

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

August 14, 2017 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar:

9, 10, 11

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative 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.

August 14, 2017 at 10:00 a.m.

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 SEPTEMBER 18, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 5, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 12, 2017. 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. 16-22503-A-7 EMBRY FANTOZZI MOTION TO
DNL-5 SELL
7-17-17 [92]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee seeks to sell \$67,050 of publicly traded, blue chip stock. The value of all the stock in the estate is approximately \$339,000. The sale of a portion of this stock will require a commission of \$1,367.50. The sale proceeds will pay the approximately \$36,000 in unsecured claims in full with balance of the proceeds paying administrative expenses.

The debtor opposes the motion. She wants to borrow against the stock in order to save \$2,432.38 in trustee compensation.

The short answer to the debtor's request is that the trustee is charged with administering the estate. See 11 U.S.C. § 704(a). The debtor lost that right when this case was filed.

Given that the trustee must administer the estate by liquidating enough assets to pay claims and expenses, the estate will bear the trustee's compensation in the amount permitted by the statutory formula mandated by 11 U.S.C. § 326(a). The \$6,800 in trustee compensation referred to in the motion is an estimate. The actual compensation will be determined by this formula.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate proceeds to pay all creditors of the estate. 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.

2. 16-22503-A-7 EMBRY FANTOZZI MOTION TO
DNL-6 APPROVE DISTRIBUTION TO CREDITORS
7-17-17 [96]

Tentative Ruling: The motion will be granted.

The trustee asks for authority to make two interim distributions to creditors, representing all claims against the estate (except for the administrative claims), in order to save the accrual of interest on at least one of the claims, for which the debtor will be made responsible given the revocation of her discharge. The two claims are \$36,041.66 to Stohlman & Rogers, Inc. (dba Lakeview Petroleum) and \$134.58 to American Express Centurion Bank.

Given that the trustee is selling stock that will generate sufficient proceeds to pay all claims against the estate, including the administrative claims, the court will permit the interim distribution. The motion will be granted.

3. 16-22503-A-7 EMBRY FANTOZZI MOTION TO
DNL-7 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
7-17-17 [101]

Tentative Ruling: The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its

first and final motion for approval of compensation. The requested compensation is for services included with an approved hourly fee agreement as well as those performed pursuant to a contingency fee agreement.

For services related to prosecuting an avoidance action, the compensation arrangement called for a contingency fee of 25% of any recovery obtained prior to the filing a complaint, 33% of any recovery obtained after filing the complaint but 30 days before trial, and 40% of any recovery obtained thereafter. For all other services, the compensation arrangement was an hourly fee agreement.

The requested compensation consists of \$26,340 in fees and \$640.49 in expenses, a total of \$26,980.49. All requested compensation has been calculated on an hourly basis. \$9,007.50 of the fees (hourly fee basis) were incurred in connection with services rendered pursuant to the contingency fee compensation arrangement. This fee arrangement was approved in connection with an avoidance action concerning transfer of real property by the debtor and her non-filing spouse to a family trust without consideration. The movant is asking for hourly fees for those services because, after the trustee had filed on October 27, 2016 the adversary proceeding to avoid the transfer, the debtor disclosed for the first time that she had inherited stock, post-petition, valued at approximately \$350,000. As the trustee determined that sale of the stock would pay all claims against the estate, he dismissed the adversary proceeding. The movant contends that he should be paid an hourly fee for the transfer avoidance services due to the debtor's concealment or delayed disclosure of the stock.

This motion covers the period from September 20, 2016 through July 14, 2017. The court approved the movant's employment as the trustee's attorney on October 31, 2016. In performing its services, the movant charged hourly rates of \$100, \$200, \$225, \$325, and \$425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

- (1) reviewing petition documents,
- (2) analyzing assets for administration,
- (3) investigating the real property transfer into the trust,
- (4) preparing and prosecuting adversary proceeding complaint,
- (5) preparing and recording a lis pendens,
- (6) preparing motion to dismiss the adversary proceeding,
- (7) investigating the estate's interest in the newly disclosed stock,
- (8) negotiating the revocation of the debtor's discharge,
- (9) preparing stipulation for revocation of the debtor's discharge,
- (10) investigating a \$1.931 million claim filed by the debtor on behalf of purported creditor Swainson Farms, Inc.,
- (11) negotiating withdrawal of that claim,

- (12) preparing opposition to the debtor's motion to abandon stock,
- (13) preparing motions to sell and make distributions to creditors,
- (14) assisting the trustee in the general administration of the estate, and
- (15) preparing and filing employment and compensation motions.

The opposition will be overruled.

First, it is unsupported by any evidence, much less admissible evidence, such as a declaration establishing the factual assertions in the opposition.

Second, the opposition makes general arguments about the movant's compensation, without pointing to specific services provided by the movant. The movant has produced a detailed and well-organized list of tasks performed. Docket 105. Yet, the opposition makes no effort to identify any specific services and corresponding compensation being disputed.

Third, the opposition merely speculates about some of the services and compensation it disputes. For example, in referencing the debtor's two objections to claims, the opposition says, "I don't know for sure if my client got billed for that advice or not." Docket 107 at 2. The debtor should know because the record contains a detailed services record of the movant. And, if the debtor does not know, the court does not know either. The court will not speculate.

Fourth, the debtor's complaint that the movant had to re-notice the employment motion for the trustee's accountant lacks merit. The two motions were substantially identical (Dockets 35 & 42) and the movant did not appear at either of the hearings on the motions (Dockets 47 & 70). The debtor has not identified any duplicative services.

The debtor says only that "[i]t is not clear whether the Debtor got billed twice for this routine work or not." Docket 107 at 2. But, the debtor does not say why it is not clear. It should be clear because, once again, the movant has provided a detailed services record. The court sees no duplicative services.

Fifth, the debtor's contention that the movant's compensation should be reduced because it is 74.58% of the \$36,176 of claims against the estate is disingenuous because the proofs of claim against the estate were in the millions of dollars prior to being reduced to the current figure of \$36,176. The debtor herself had filed a proof of claim on behalf of a creditor, in the approximate amount of \$1.931 million, which was successfully disputed by the movant on behalf of the estate.

Finally, the opposition says nothing about her concealment or delay in disclosing of the stock until after the trustee had already started litigating the avoidance transfer. The debtor inherited the stock on July 18, 2016, upon the passing of her mother, less than 90 days after the April 20, 2016 petition date. The movant did not file the avoidance transfer complaint until October 27, 2016, more than three months later. The debtor disclosed the stock only on November 7, 2016, nearly four months after she had inherited it. The estate did not receive the stock and dismiss the transfer avoidance proceeding until about January 19, 2017.

If she had timely disclosed the stock to the trustee, the debtor would have

prevented the movant from incurring all or nearly all of the \$9,007.50 in services to avoid the transfer.

Given the debtor's attempt at concealment or delay in disclosing the stock, affirmed by the revocation of her discharge, the court concludes it is reasonable for the movant to be compensated on an hourly fees basis for its services related avoiding transfers even though the movant did not recover those. According to the movant, it was the transfer avoidance litigation and related investigation that led to the discovery of the stock. The debtor has not disputed this. In other words, the transfer avoidance services were also necessary and they benefitted the estate.

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

4. 16-24261-A-7 C.C. MYERS, INC.

MOTION TO
PERMIT INSURER TO ADVANCE
INSURANCE PROCEEDS IN
ACCORDANCE WITH TERMS OF
INSURANCE POLICY
7-3-17 [457]

Tentative Ruling: The motion will be granted in part.

The movant, Gary Janco, former officer and director of the debtor, seeks prospective and retroactive relief from the automatic stay permitting the debtor's insurer, Chubb Insurance Company, to advance insurance proceeds in three state court actions involving fiduciary duty claims against the movant for conduct committed in his capacity as an officer and/or director of the debtor pre-petition. The advances of insurance proceeds are limited by the terms of the underlying insurance policy agreements.

The court will grant retroactive relief from stay back to the petition date as to any disbursements made by the debtor's insurer on account of the movant's claims, to the extent such reimbursements were not property of the estate.

The motion will be granted prospectively only as to insurance proceeds that are not property of the estate. Generally, insurance proceeds are not property of the estate. But, if there are any insurance proceeds that may be property of the estate, relief from stay is not granted.

The movants have not established basis for the advance of proceeds that are property of the estate. There is no basis for the estate foregoing such proceeds. Also, there is no evidence in the motion of insurance proceeds that are property of the estate. See 11 U.S.C. § 362(d)(2). The court will not grant relief from stay as to any unidentified estate property.

By granting relief from stay, the court is not determining the propriety of the disbursements made or to be made by the debtor's insurer.

No fees and costs are awarded because the movants are not over-secured creditors. See 11 U.S.C. § 506.

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

5. 13-27117-A-7 DAVID/VICTORIA EHRHARDT MOTION TO
MTM-5 AVOID JUDICIAL LIEN
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. 6-30-17 [85]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Victoria Ehrhardt in favor of Portfolio Recovery Associates, L.L.C. for the sum of \$11,196.49 on December 20, 2012. The abstract of judgment was recorded with Amador County on January 14, 2013 at 10:38 a.m. That lien attached to the debtor's 2.93% interest in a 400-acre undeveloped parcel of land in Amador County, California.

A judgment was entered against debtor Victoria Ehrhardt in favor of Portfolio Recovery Associates, L.L.C., for the sum of \$10,889.76 on December 20, 2012. The abstract of judgment was recorded with Amador County on January 14, 2013 at 10:42 a.m. That lien attached to the debtor's 2.93% interest in a 400-acre undeveloped parcel of land in Amador County, California.

As the judgments were entered only against Victoria Ehrhardt, this ruling pertains solely to Victoria Ehrhardt's interest in the subject real property.

The debtors seek avoidance of the liens under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of \$2,000 as of the date of the petition. The unavoidable liens totaled \$0.00 on that same date. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$2,000 in Amended Schedule C. Docket 1.

The motion will be denied because the debtor does not state her opinion of value for the property. She merely references what her Schedule A filed on May 24, 2013 says about the property. Docket 87. The Schedule is hearsay. Fed. R. Evid. 801(c) & 802.

Moreover, even if the Schedule were admissible, the opinion expressed in it is not. The debtor states that her valuation in Schedule A *"is based on the fact that the area is steep, brush covered, and used only for seasonal grazing without public access. The property is encumbered by the Williamson Act, and the fact that it is held by a large family group and a large family trust renders it effectively unmarketable."* Docket 87 at 1.

However, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). The debtor's lay witness testimony cannot be based on scientific, technical or other specialized knowledge, such as the enumerated factors determining the value of the property. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

6. 15-27322-A-7 WILLIAM MYER
DNL-8

MOTION TO
EMPLOY AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION
AND PAYMENT OF AUCTIONEER FEES AND
EXPENSES
7-17-17 [117]

Tentative Ruling: The motion will be granted in part.

The trustee requests authority to employ and compensate West Auctions as auctioneer of the estate. West will assist the estate with the sale of a 1987 Mercedes vehicle, a 2010 Polaris snowmobile, and a 2011 Ski-Doo snowmobile. The proposed compensation arrangement is a 12% commission along with reimbursement of expenses not to exceed \$3,500.

The trustee also asks for approval of the sale. The sale will be conducted via an Internet auction, to be held between August 22 and 24, 2017.

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

The court will deny authority for the sale because the motion does not say whether and to what extent the items to be sold are encumbered. The motion also does not identify the expected benefit for the estate from the proposed sale. Even if the assets are unencumbered, it does not necessarily mean that the sale is in the best interests of the creditors and the estate.

Next, 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. West is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Its employment will be approved.

However, the court will deny approval of West's compensation and reimbursement of expenses at this time. The court is not approving the sale. The court cannot assess the reasonableness and necessity of compensation until it knows what is the compensation. Because the sale has not taken place yet, the court cannot determine that the requested compensation is reasonable or necessary.

7. 17-22836-A-7 LUEGENE SIMPSON
ETL-1
CITIBANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-13-17 [24]

Tentative Ruling: The motion will be granted.

The movant, Citibank, seeks relief from the automatic stay as to real property in Sacramento, California.

The debtor opposes the motion, contending that the movant approved a loan modification which it knew the debtor could not perform. He says, if the motion is granted, he will be homeless given his advanced age. If the motion is granted, the debtor is asking to stay on the property until November 1, 2017, when he is scheduled to leave California for Texas, where he will enter

into a senior housing facility.

The property has a value of \$220,000 and it is encumbered by claims totaling approximately \$435,021. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 31, 2017.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

While the court is sympathetic to the debtor's situation, the court does not have discretion not to grant stay relief under 11 U.S.C. § 362(d)(2), where there is a lack of equity in the subject property. There is no dispute here that the debtor/estate has no equity in the property.

On the other hand, the court is not ordering the debtor to vacate the property. The movant must still complete its foreclosure and obtain possession of the property under California law.

8.	16-25749-A-7	ROBERT GARZA AND MARIA	MOTION FOR
	DNL-2	HERRERA	TURNOVER OF PROPERTY
			7-28-17 [59]

Tentative Ruling: The motion will be granted in part.

The trustee seeks an order directing the debtor's counsel, Timothy Walsh, to turn over to her the debtor's 2016 tax refunds, totaling \$3,758 (federal tax refund in the amount of \$3,327 and state tax refund in the amount of \$431). Mr. Walsh informed the trustee on July 25, 2017 that the debtor had used the refunds to pay him for his services.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to

the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

The motion will be granted in part. Given that Mr. Walsh holds has the debtor's 2016 tax refunds, he shall turn them over to the estate.

However, this case was filed on August 30, 2016, meaning that the estate has an interest in the refunds only to the extent they represent the period prior to August 30, 2016. Mr. Walsh shall turn over to the estate the refunds to the extent they represent the period between January 1, 2016 and August 30, 2016. The motion will be granted in part.

9.	16-23780-A-7 MATTHEW/LISA BAKER HLG-7 VS. PERSOLVE, L.L.C.	MOTION TO AVOID JUDICIAL LIEN 7-27-17 [87]
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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 debtor Lisa Baker (the remaining debtor) in favor of Persolve, L.L.C., for the sum of \$9,232.99 on September 3, 2015. The abstract of judgment was recorded with Sacramento County on February 2, 2016. That lien attached to the debtor's interest in a residential real property in Sacramento, 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 \$258,075 as of the petition date. Dockets 89, 90, 17. The unavoidable liens totaled \$218,625.43 on that same date, consisting of an utilities lien in the amount of \$1,055.43 and a mortgage for \$217,570 in favor of Wells Fargo Home Mortgage. Dockets 90 & 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Schedule C. Dockets 89, 90, 17.

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).

10. 16-23780-A-7 MATTHEW/LISA BAKER
HLG-8
VS. TARGET NATIONAL BANK

MOTION TO
AVOID JUDICIAL LIEN
7-31-17 [92]

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 debtor Lisa Baker (the remaining debtor) in favor of Target National Bank for the sum of \$3,648.65 on March 24, 2011. The abstract of judgment was recorded with Sacramento County on March 28, 2013. That lien attached to the debtor's interest in a residential real property in Sacramento, 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 \$258,075 as of the petition date. Dockets 94, 95, 17. The unavoidable liens totaled \$218,625.43 on that same date, consisting of an utilities lien in the amount of \$1,055.43 and a mortgage for \$217,570 in favor of Wells Fargo Home Mortgage. Dockets 95 & 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Schedule C. Dockets 94, 95, 17.

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).

11. 16-23780-A-7 MATTHEW/LISA BAKER
HLG-9
VS. UNIFUND CCR, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
7-31-17 [97]

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 debtor Lisa Baker (the remaining debtor) in

favor of Unifund CCR, L.L.C., for the sum of \$14,160.98 on March 11, 2013. The abstract of judgment was recorded with Sacramento County on February 3, 2014. That lien attached to the debtor's interest in a residential real property in Sacramento, 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 \$258,075 as of the petition date. Dockets 99, 100, 17. The unavoidable liens totaled \$218,625.43 on that same date, consisting of an utilities lien in the amount of \$1,055.43 and a mortgage for \$217,570 in favor of Wells Fargo Home Mortgage. Dockets 100 & 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Schedule C. Dockets 99, 100, 17.

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).

12. 17-22481-A-7 WILLIAM LANDES MOTION TO
UST-1 EXTEND DEADLINE
7-13-17 [45]

Tentative Ruling: The motion will be granted in part.

The United States Trustee requests a 180-day extension, from July 31, 2017 to January 27, 2018, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727 by the United States Trustee, the chapter 7 trustee, and any creditors.

Fed. R. Bankr. P. 4004(b) provides that, when good cause exists, the court may extend the deadline for filing objections to discharge. The request for the extension must be filed before the deadline expires.

The deadline for filing such complaints was July 31, 2017. This motion was filed on July 13, 2017. Thus, the motion complies with the temporal requirements of the rule.

The movant requested documents and information from the debtor. The debtor is a medical doctor and has significant debt, including \$1,020,961 in non-priority unsecured debt, approximately \$860,000 in unpaid income taxes, and an unknown amount of spousal and child support debt. The movant has not received all the requested documents and information from the debtor. The debtor has promised to provide them by August 11, 2017. Once the documents are received, the movant needs additional time to receive and review them.

However, the court is unconvinced that the movant needs six months. The debtor has promised to provide all outstanding documents and information to the movant by August 11, 2017. As such, the court will extend the deadline for section 727 complaints until October 31, 2017, which is a 92-day extension.

Inasmuch as only the trustee has requested the documents, the court sees no cause to extend the deadline for anyone other than the trustee.

The motion will be granted in part.

FINAL RULINGS BEGIN HERE

13. 14-32106-A-7 NATHAN/MICHELLE LOMMASSON MOTION TO
JRR-1 APPROVE COMPROMISE
7-13-17 [57]

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 of a compromise between the estate and the debtors. The compromise concerns the estate's interest in non-exempt assets and an avoidance claim. The nonexempt assets in question include cash on hand in the amount of \$40, a credit union account balance of \$385, American Express checking account balance of \$461.61, a deposit with Realty Roundup in the amount of \$695, and a 2014 tax refund in the amount of \$3,887. The avoidance claim is for \$1,200 the debtors transferred to their parents.

Under the terms of the compromise, the debtors will pay the value of all exempt assets and the value of the transfer in installments. The debtors have already paid \$5,787 and the remaining \$881.61 will be paid in two more installments.

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 court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the estate is recovering 100% of its interest in the assets, given that the debtors have already paid the great majority of the compromised amount, given that the debtors are going through a divorce that would make the collectibility of any judgment questionable, and given the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be 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. Accordingly, the motion will be granted.

14. 17-23115-A-7 JEFFERY HUTTON
ALF-1
VS. BUTTE COUNTY CREDIT BUREAU

MOTION TO
AVOID JUDICIAL LIEN
6-15-17 [13]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

A renewal of judgment was entered against the debtor in favor of Butte County Credit Bureau for the sum of \$11,166.44 on January 13, 2016. The renewal of judgment was recorded with Butte County on February 9, 2016. The original lien, based on an abstract of judgment recorded in Butte County on May 20, 1996, continued to attach to the debtor's interest in a residential real property in Oroville, 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 \$147,455 as of the petition date. Dockets 15 & 1. The unavoidable liens totaled \$0.00 on that same date. Dockets 15 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000 in Schedule C. Dockets 15 & 1; Docket 28 (outlining factual bases for exemption claim).

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).

15. 17-23115-A-7 JEFFERY HUTTON
ALF-2
VS. BUTTE COUNTY CREDIT BUREAU

MOTION TO
AVOID JUDICIAL LIEN
6-15-17 [19]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

A renewal of judgment was entered against the debtor in favor of Butte County Credit Bureau for the sum of \$51,713.95 on January 13, 2016. The renewal of judgment was recorded with Butte County on February 9, 2016. The original lien, based on an abstract of judgment recorded in Butte County on September 16, 1996, continued to attach to the debtor's interest in a residential real property in Oroville, 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 \$147,455 as of the petition date. Dockets 21 & 1. The unavoidable liens totaled \$0.00 on that same date. Dockets 21 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc.

Code § 704.730 in the amount of \$175,000 in Schedule C. Dockets 21 & 1; Docket 32 (outlining factual bases for exemption claim).

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).

16. 17-23755-A-7 DENISE HARPER MOTION FOR
DWE-1 RELIEF FROM AUTOMATIC STAY
CIT BANK, N.A. VS. 7-13-17 [11]

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, CIT Bank, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of \$254,000 and it is encumbered by claims totaling at least approximately \$293,829. The movant's deed is in first priority position and secures a claim of approximately \$293,829.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 20, 2017.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

17.	17-23070-A-7	LARRY CLELAND	MOTION TO
	RLC-1		AVOID JUDICIAL LIEN
	VS. STEPHEN AND LYDIA VENABLES		6-30-17 [13]

Final Ruling: This motion has been voluntarily dismissed. Docket 18.

18.	17-23983-A-7	HOPE SETH	MOTION FOR
	AP-1		RELIEF FROM AUTOMATIC STAY
	BRANCH BANKING AND TRUST COMPANY VS.		7-6-17 [12]

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, Branch Banking and Trust Company, seeks relief from the automatic stay as to 32 Ridgeoak Place Jackson, Tennessee (identified as 37 Ridgeoak Place in the schedules). The property has a value of \$120,000 and it is encumbered by claims totaling approximately \$136,530. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a nonopposition to the motion.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a foreclosure sale and to obtain possession of the subject property following sale. 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 not be waived.

19.	17-22385-A-7	PAUL HIGGINS AND KELLY	MOTION FOR
	EAT-1	GARRINGTON	RELIEF FROM AUTOMATIC STAY
	DITECH FINANCIAL, L.L.C. VS.		7-17-17 [24]

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 in part and dismissed as moot in part.

The movant, Ditech Financial, L.L.C., seeks relief from the automatic stay as to real property in Cameron Park, California.

Given the entry of the debtor's discharge on July 25, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$499,999 and it is encumbered by claims totaling approximately \$592,250. The movant's deed is in first priority position and secures a claim of approximately \$478,400.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 16, 2017.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any

motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.