UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 16, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 4, 5, 9.

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions or objects to the tentative ruling. If you wish to oppose the motion or otherwise be heard, please so advise Judge McManus. Please do not identify yourself or explain the nature of your opposition. If anyone wishes to be heard, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion or object to the proposed ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON AUGUST 13, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 31, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 6, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF

THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 18-21605-A-7 DENISE CANALS — MOTION TO AVOID JUDICIAL LIEN
MB-2 — 6-26-18 [29]
VS. CAPITAL ONE

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $7,408.56 on August 22, 2015. The abstract of judgment was recorded with Sacramento County on November 9, 2016. That lien attached to the debtor's interest in a residential real property in Citrus Heights, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of $250,000 as of the petition date. Dockets 31 & 16. The unavoidable liens totaled $116,261 on that same date, consisting of a single mortgage in favor of Loan Care. Dockets 31 & 16. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $135,000 in Schedule C. Dockets 31 & 16.

The motion will be denied because the debtor has not established her entitlement to the $135,000 exemption. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 31.

2. 18-22921-A-7 CLEAN THE SERIES L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
ETW-1 — 5-25-18 [16]
USAM 1 FUND, L.L.C. VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, USAM 1 FUND, L.L.C., seeks relief from the automatic stay as to real property in Vallejo, California.

11 U.S.C. § 362(g) provides that:

"*In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—*

"*(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property . . . .*"

The motion will be denied. The movant has offered no evidence on the value of the property and thus there is no evidence that the debtor/estate lacks equity in the property. The motion merely asserts that "[m]ovant believes there are other liens on the property junior to Movant's lien and that the value of the property is such that there is no equity in the property at all." Docket 16 at 3. What the movant believes is not proof. The movant's supporting declaration states no opinion of the property's. See Docket 18.

Finally, the court cannot tell whether the debtor's failure to make payments to the movant has any relevance to the disposition of this motion. Because there is evidence of value, it is not possible to gauge both equity and the movant's adequate protection.

In the event there is equity in the property, the equity cushion may be sufficient to adequately protect the movant's interest in the property until the debtor's case is closed. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law as to the debtor's interest in it. Thus, relief from stay under section 362(d)(1) would not be appropriate under those circumstances.

The motion will be denied.

3. 15-26125-A-7 EDUARDO VELIS
KWS-2

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
5-29-18 [34]

Tentative Ruling: The motion will be dismissed without prejudice.

The debtor is seeking sanctions against New Penn Financial, L.L.C., d.b.a. Shellpoint Mortgage Servicing, for discharge injunction violations.

The motion has serious deficiencies.

Preliminarily, the court is unconvinced that the motion was served on the correct party. The debtor has not established that New Penn Financial and Shellpoint Mortgage Servicing are one and the same entity. The statements from Shellpoint addressed to the debtor do not mention or identify New Penn as an alias of Shellpoint. New Penn does not share the same address as Shellpoint. This motion was served only on New Penn at an address in Pennsylvania. Docket 40. The addresses for Shellpoint, on the other hand, are in Michigan and South Carolina. See, e.g., Docket 1, Schedule D & Docket 3 at 3 & Docket 39, Ex. B & Docket 40.

The motion has not been served on Shellpoint. See Docket 40.

Even without the service deficiency, the motion would be denied.

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. The case was reopened on May 29, 2018, in order for this motion to be heard. The debtor complains that since the entry of discharge, Shellpoint has been sending him statements with the balance owed on its claim. Some of the statements also offered a settlement to the debtor to resolve the claim.

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 because it does not give adequate background and history of Shellpoint's claim, including when it was incurred, whether it is secured and the collateral for the claim, whether the claim is over or under secured, who has possession of the collateral, who legally and/or equitably owns the collateral, etc.

The motion vaguely refers in several places that Shellpoint's claim is based on a mortgage, but it does not say when the mortgage was incurred, does not identify the property securing the claim, does not say what has happened with the property since the case was filed, does not say whether the debtor has surrendered the property as he indicated he would do in his statement of intention (Docket 1 at 36), does not say whether the debtor still occupies the property, etc. The court cannot tell whether the debtor lives on the property, as all mail addressed to him is to a post office box. Dockets 39 & 40.

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 his interest in the property in January 2017 to an entity maned Silver Bullet, L.P. But, the motion says virtually nothing about the transaction. For instance, it does not say 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, how much Silver Billet paid for the property, whether the senior mortgage was paid off, whether and how much Shellpoint received on account of its claim from the transfer, 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).

Finally, 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 39, Ex. A.

The court is unconvinced that Shellpoint received notice of the debtor's August 18, 2017 letter referencing the discharge injunction. Docket 39, Ex. H. 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 39, Ex. G. 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; see also Docket 39.

4. 18-22848-A-7 CHERIE/LAWRENCE CARPENTER — MOTION TO DISMISS CASE
BLC-1 — 6-21-18 [16]

Tentative Ruling: The motion will be granted.

The attorney for the debtors requests dismissal of this case on the basis that he erroneously filed this case. The debtors previously commenced another case on April 10, 2018, Case No. 18-22129. A clerical error caused the debtors' petition to be mistakenly uploaded again in the filing of this second case. Given the error, this case (Case No. 08-39101) will be dismissed. No other relief will be granted.

5. 18-21968-A-7 RAYMOND/JUDITH HOWARTH — MOTION TO AVOID JUDICIAL LIEN
ADR-1 — 6-29-18 [22]
VS. DAVE AND KENDRA MORTENSEN

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

The motion will be granted.

A judgment was entered against the debtors in favor of Judy Howarth for the sum of $29,996.74 on September 4, 2015. The abstract of judgment was recorded with Sacramento County on October 18, 2016. That lien attached to the debtors' interest in a residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $315,000 as of the petition date. Dockets 24 & 15. The unavoidable liens totaled $358,847.48 on that same date, consisting of a mortgage in favor of Ditech for $273,617, a mortgage in favor of Bank of America for $28,414, a mortgage in favor of Admirals Bank for $25,328, and a mortgage in favor of CalHFA Mortgage Assistance Corp. for $31,488.48. Dockets 24 & 15. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 24 & 15.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After

application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 18-21577-A-7 CONSTANCE CHERRONE — MOTION TO AVOID JUDICIAL LIEN
RLG-1
VS. PATRICIA TURNAGE — 5-31-18 [11]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Patricia Turnage for the sum of $37,978.36 on July 31, 2009. The abstract of judgment was recorded with San Joaquin County on October 8, 2009. That lien attached to the debtor's interest in a residential real property in Manteca, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1).

The motion will be denied for several reasons. First, the motion does not have admissible evidence of value for the property. The debtor's supporting declaration says that the property has a value of "approximately $350,000 based upon a home appraisal." Docket 17 at 2. But, the attached appraisal was not prepared by the debtor. It was prepared by Anthony Jacobo. Docket 18, Ex. B at 3. Mr. Jacobo has not authenticated his appraisal.

The debtor cannot give an opinion of value for the property based on an appraisal she did not prepare. The debtor has no personal knowledge of the appraisal. Fed. R. Evid. 601.

More, the appraisal is inadmissible hearsay. It has not been even authenticated. Fed. R. Evid. 801(c), 802, 901. There is no declaration from Mr. Jacobo.

The debtor has not been qualified as an expert witness either. She cannot give testimony based on specialized knowledge. Fed. R. Evid. 701-03.

Second, while the debtor's supporting declaration refers to an exemption with respect to the property, the declaration does not identify the exemption amount or the basis for the exemption. See Docket 17.

Finally, the court has no evidence of any unavoidable liens against the property. All admissible evidence in the record is derived from the supporting declaration. In that declaration, the debtor says nothing about unavoidable liens. As such, the motion will be denied.

As the court is denying the motion without prejudice, it finds it unnecessary to continue the hearing for the respondent to obtain her own appraisal.

7. 16-22482-A-7 TIMOTHY MUNSON — MOTION TO SELL AND TO APPROVE COMPROMISE
HCS-3 — 6-18-18 [41]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $15,000 the estate's one-third interest in real property in Lodi, California to Shanon Cabebe. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee further asks for approval of the transaction as a compromise with

the buyer Shanon Cabebe, resolving a dispute over the estate's interest in the property.

Shanon Cabebe, the debtor, and a third party purchased the property pre-petition, with each of them owning one-third interest in the property. Shanon Cabebe alleges that he purchased the interests of the debtor (pre-petition) and the third party, but the executed grant deed(s) was lost and never recorded. The trustee contends that he can avoid and recover the transfer of the debtor's one-third interest in the property. The trustee argues that he is a bona fide purchaser for value. See 11 U.S.C. § 544(a)(3).

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

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

The sale is "as is," without warranty or representation, and it is subject to any and all encumbrances or liabilities against the property.

The sale will generate proceeds for distribution to creditors of the estate, without the need for further litigation relating to the estate's interest in the property.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

The court concludes that the Woodson factors balance in favor of approving the transaction as a compromise. That is, given the relatively small amount at stake and the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court will approve the transaction as a compromise as well. It is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. The motion will be granted.

8. 18-24186-A-7 TIANA PARSONS
SS-2

MOTION TO COMPEL ABANDONMENT O.S.T. 7-9-18 [13]

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests an order compelling the trustee to abandon the estate's interest in her beauty services business, Lotus Day Spa.

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

Neither the motion nor supporting declaration identifies the assets of the business. The papers simply say that the "business has less than $1,000 in business assets." Docket 15 at 2. Directing the court to the schedules without identifying the assets and telling the court which assets are encumbered and/or exempt, and to what extent they are encumbered and/or exempt, invites the court to speculate about which assets belong to the business. The court should not have to speculate about the assets of the business. The motion will be denied.

9. 18-23893-A-7 JENNIFER/DANIEL HARRIS — MOTION TO COMPEL ABANDONMENT
MOH-1 — 6-25-18 [13]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their exercise Curves franchise business.

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

According to the motion, the business assets include exercise equipment with value of approximately $6,000. The equipment has been claimed as exempt in Schedule C in the amount of $6,000. Docket 12. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion (only exercise equipment), is of inconsequential value to the estate. The court will not order the abandonment of other business assets, such as receivables or bank accounts, as such assets were not listed in the motion. The motion will be granted.

FINAL RULINGS BEGIN HERE

10. 18-21125-A-7 JASON/ELIZABETH WILSON — MOTION TO COMPEL ABANDONMENT
HLG-1 — 5-30-18 [17]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Citrus Heights, California. The entire equity in the property is exempt.

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

The property has a value of $307,899. The property is encumbered by a deed of trust in favor of M&T Bank in the amount of $248,733. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $24,630 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

11. 18-23630-A-7 ALEKSANDR/DIANA SAPRYKIN — MOTION TO COMPEL ABANDONMENT
MS-1 — 6-11-18 [7]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in North Highlands, California. The entire equity in the property is exempt.

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

The property has a value of $264,894. The property is encumbered by a deed of trust in favor of Home Point Financial Corporation in the amount of $184,073.80. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $21,190 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

12. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — MOTION TO SELL
BHS-2 — 6-5-18 [86]

Final Ruling: The parties have continued the hearing to August 27, 2018 at 10:00 a.m.

13. 18-22852-A-7 WANDA HENDRICKSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 6-8-18 [15]
SANTANDER CONSUMER USA, INC. 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, Santander Consumer USA, Inc., seeks relief from the automatic stay with respect to a 2012 Nissan Altima. The vehicle has a value of $9,275 and its secured claim is approximately $16,276.

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 June 28, 2018. Further, the debtor has not made four pre-petition payments to the movant. And, the vehicle was recovered by the movant on May 6, 2018, prior to the filing of the bankruptcy petition. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds

the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

14. 18-23252-A-7 GENE/JULIE HASKINS — MOTION TO COMPEL ABANDONMENT
CK-1 — 6-13-18 [17]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(B). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

15. 16-28083-A-7 STEPHEN LEMOS — MOTION FOR ADMINISTRATIVE EXPENSES
DMW-3 — 6-4-18 [94]

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

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability for the 2017-18 tax year (ending April 30, 2018) as follows: $400 to the California Franchise Tax Board.

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

(1) . . . (B) any tax-- (I) incurred by the estate, whether secured or

unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on December 8, 2016. The tax liability in question was incurred in 2017 and 2018. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

16. 16-28083-A-7 STEPHEN LEMOS — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DMW-4 — 6-6-18 [98]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $8,212.50 in fees and $115.85 in expenses, for a total of $8,328.35. This motion covers the period from March 13, 2017 through May 30, 2018. The court approved the movant's employment as the estate's accountant on April 8, 2017. In performing its services, the movant charged an hourly rate of $375.

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, among other things, identifying and analyzing financial documents, analyzing business operation documents and cash flow, assisting with business valuation assessment, preparing estate tax returns, communicating with the trustee and counsel for the estate about various issues, and communicating with the debtor's former accountant.

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

17. 16-24184-A-7 MA CRISTINA APIADO — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
ASF-2 — 6-15-18 [70]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving

party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,837.50 in fees and $111.95 in expenses, for a total of $1,949.45. This motion covers the period from March 21, 2018 through June 14, 2018. The court approved the movant's employment as the estate's accountant on March 23, 2018. In performing its services, the movant charged an hourly rate of $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the preparation of estate tax returns and analyzing tax consequences from the sale of real property.

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

18. 04-34185-A-7 DNL-1 — AZTECA CONSTRUCTION, INC. — MOTION TO EMPLOY 6-18-18 [654]

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

The motion will be granted.

The trustee requests approval to employ Desmond, Nolan, Livaich & Cunningham as counsel for the estate in this reopened case. DNLC will assist the estate with the investigation, liquidation and overall administration of the debtor's assets. The proposed compensation is an hourly fee arrangement, based on DNLC's current hourly rates.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. DNLC is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. While the movant represented creditor Granite Construction from 2004 through 2009 in an eminent

domain proceeding, Granite is not a client of the movant presently and it has withdrawn its $74,313.41 proof of claim in this case. Docket 585. Nor has Granite received a distribution from this case. The employment will be approved.

19. 18-20595-A-7 SALMA LUSSY — MOTION TO
HSM-2 — AVOID JUDICIAL LIEN
VS. RAY RANCIATO — 6-14-18 [25]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of Ray Ranciato (dba Superior Restoration) for the sum of $31,510.53 on July 27, 2016. The abstract of judgment was recorded with Sacramento County on August 19, 2016. That lien attached to the debtor's 50% interest in residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $335,000 as of the petition date. Dockets 1, 28, 29. The unavoidable liens totaled $179,424.36 on that same date, consisting of a single mortgage in favor of Select Portfolio Servicing. Dockets 1, 28, 29. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 1, 28, 29.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

This ruling avoids a lien created only by the creditor's recordation of an abstract of judgment in Sacramento County, with respect to the subject property. It has no impact on abstracts recorded in other counties or notices of judgment lien recorded with the California Secretary of State. "We hold that [section] 522(f)(1) of the Bankruptcy Code requires a debtor to have possessed an interest to which a lien attached, *before it attached*, to avoid the fixing of the lien on that interest." Law Offices of Moore & Moore v. Stoneking (In re Stoneking), 225 B.R. 690, 693 (B.A.P. 9th Cir. 1998) (citing Farrey v. Sanderfoot, 500 U.S. 291, 299 (1991) (prohibiting the avoidance of liens on newly-created property interest, where a divorce decree created the liens, created the new interest and extinguished all prior interests, and the liens never attached to the debtor's prior interest in the property)).

Encumbrances based on dischargeable unsecured debt can be removed after the debtor obtains a discharge, by applying with the agencies where the

encumbrances were recorded or registered. The court will not do this on a motion, however. It would violate Fed. R. Bankr. P. 7001(2), as it requires the court to determine the validity, priority, or extent of an interest in property on a motion.