

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

September 27, 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.	17-24800-D-7	CATHERINE GOODSON	MOTION FOR RELIEF FROM
	JHW-1		AUTOMATIC STAY
	FIRST INVESTORS FINANCIAL		8-17-17 [18]
	SERVICES VS.		

**Final ruling:**

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

2. 14-26105-D-7 CHERYL MEYERS  
DNL-4

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR J.  
RUSSELL CUNNINGHAM, TRUSTEE'S  
ATTORNEY(S)  
8-30-17 [50]

**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.

3. 14-26105-D-7 CHERYL MEYERS  
JMH-2

MOTION FOR ADMINISTRATIVE  
EXPENSES  
8-23-17 [46]

**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 administrative expenses of the Franchise Tax Board in the amount of \$273 is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

4. 17-21707-D-7 WAIBEL AIR CONDITIONING,  
MPD-3 INC.

MOTION FOR COMPENSATION FOR  
MICHAEL P. DACQUISTO, TRUSTEE'S  
ATTORNEY  
8-11-17 [22]

**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.

5. 17-25615-D-7 EDWARD/PANDORA ROBERTS  
CK-1

MOTION TO COMPEL ABANDONMENT  
8-24-17 [8]

6. 17-24720-D-7 HERIBERTO HERNANDEZ AND MOTION TO DISMISS YADIRA MOJICA  
UST-1 YADIRA MOJICA 8-15-17 [13]

7. 17-21127-D-7 HAZEL 71, INC. MOTION FOR ADMINISTRATIVE  
NOS-5 EXPENSES  
8-30-17 [63]

**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 administrative expenses of the Internal Revenue Service of \$3,731 and the Franchise Tax Board in the amount of \$2,805 is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

8. 17-21127-D-7 HAZEL 71, INC. MOTION FOR COMPENSATION BY THE  
NOS-6 LAW OFFICE OF NOSSAMAN, LLP FOR  
CHRISTOPHER D. HUGHES,  
TRUSTEE'S ATTORNEY(S)  
8-30-17 [67]

**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.

9. 17-20731-D-11 CS360 TOWERS, LLC MOTION TO SELL FREE AND CLEAR  
DB-6 OF LIENS  
8-30-17 [211]

**Tentative ruling:**

This is the trustee's motion to sell a condominium unit free and clear of liens. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(2). The moving party (1) utilized an outdated PACER matrix, and therefore, failed to serve at least six creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve the parties requesting special notice at DN 74, 113, 206, and 209 at their designated addresses, as required by the same rule; and (3) the moving party failed to serve four of the creditors added to Schedule E/F by amendment filed March 28, 2017. Accordingly, the court will consider whether to continue the hearing.

10. 17-23436-D-7 RENEE DRUSYLLA  
17-2134 ALL-1  
DRUSYLLA V. TORRES

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
8-21-17 [7]

**Tentative ruling:**

This is the defendant's motion to dismiss the plaintiff's complaint in this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b) for failure to state a claim upon which relief can be granted. The plaintiff has filed opposition. For the following reasons, the court will construe the motion as one for abstention and, as such, the motion will be granted. In addition, the court will lift the automatic stay to permit the parties to litigate the plaintiff's attacks on the defendant's state court judgment in that court and will stay the defendant's adversary proceeding against the plaintiff, AP No. 17-2163, until the plaintiff has exhausted her attacks on the judgment in the state court.

By her complaint, the plaintiff, who is the debtor in the underlying chapter 7 case in which this adversary proceeding is pending, attacks a judgment of the Sacramento County Superior Court and seeks to involve this court in issues that appear to have been already adjudicated by that court.<sup>1</sup> The plaintiff claims that when the defendant applied to this court for orders to take examinations pursuant to Fed. R. Bankr. P. 2004, she (1) breached a Civil Settlement Agreement allegedly entered into between the plaintiff and the defendant's predecessor-in-interest, which was filed in the state court action (but which was apparently never approved by that court); and (2) violated a restraining order issued in the plaintiff's favor against the defendant's predecessor in a family law case in the state court. Thus, according to the plaintiff, the defendant and her predecessor "are attempting to use this Court to further harass and torment the Plaintiff" (Plaintiff's Complaint, DN 1, ¶ 15) and "have substantially misrepresented the debt they are attempting to collect." Id. ¶ 16.

Based on these allegations, the plaintiff purports to set forth causes of action for declaratory relief, breach of contract, violation of the Unfair Business Practices Act, Cal. Bus. & Prof. Code §§ 17200, et seq., abuse of process, and fraud. All of these causes of action are based on the single factual allegation that the defendant's filing of her Rule 2004 applications and the declarations supporting them breached the Civil Settlement Agreement and violated the state court restraining order.

By the present motion, the defendant contends the issue raised by the plaintiff's complaint - whether the defendant's right to enforce her state court judgment is barred by the Civil Settlement Agreement and/or the restraining order - was litigated in the state court prior to the filing of the plaintiff's bankruptcy petition, that it was decided in the defendant's favor, and that it was decided by a state court ruling that has now become final, such that it has collateral estoppel effect on the plaintiff's complaint in this adversary proceeding. The defendant also claims she was assigned all right, title, and interest in the judgment; that, as such, she is attempting to collect on her own behalf; and that because she was not a party to either the Civil Settlement Agreement or the restraining order, neither has any effect on her collection efforts. In support of her collateral estoppel argument, the defendant has submitted as exhibits copies of tentative rulings issued by the state court, incorporated into minute orders, on the plaintiff's motion to quash the defendant's subpoena for business records and the

plaintiff's motion to compel acknowledgment of satisfaction of judgment.

The plaintiff opposes the motion, arguing collateral estoppel does not apply. The argument is presented in the most conclusory of terms - that the issue "was never actually litigated," that "the matter was never decided in the former proceeding," and that the judgment "was never actually a final decision on the merits." Plaintiff's Opposition, DN 17 ("Opp."), at 6:2-8. In terms of collateral estoppel, the plaintiff also claims that because the defendant obtained the judgment by assignment, the parties to this adversary proceeding are not the same as the parties to the judgment. This court need not determine the collateral estoppel issues because it is clear that the plaintiff's adversary complaint is an attack on the state court judgment. The issues raised in the adversary proceeding are based entirely on state law.<sup>2</sup> There is nothing in the complaint that persuades the court that it, rather than the state court, should decide these issues.

The plaintiff also raises a couple of procedural issues. First, the court rejects her request that the motion be denied because it is 32 pages long but does not include a table of contents or a table of authorities. Local District Court Rule 133(k), on which the plaintiff relies, does not apply in this court. LBR 1001-1(c). Second, the court denies the plaintiff's request to convert the motion to a motion for summary judgment due to the volume of documents of which the defendant has asked the court to take judicial notice. The court has considered the documents only to the extent necessary to determine that the plaintiff's complaint is an attack on the state court's judgment, an attack that should be determined by the state court.<sup>3</sup> Third, the plaintiff claims she will be able to prove that the defendant's predecessor, not the defendant, is the true owner and controller of Alliance Financial and, in attempting to collect on the debt represented by the judgment, is trying to extort money from the plaintiff. That, like the rest of the issues raised by the complaint, will be a matter for the state court to decide.

The plaintiff contends that, in alluding in her Rule 2004 applications to a possible adversary proceeding under § 523(a) and/or § 727 of the Bankruptcy Code, the defendant "'opened the door' for the Plaintiff to determine the rights of the parties in a Declaratory Relief action." Opp. at 8:1-2. She cites authority for the proposition that a prospective defendant may sue for declaratory relief to establish his or her non-liability. The question, however, is where that suit for declaratory relief should proceed. Neither the defendant's indication in her Rule 2004 applications that she intended to seek relief under the Bankruptcy Code nor her filing, subsequent to the plaintiff's filing of this adversary proceeding, of her own adversary complaint under § 523(a) is a basis on which this court should consider the plaintiff's attack on the underlying state court judgment itself.

The plaintiff claims that "[t]he entire dispute involving the adversary procedure before this Court has arose out of [the defendant's] assertion that her judgment is non-dischargeable in the Plaintiff's bankruptcy case." Opp. at 8:23-25. Further, "[t]he non-dischargeability assertion involves a claim and is a necessary step in the claims allowance process." *Id.* at 8:25-27. Therefore, in the plaintiff's view, the matter is a core proceeding. Not so. The plaintiff has not demonstrated that this adversary proceeding arises under title 11, arises in a case under title 11, or is related to a case under title 11; thus, she has failed to demonstrate that this court has jurisdiction to consider it. Even if she had so proven, however, the court would abstain from deciding it.

"Section 1334(c)(1) [Title 28, United States Code] provides for permissive abstention in both core and non-core proceedings." Security Farms v. International

Bhd. of Teamsters, 124 F.3d 999, 1009 (9th Cir. 1997). The factors the court is to consider are:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1166-67 (9th Cir. 1990).

The issues raised by the plaintiff's complaint have nothing to do with the administration of the bankruptcy estate.<sup>4</sup> The issues are purely issues of state law. There is a pending action in the state court in which the plaintiff may seek the same relief.<sup>5</sup> There is no basis for this court's jurisdiction other than 28 U.S.C. § 1334; that is, the action could not have been commenced in the federal courts absent bankruptcy jurisdiction. This proceeding bears virtually no relationship to the main bankruptcy case. The fact that the plaintiff has raised both the Civil Settlement Agreement and the restraining order in the state court and lost suggests this adversary proceeding represents forum shopping. Further, there are several nondebtor parties in the state court action, as well as the plaintiff, the defendant, and the defendant's predecessor-in-interest. Finally, there will be no difficulty in severing the plaintiff's state law claims from the core bankruptcy issues of the dischargeability of the plaintiff's debt and the plaintiff's right to a discharge.

In that regard, the court will stay the defendant's § 523(a) adversary proceeding pending the plaintiff's exhaustion of her attacks on the state court judgment. In the event the judgment withstands those attacks, the parties may return to this court to resolve the dischargeability issues. The court will lift the automatic stay to allow the plaintiff to renew and conclude her attacks on the state court judgment in that court.<sup>6</sup> If the plaintiff fails to take action in the state court toward that end, the defendant may seek a determination from the state court as to the validity and finality of its judgment. No enforcement action may be taken against the debtor, the debtor's property, or property of the estate without further order of this court.

Finally, the plaintiff has requested leave to amend in the event the court grants the motion. Although "[t]he court should freely give leave [to amend] when justice so requires" (Fed. R. Civ. P. 15(a)(2), incorporated herein by Fed. R. Bankr. P. 7015), leave need not be granted where amendment would be futile. Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007); Heagler v. Wells Fargo Bank, N.A., 2017 U.S. Dist. LEXIS 49815, \*7 (E.D. Cal. March 31, 2017). The court is unable to conceive of any manner in which the plaintiff might amend her complaint that would alter the court's conclusion that the state

court is better suited to determine attacks on its judgment than this court.

The court will hear the matter.

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- 1 Whether the issues have been actually, necessarily, and finally adjudicated will be a matter for the state court to decide.
  - 2 The fact that the plaintiff's complaint was apparently triggered by the defendant's applications for Rule 2004 examinations does not mean the complaint raises issues of bankruptcy law. The filing of the applications was an action taken by the defendant as a creditor; that is, in furtherance of collection on her judgment. That it was an action taken pursuant to a bankruptcy rule is irrelevant.
  - 3 As with the court's ruling on the plaintiff's earlier motion to quash subpoenas, no party should take the court's consideration of these documents as a determination of their admissibility for future purposes.
  - 4 The trustee has issued a report of no distribution, indicating she does not intend to administer any assets. Even if she had not issued that report, however, the plaintiff suggests no way in which her adversary proceeding would affect the estate.
  - 5 Although the judgment was entered in 2014, the defendant has been attempting to collect by way of orders for appearance and examination and the plaintiff has filed at least two motions to quash subpoenas, along with a motion to compel acknowledgment of satisfaction of judgment. In fact, the plaintiff filed her bankruptcy petition three days before a scheduled hearing on another of her motions to quash subpoenas.
  - 6 The court has the power under § 105(a) of the Code to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, \*25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

11. 17-21344-D-7 CONNIE ADAMS  
AP-1  
BANK OF AMERICA, N.A. VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
7-26-17 [26]

Tentative ruling:

This is Bank of America's motion for relief from the automatic stay. The debtor received her discharge on September 5, 2017, and as such, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court finds a hearing is not necessary as to the trustee because the trustee has filed a Report of No Assets and will grant relief from stay as to the trustee and the estate by minute order. There will be no further relief afforded. The court will hear the matter.

12. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR COMPENSATION FOR  
MFB-6 MICHAEL F. BURKART, CHAPTER 7  
TRUSTEE  
8-29-17 [1018]

**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 appropriate compensation for actual, necessary, and beneficial services under Bankruptcy Code § 326. As such, the court will grant the motion by minute order. No appearance is necessary.

13. 17-24753-D-7 LYNELL/BRENDA STOCK MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY AND/OR MOTION  
WELLS FARGO BANK, N.A. VS. FOR ADEQUATE PROTECTION  
8-24-17 [16]

**Final ruling:**

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

14. 17-25253-D-7 MIROSLAVA KURICH MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
8-8-17 [5]

15. 17-22056-D-11 JAMES MCCLERNON MOTION TO EMPLOY CUSHMAN AND  
RLC-2 WAKEFIELD U.S., INC. AS  
BROKER(S)  
8-21-17 [81]

16. 12-40858-D-7 MERY LO  
SS-2

MOTION TO AVOID LIEN OF EAST  
WEST BANK  
8-24-17 [24]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

17. 16-25460-D-7 GABRIEL/CHRISTINA PAULL  
SSA-4

MOTION TO SELL  
8-25-17 [49]

18. 17-24462-D-7 COLLEEN ROBERTS  
APN-1  
SANTANDER CONSUMER USA, INC.  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-29-17 [19]

**Final ruling:**

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

19. 14-27267-D-7 SARAD/USHA CHAND  
HSM-26

MOTION TO UNBLOCK FUNDS  
8-23-17 [417]

**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 unblock funds 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.

20. 16-28173-D-7 DEBBIE HAYES  
EAT-1  
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-24-17 [67]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on August 24, 2017 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

21. 17-24981-D-7 HARJINDER GILL

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
7-29-17 [5]

**Final ruling:**

On September 5, 2017 debtor's application to pay the filing fee in installments was granted. As such, the debtor's application for waiver of the Chapter 7 filing fee will be denied by minute order as moot. No appearance is necessary.

22. 17-20689-D-11 MONUMENT SECURITY, INC.  
SSB-1  
IRENE SMITH VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-18-17 [142]

**Final ruling:**

This the motion of Irene Smith for relief from the automatic stay to proceed with a State Court action. The motion is denied because moving party failed to file a certificate of service. Also, moving party's notice of hearing does not contain the appropriate language regarding the opportunity for filing opposition to the motion as required by LBR 9014-1(d)(4). Specifically, the notice of hearing indicates that only the debtor has the opportunity to file opposition with a deadline of August 30, 2017. The motion will be denied by minute order. No appearance is necessary.

23. 15-29890-D-7 GRAIL SEMICONDUCTOR  
MPD-1  
WILLIS E. HIGGINS, ET AL.  
VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR ORDER THE AUTOMATIC  
STAY DOES NOT APPLY  
3-1-17 [579]

24. 17-24999-D-7 GINO GONZALES  
APN-1  
INFINITI FINANCIAL SERVICES  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-28-17 [11]

**Final ruling:**

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

25. 17-24437-D-7 MARILYN CARLETON

TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
8-23-17 [12]

**Final ruling:**

This is the trustee's motion to dismiss for failure to appear at the meeting of creditors. On September 20, 2017, the debtor appeared at a continued session of the meeting and the meeting was concluded. Accordingly, the motion will be denied by minute order. No appearance is necessary.

26. 16-24739-D-7 ANN POFFENBERGER  
DNL-4

MOTION TO EMPLOY BACHECKI, CROM  
& CO., LLP AS ACCOUNTANT(S)  
9-5-17 [49]

27. 17-20689-D-11 MONUMENT SECURITY, INC.  
ET-13

MOTION FOR AUTHORITY TO ENTER  
INTO LEASE AGREEMENT O.S.T.  
9-14-17 [161]

28. 15-29890-D-7      GRAIL SEMICONDUCTOR  
DB-1  
RONALD W. HOFER VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY  
5-8-17 [681]

29. 17-20689-D-11      MONUMENT SECURITY, INC.  
ET-15

MOTION FOR AUTHORITY TO ENTER  
INTO LEASE AGREEMENT O.S.T.  
9-19-17 [174]