

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

July 19, 2017 at 10:00 a.m.

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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.

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1.	16-25802-D-7 JSO-1	JACK/JOANNE YOUNT	MOTION TO COMPEL ABANDONMENT 5-31-17 [20]
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Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon real property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

2.	17-21107-D-7 MHK-2	LUNA DIVERSIFIED ENTERPRISES, INC.	CONTINUED MOTION TO DISMISS CASE 5-17-17 [23]
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Tentative ruling:

This is the motion of the putative debtor in this involuntary case, Luna Diversified Enterprises, Inc. ("Luna") to dismiss the case pursuant to Fed. R. Bankr. P. 1011(b) and Fed. R. Civ. P. 12(b)(6). Petitioning creditors Hensel Phelps Construction Co. ("Hensel Phelps"), Eaton Corporation ("Eaton"), and Consolidated Electrical Distributors, Inc. ("CED") have filed opposition and the putative debtor

has filed a reply. For the following reasons, the court intends to grant the motion.

The motion presents a single issue for this court. Luna has more than 12 creditors; thus, to satisfy the minimum requirements for filing an involuntary petition, under § 303(b)(1) of the Code, none of three petitioning creditors' claims can be in bona fide dispute as to liability or amount. The parties acknowledge that Eaton's claim is not in dispute. As for Hensel Phelps and CED, the nature of their claims and the parties' arguments about them indicate both are the subject of bona fide disputes, as to both liability and amount.

The petitioning creditors state that Hensel Phelps was the general contractor on a project for the federal government at an Air Force base in Colorado. As part of the project, Luna entered into a supply contract with Hensel Phelps, who required Luna to purchase some of the materials to be provided under the contract from Eaton and CED. The contract between Luna and Hensel Phelps was for in excess of \$10 million. According to the petitioning creditors, there were 23 change orders to the Luna-Hensel Phelps contract. Disputes arose among Luna and the petitioning creditors as long ago as 2015 and resulted in a settlement agreement among Hensel Phelps, Eaton, and CED, but not Luna, in December of 2015. Under the settlement agreement, Hensel Phelps paid in excess of \$200,000 each to Eaton and CED on account of monies allegedly due them under their subcontracts with Luna.

In other words, the claims of the three petitioning creditors all arise out of a single contract and subcontracts entered into in furtherance of that contract, and the three claims are very much intertwined. In the court's experience, it is not at all uncommon, in situations involving these types of interconnected contracts and subcontracts, with their various invoices, change orders, debits, credits, and so on, for there to be some disputes at the end of the day when the parties are trying to reconcile the final accounting. Thus, and because of the nature of the factual allegations presented on both sides, the court disagrees with the petitioning creditors' contention that Hensel Phelps' claim "is simply a minor contract debt claim that is fixed and liquidated." Petitioning Creditors' Opposition, DN 38 ("Opp."), at 11:14-15.

In short, this is not a case of an invoice for widgets that has not been paid or some other account payable of a standard variety. Nor is it a case of three separate creditors holding their own independent, stand-alone claims. Rather, the case has all the indicia of the types of final accounting and reconciliation issues that often occur in complex contractual arrangements among several parties. In an email to one of Luna's attorneys in December of 2015, one of Hensel Phelps' attorneys described the settlement that had been reached among Hensel Phelps, Eaton, and CED and referred to Eaton "agree[ing] to continue good faith settlement talks with Luna and agree[ing] to stay any action against Hensel Phelps . . . through the end of 2016." Luna's Ex. D. This supports a conclusion that the disputes among the parties are bona fide and a conclusion that Luna's disputes that were not covered by the settlement agreement are bona fide. Further, the petitioning creditors' list of exhibits in support of their opposition to this motion, along with the exhibits themselves, suggests a level of complexity that belies the notion that their claims are simple and straightforward. In short, the court concludes that Luna's disputes with Hensel Phelps and CED are bona fide.

For the reasons stated, the court concludes there is an objective basis for a factual dispute as to the validity and amounts of Hensel Phelps' and CED's claims against Luna; thus, the case must be dismissed. Vortex, 277 F.3d at 1064. The petitioning creditors request that if the court is inclined to dismiss, they be granted leave to amend to add additional creditors. The court will construe the

request as a request for a continuance to allow the petitioning creditors to seek other creditors to join in the petition pursuant to § 303(c). The court is inclined to deny this request as this case has been pending for over four months and, as of date, no other creditors have joined in the petition.

The court will hear the matter.

3. 15-23511-D-7 SCOTT COURTNEY MOTION TO COMPROMISE  
SCB-16 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JENNIFER BAKER  
6-21-17 [93]

Final ruling:

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

4. 15-23511-D-7 SCOTT COURTNEY MOTION FOR COMPENSATION FOR  
SCB-17 WEST AUCTIONS, INC.,  
AUCTIONEER(S)  
6-21-17 [100]

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 for approval to sell personal property at auction sale and for compensation for West Auctions, Inc. 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.

5. 16-28018-D-7 TERRENCE/NANCIE HOFMANN MOTION FOR COMPENSATION FOR  
BLL-5 BYRON LEE LYNCH, TRUSTEE'S  
ATTORNEY  
6-15-17 [91]

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.

6. 15-26623-D-7 HOLLY BURGESS  
15-2227 ELG-2  
MEYERS ET AL V. BURGESS

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH HOLLY S. BURGESS  
AND/OR MOTION TO DISMISS CASE  
6-7-17 [59]

7. 17-23738-D-7 CHRISTOPHER SISTO  
WW-1

MOTION TO AVOID LIEN OF LES  
SCHWAB TIRE CENTERS OF  
CALIFORNIA  
6-13-17 [8]

**Tentative ruling:**

This is the debtor's motion to avoid a judicial lien held by Les Schwab Tire Centers of California (the "Lienholder"). The Lienholder has filed opposition. For the following reasons, the court intends to deny the motion.

The issue is the value of the real property that is the debtor's residence. The debtor testifies its current value is \$230,000. He states he is the owner of the property, having purchased it in 2000 and lived in it since then. The debtor, who has owned and operated a business as a general contractor since 1997, testifies to the size of the home, number of bedrooms and baths, and the extensive repairs he says are needed, including roof repairs, dryrot repairs, and sewer line repairs.

The Lienholder objects on the basis that the debtor's testimony lacks supporting corroborative evidence. The Lienholder cites online estimates from zillow.com and redfin.com placing the value of the home at between \$326,914 and \$366,369. At a value at the low end of that range, there would be sufficient equity in the property to fully secure the Lienholder's judicial lien.

A property owner is permitted to testify to its value. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 843-44 (West 2015-2016 ed.). However, his testimony is generally assigned little weight absent evidence he has experience in the field of property appraisal. Id. Here, the debtor's experience as a general contractor for 20 years qualifies him to testify to the likely cost of needed repairs. However, he does not testify to what those costs would be or to the starting value he assigned the property before he made deductions for needed repairs. The Lienholder, on the other hand, offers no evidence other than online values that are considered unreliable (Debilio v. Golden (In re Debilio), 2014 Bankr. LEXIS 3886, \*19 (9th Cir. BAP 2014)), and that do not take into account less visible defects in the property that require repair.

However, the burden of proof is on the debtor. The court concludes the debtor has failed to submit sufficient evidence to satisfy his burden of demonstrating that the value of the property is \$230,000. Although the debtor appears to have sufficient knowledge and experience to testify that the home needs substantial repairs, he has offered no estimate of the home's value absent the needed repairs and no basis for such an estimate, as well as no estimates of the approximate costs of the needed repairs. Accordingly, the court will deny the motion. In the alternative, the court will consider continuing the hearing to permit both parties to supplement the record.

The court will hear the matter.

8. 16-25239-D-7 DIVINDER HUNDAL CONTINUED MOTION TO COMPEL  
DAO-3 ABANDONMENT  
1-18-17 [77]

**Final ruling:**

This motion has been withdrawn by stipulation of the parties, which has been approved by the court. The matter is removed from calendar.

9. 16-25239-D-7 DIVINDER HUNDAL CONTINUED MOTION TO EXTEND TIME  
NOS-3 2-15-17 [109]

10. 17-21149-D-7 LESLEY REEVE MOTION TO EXTEND TIME TO OBJECT  
PA-1 TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-16-17 [32]

**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 extend time to object to debtor's claim of exemptions 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.

11. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO APPROVE SECOND  
GJH-17 INTERIM DISTRIBUTION TO  
CREDITORS  
6-21-17 [980]

**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 approve second interim distribution to creditors 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.

12. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO APPROVE WITHDRAWAL OF  
GJH-18 PROOFS OF CLAIM  
6-21-17 [985]

**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 approve withdrawal of proofs of claim 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.

13. 17-22056-D-11 JAMES MCCLERNON CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-29-17 [1]

14. 16-22658-D-7 KIRK MATTIUZZI MOTION FOR COMPENSATION BY THE  
SCB-3 LAW OFFICE OF SCHNEWEIS-COE AND  
BAKKEN, LLP FOR LORIS L.  
BAKKEN, TRUSTEE'S ATTORNEY(S)  
6-15-17 [29]

**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. Moving party is to submit an appropriate order. No appearance is necessary.

15. 17-21465-D-11 BELINDA SMITH CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-7-17 [1]

16. 17-21465-D-11 BELINDA SMITH  
UST-1

CONTINUED MOTION TO DISMISS  
CASE AND/OR MOTION TO IMPOSE A  
ONE-YEAR BAR AGAINST THE FILING  
OF A NEW CASE  
4-11-17 [27]

17. 17-21875-D-7 KAREN/CALEB MCGINTY  
PK-1

MOTION TO AVOID LIEN OF CACH,  
LLC, MOTION TO AVOID LIEN OF  
COUNTY OF SACRAMENTO AND/OR  
MOTION TO AVOID LIEN OF GOLDEN  
1 CREDIT UNION  
5-24-17 [15]

**Final ruling:**

This is the debtors' motion to avoid judicial liens held by CACH, LLC and the Golden 1 Credit Union and to avoid an alleged judicial lien held by the County of Sacramento. The motion will be denied for the following reasons.

First, the moving parties have failed to serve any of the three creditors in strict compliance with Fed. R. Bankr. P. 7004(b), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CACH, LLC (1) at a post office box address with no attention line; (2) through the attorneys who obtained its abstract of judgment; and (3) through another law firm. The first method was insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process (Rule 7004(b)(3)), whereas here, there was no attention line. The second and third methods were insufficient because there is no evidence either firm was authorized to receive service of process on behalf of CACH, LLC in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The moving parties served the Credit Union (1) at a street address with no attention line, contrary to Rule 7004(b)(3); and (2) by certified mail to the attention of a named CEO, whereas the Credit Union is not an FDIC-insured institution, and therefore, must be served by first-class mail, not certified mail. Compare Rule 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h). The moving parties served the County at a street address with no attention line, contrary to Fed. R. Bankr. P. 7004(b)(6) and Cal. Code Civ. Proc. § 416.50.

Finally, as to the County's lien, the motion will be denied for the additional reason that it is a statutory lien, not a judicial lien. The lien is evidenced by a Notice of Utility Lien recorded by the County pursuant to Sacramento County Code section 15.05.030(11) and Cal. Health & Safety Code § 5473.11 for nonpayment of utility services. Cal. Health & Safety Code § 5473.11(b) provides that the amount of utility charges may be secured by the recordation of a certificate specifying the amount of the unpaid charges and the name and address of the person liable for them. The subsection further provides that "[f]rom the time of recordation of the certificate, the amount required to be paid together with interest and penalty constitutes a lien upon all real property in the county owned by the person or afterwards, and before the lien expires, acquired by him or her." Here, the County's lien arose automatically upon recordation of the notice. No judicial action or process was involved. According, the lien is a statutory lien, not a judicial lien, and cannot be avoided.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

18.	17-20083-D-7	PAUL THOMAS	CONTINUED MOTION TO EXTEND
	UST-1		DEADLINE TO FILE A COMPLAINT
			OBJECTING TO DISCHARGE OF THE
			DEBTOR
			4-7-17 [29]

19.	15-29890-D-7	GRAIL SEMICONDUCTOR	CONTINUED MOTION TO DISMISS
	16-2088	MRH-1	ADVERSARY PROCEEDING
	CARELLO V. STERN ET AL		8-26-16 [104]

**Final ruling:**

**This matter has been continued by stipulation and order to October 25, 2017.  
No appearance is necessary on July 19, 2017.**

20.	14-25820-D-11	INTERNATIONAL	MOTION FOR AUTHORITY TO MAKE
	FWP-80	MANUFACTURING GROUP, INC.	FIRST INTERIM DISTRIBUTION TO
			GENERAL UNSECURED CREDITORS
			7-5-17 [1437]

21.	16-27522-D-7	MARIETES PIPER	MOTION FOR RELIEF FROM
	EGS-1		AUTOMATIC STAY
	BAYVIEW LOAN SERVICING, LLC		6-30-17 [36]
	VS.		

22. 15-29031-D-7 OKSANA KOPCHUK  
DNL-6  
MOTION TO EMPLOY GONZALES &  
ASSOCIATES, INC. AS  
ACCOUNTANT(S)  
6-26-17 [99]
23. 16-27672-D-11 DAVID LIND  
JMW-2  
GREEN GROWERS, LLC VS.  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-3-17 [181]
24. 17-22275-D-7 CALIFORNIA GOLF  
SW-1 PROPERTIES, LLC DBA RIVER  
YAMAHA MOTOR FINANCE  
CORPORATION, USA VS.  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-5-17 [63]
25. 17-21908-D-7 DEMETRIUS WRIGHT  
TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
6-12-17 [12]