estate from the reporting. And the trustee, in the exercise of her duty to "maximize the value of the estate" (Commodity Futures Trading Com v. Weintraub, 471 U.S. 343, 352 (1985)), should have verified on a regular basis that the services were being performed efficiently and in compliance with those standards.

Professionals do not work for the court. Professionals, with the approval of the court, are employed by the estate, of whom the Trustee is the representative and guardian. The Trustee is supposed to review the services rendered, the bills as they are presented, and the costs of those services as they are incurred. The Trustee is supposed to be in control of those professionals and, as a professional himself, to make decisions for the benefit of the estate relating to the quality and cost of their services.

In re Borland, 2005 Bankr. LEXIS 1197, *9-10, 2005 WL 3416125 (Bankr. C.D. Cal. 2005). See also In re Southbank Dairies, LLC, 2018 Bankr. LEXIS 1219, *14 (Bankr. W.D. Wash. April 24, 2018) ["the Trustee has a duty . . . to supervise and direct the professionals she employs to minimize administrative expenses."].

Here, the amount of time spent and billed by the Applicant demonstrates a real lack of exercise of good billing judgment on the part of the Applicant and a lack of good business judgment and a failure to supervise professionals on the part of the trustee. Accordingly, the court will reduce the amount of the Applicant's fees - to \$15,000 for the monthly operating reports, which, in the court's view, is generous.

This amount represents reasonable compensation for actual, necessary services.

The balance of the compensation sought, \$13,019, and the costs, \$1,346.52, will be allowed. The Applicant's overly aggressive billing for the monthly operating reports casts a shadow of doubt on the time billed for his other services. However, the court will not second-guess that time, especially since it apparently included the preparation of four years' worth of tax returns. See Applicant's Exhibits, DN 462, p. 12 of 19.

The court will hear the matter.

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- 1 The trustee in this case states she believes the fees and costs are reasonable and necessary for estate administration. However, the court has a duty to review all fee applications for reasonableness, regardless of the absence of objections by parties-in-interest. Eliapo, 298 B.R. at 405.
 - 2 The court is by this estimate making no determination as to the trustee's fee.
 - 3 It began as a chapter 13 case and was converted to chapter 7 three years ago.
 - 4 In sharp contrast, in his declaration supporting his employment, the Applicant estimated his firm would spend 20 to 40 hours on the "tax compliance aspects of the case," as well as "other tasks requested by the Trustee."
 - 5 Of that total, \$19,481 was billed for the monthly operating reports for the period from January 2017 through February 2018, whereas the trustee collected no rents from any of the properties after December of 2016 and rent from only one property after May of 2016. Thus, after December of 2016, the only possible justification for employing someone to prepare monthly operating reports in this chapter 7 case had been eliminated, and the justification for all months after May of 2016 was tenuous at best.
 - 6 By September of 2017, the trustee had not collected any rents for nine months. However, she closed escrow on two properties in September of 2017 and the Applicant attached a copy of the closing statement to the operating report and entered the proceeds, closing costs, and commissions in the operating report. Chapter 7 trustees sell property all the time and although they often file a report of sale, with a copy of the closing statement, they do not file monthly operating reports. In this case, there was no need for a CPA or an enrolled agent to spend much, if any, time on monthly operating reports, let alone this kind of time, simply to duplicate the figures on the escrow closing statements.

8. 16-27672-D-7 DAVID LIND
DNL-14

MOTION FOR COMPENSATION FOR
BACHECKI, CROM & CO., LLP,
ACCOUNTANT(S)
4-11-18 [392]

Tentative ruling:

This is the application of the accountants for the former chapter 11 trustee (the "Applicant") for a first and final allowance of compensation for services performed during the chapter 11 period. The debtor has filed opposition. For the following reasons, the motion will be granted.

The court is very familiar with how this case has transpired and with the debtor's repeated efforts to interfere with the trustee's administration of the estate. Based on that knowledge and the record in the case, the court finds that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a).

The debtor begins by asking that all requests for expenses "be reviewed by an independent source other than a party of this case." Debtor's Opp., DN 422 ("Opp."), at 2. To the extent the debtor is asking that this judge be disqualified from deciding the motion, the request will be denied. Determination of the request is governed by 28 U.S.C. § 455 and the matter is to be decided by the judge whose disqualification is sought. Bernard v. Coyne (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994). The debtor has not identified any ground for disqualification and the court finds none in the opposition other than the debtor's dissatisfaction with the outcome of the various motions, which is not a valid ground.

The debtor's opposition is a rambling set of complaints about the outcome of three motions brought by the chapter 11 trustee - the motion to sell certain real property, the motion to employ a real estate broker to market that property, and the motion to approve a lot line adjustment. The complaints are without foundation and without evidentiary support, and the court has considered them previously in connection with the motions themselves. The court finds no reason to reconsider them here. The debtor's final argument states that when the trustee asked the debtor's spouse to sign off on certain documents, she learned that "instead of there being three APN Nos. on the remaining 80 acres, there were TWO APN Nos. on the LLA." Opp. at 4. As with the other complaints, this argument is offered without foundation or evidence and the court will not consider it. Finally, the debtor has not identified any particular services performed by the Applicant that he considers to be unreasonable.

For the reasons stated, the court intends to grant the motion. The court will hear the matter.

Tentative ruling:

This is the application of the former chapter 11 trustee (the "Applicant") for a first and final allowance of compensation for services performed during the chapter 11 period. The debtor has filed opposition. For the following reasons, the motion will be granted in part. In the alternative, the court will continue the hearing to permit the trustee to supplement the record.

The court is very familiar with how this case has transpired and with the debtor's repeated efforts to interfere with the trustee's administration of the estate. Based on that knowledge and the record in the case, the court finds that, except as discussed below, the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a).

The debtor begins by asking that all requests for expenses "be reviewed by an independent source other than a party of this case." Debtor's Opp., DN 422 ("Opp."), at 2. To the extent the debtor is asking that this judge be disqualified from deciding the motion, the request will be denied. Determination of the request is governed by 28 U.S.C. § 455 and the matter is to be decided by the judge whose disqualification is sought. Bernard v. Coyne (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994). The debtor has not identified any ground for disqualification and the court finds none in the opposition other than the debtor's dissatisfaction with the outcome of the various motions, which is not a valid ground.

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The court has one concern. The motion states that during the trustee's tenure as chapter 11 trustee, disbursements from the estate totaled \$2,397,807. Based on that figure, the trustee's compensation as calculated under § 326(a) would total \$95,184, whereas the trustee is seeking fees totaling only \$65,000. The motion states that "[a]lthough the amount sought is slightly above the Trustee's calculated fees based on his hourly rate, it is well below the \$95,184 cap as calculated pursuant to 11 U.S.C. Section 326(a)." Motion, DN 404, at 14:19-21. As acknowledged in the motion and demonstrated by the trustee's time records, the amount incurred if calculated on an hourly basis would be \$55,170, almost \$10,000 less than the amount sought. The court recognizes that "absent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory [§ 326(a)] rate." In re Salgado-Nava, 473 B.R. 911, 921 (9th Cir. 2012). However, this was a chapter 11 case and the traditional reasonableness analysis under § 330(a)(3) applies. In the case of a chapter 11

trustee, the determination whether there is a rational relationship between the amount of the commission and the type and level of services rendered "necessarily requires consideration of the § 330(a)(3) factors, and also ordinarily includes a lodestar analysis." Id.

For the reasons stated, the court intends to grant the motion in part and allow compensation of \$55,170 in fees and \$5,648.60 in costs. In the alternative, the court will continue the hearing to allow the trustee to file supplemental evidence and/or briefing. The court will hear the matter.

10. 16-27672-D-7 DAVID LIND
DNL-16

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
4-11-18 [398]

Tentative ruling:

This is the application of counsel for the former chapter 11 trustee (the "Applicant") for a first and final allowance of compensation for services performed during the chapter 11 period. The debtor has filed opposition. For the following reasons, the motion will be granted.

The court is very familiar with how this case has transpired and with the debtor's repeated efforts to interfere with the trustee's administration of the estate. Based on that knowledge and the record in the case, the court finds that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a).

The debtor begins by asking that all requests for expenses "be reviewed by an independent source other than a party of this case." Debtor's Opp., DN 422 ("Opp."), at 2. To the extent the debtor is asking that this judge be disqualified from deciding the motion, the request will be denied. Determination of the request is governed by 28 U.S.C. § 455 and the matter is to be decided by the judge whose disqualification is sought. Bernard v. Coyne (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994). The debtor has not identified any ground for disqualification and the court finds none in the opposition other than the debtor's dissatisfaction with the outcome of the various motions, which is not a valid ground.

The debtor's opposition is a rambling set of complaints about the outcome of three motions brought by the chapter 11 trustee - the motion to sell certain real property, the motion to employ a real estate broker to market that property, and the motion to approve a lot line adjustment. The complaints are without foundation and without evidentiary support, and the court has considered them previously in connection with the motions themselves. The court finds no reason to reconsider them here. The debtor's final argument states that when the trustee asked the debtor's spouse to sign off on certain documents, she learned that "instead of there being three APN Nos. on the remaining 80 acres, there were TWO APN Nos. on the LLA." Opp. at 4. As with the other complaints, this argument is offered without foundation or evidence and the court will not consider it. Finally, the debtor has not identified any particular services performed by the Applicant that he considers to be unreasonable.

For the reasons stated, the court intends to grant the motion. The court will hear the matter.

11. 18-20673-D-7 RAFT THOMPSON
NLG-1
FIRST TECH FEDERAL CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-4-18 [15]

Final ruling:

This matter is resolved without oral argument. This is **'s motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 18-21188-D-7 ROBERT OLSON
MDA-1

MOTION TO COMPEL ABANDONMENT
4-3-18 [12]

13. 15-27697-D-7 ROMEO/SONIA GAPASIN
SSA-5

CONTINUED MOTION FOR ENTRY OF
JUDGMENT RE: MOTION TO APPROVE
SETTLEMENT OF CLAIMS AND
COMPROMISE MOTION BETWEEN
TRUSTEE AND SONIA'S CARE HOME,
INC.
2-21-18 [72]

14. 17-27397-D-7 GEVORG POLADYAN AND
GEL-1 ARMINE ASATRYAN

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 7 TO CHAPTER 13
2-24-18 [16]

15. 17-23507-D-7 BRENT/HELEN RAPPAPORT MOTION IN LIMINE
17-2108 RJM-101 4-25-18 [34]
NELSON ET AL V. RAPPAPORT ET
AL
16. 09-46625-D-7 VASCO/MICHELE DEMELLO MOTION FOR COMPENSATION BY THE
DNL-13 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM
TRUSTEE'S ATTORNEY(S)
4-18-18 [207]
17. 17-23436-D-7 RENEE DRUSYLLA MOTION BY GARY RAY FRALEY TO
17-2163 FF-2 WITHDRAW AS ATTORNEY O.S.T.
TORRES V. DRUSYLLA 4-18-18 [33]

Tentative ruling:

This is the motion of Gary Ray Fraley to withdraw as counsel "for the plaintiff" in this adversary proceeding. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, unless Mr. Fraley's client herself appears at the hearing, the court intends to continue the hearing due to what the court considers to be a notice defect.

The parties to this adversary proceeding have been parties to reciprocal adversary proceedings, in which the plaintiff in one was and/or is the defendant in the other and vice versa. Mr. Fraley's client, Renee Drusylla, is the defendant in this adversary proceeding, in which the plaintiff, Carmen Torres, dba Alliance Financial, seeks a determination that Drusylla's alleged debt to Torres is not dischargeable, pursuant to § 523(a)(6). Yet Mr. Fraley's moving papers refer consistently to his client as the plaintiff, even in the caption. There is no indication anywhere in the moving papers that his client is actually the defendant.¹

The court will continue the hearing, Mr. Fraley to file and serve a notice of continued hearing with the correct caption of this adversary proceeding, clearly advising his client of her status as the defendant in this adversary proceeding, not the plaintiff, so the court can be certain she understands the granting of the motion would leave her without counsel as the defendant in this adversary

proceeding.² The notice of continued hearing is to state that no written opposition is required and that opposition may be presented at the hearing.

The court will hear the matter.

- 1 The adversary proceeding in which Drusylla was the plaintiff and Torres was the defendant has been dismissed. However, given the importance of the present motion to Drusylla's status as represented or unrepresented in this § 523(a)(6) proceeding, and given that the moving papers all refer to her as the plaintiff in the adversary proceeding from which Mr. Fraley proposes to withdraw, corrective notice is necessary.
- 2 Mr. Fraley should not file an "amended motion" or "amended declaration" - the rules do not provide for "amended" motions.

18.	18-20851-D-7	ROOSEVELT/JENNIFER TONEY	MOTION FOR RELIEF FROM
	PP-1		AUTOMATIC STAY
	JOCEPHUS MELTON VS.		4-25-18 [11]

19.	18-20967-D-7	CHRISTINE RUSSAK	MOTION TO SELL FREE AND CLEAR
	JB-1		OF LIENS
			4-19-18 [25]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion for authority to sell certain real property, which she states she has claimed as exempt. The debtor cites 28 U.S.C. § 157(b) for the proposition that this court has jurisdiction over this matter and § 363 of the Bankruptcy Code as support for the motion to sell.

There is no authority under § 363 for the bankruptcy court to authorize a chapter 7 debtor to sell property, whether property of the estate or exempt property. Under that section, the court may authorize sales of property only by a bankruptcy trustee and, by way of § 1107(a), a chapter 11 debtor-in-possession and, as to certain subsections of § 363, a chapter 13 debtor. § 1303. There is no authority for the court to authorize sales of property by a chapter 7 debtor. Moreover, the court has no jurisdiction to do so.

This court, by reference from the district court, has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b), 157(a). The debtor's claim to sell her property does not "arise under" title 11 because it does not involve a claim created or determined by a statutory provision of title 11. See In re Harris, 590 F.3d 730, 737 (9th Cir. 2009). As discussed above, there is no authority under the Bankruptcy

Code for a claim for authorization for a chapter 7 debtor to sell property. Further, the matter does not "arise in" a case under title 11. "[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Obviously, the debtor's right to sell property is not a right that would not exist outside of the bankruptcy case.

Finally, this court does not have "related to" jurisdiction of the motion because the outcome could not conceivably have any effect on an estate being administered in bankruptcy. See In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). As the debtor points out, she has claimed the property as exempt. The deadline for objecting to exemptions has passed and no one has objected. Further, the trustee has filed a report of no distribution, indicating she does not intend to administer any assets in this case. Thus, the debtor's sale of the property will not have any effect on the bankruptcy estate.

To conclude, there is no authority for the court to approve the debtor's sale of the property and the court has no jurisdiction to do so. Accordingly, the motion will be denied by minute order. No appearance is necessary.

20.	13-23371-D-11	JUAN/MARGARITA RAMIREZ	CONTINUED MOTION TO CLOSE
	TCS-10		CHAPTER 11 CASE
			3-20-18 [315]

Final ruling:

An order closing this case was entered on May 7, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

21.	18-21677-D-7	DELBERT/LOIS GARNER	MOTION TO COMPEL ABANDONMENT
	LBG-1		4-24-18 [12]