UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 21, 2015 at 10:00 a.m.

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

9, 10, 11, 12, 13, 15

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a 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.

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 JANUARY 19, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 4, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 11, 2015. 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. 15-20912-A-7 DAVID ROOT — MOTION TO
MAC-2 — AVOID JUDICIAL LIEN
VS. CACH, L.L.C. — 11-25-15 [31]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of CACH, L.L.C., for the sum of $36,221.25 on August 9, 2012. The abstract of judgment was recorded with Sacramento County on October 5, 2012. That lien attached to the debtor's residential real property in Carmichael, California. The debtor asks for avoidance of the lien.

The subject real property had an approximate value of $300,000 as of the petition date. Dockets 33 & 34. The unavoidable liens totaled $341,210,81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. Dockets 33 & 34.

However, while the debtor claims to be entitled to a $75,000 exemption, he has claimed no exemption in the property. Docket 31 ¶ 5. The motion is also confusing in that in another place it contends that the debtor has claimed an exemption of $1.00 in the property. Docket 31 ¶ 10f; Docket 33 ¶ 5.

Neither the original, nor the Amended Schedule C reflects an exemption in the property. Docket 1, Schedule C; Docket 14, Amended Schedule C. Those schedules contain an exemption only in the debtor's vacation time share.

The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." The absence of an exemption claim in Schedule C reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of liens, he may not claim an impairment of such an exemption.

2. 15-20912-A-7 DAVID ROOT — MOTION TO
MAC-3 — AVOID JUDICIAL LIEN
VS. PSS WORLD MEDICAL, INC. — 11-25-15 [36]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of PSS World Medical, Inc. for the sum of $9,267 on August 30, 2010. The abstract of judgment was recorded with Sacramento County on September 28, 2010. That lien attached to the debtor's residential real property in Carmichael, California. The debtor asks for avoidance of the lien.

The subject real property had an approximate value of $300,000 as of the petition date. Dockets 38 & 39. The unavoidable liens totaled $341,210,81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. Dockets 38 & 39.

However, while the debtor claims to be entitled to a $75,000 exemption, he has claimed no exemption in the property. Docket 36 ¶ 5. The motion is also confusing in that in another place it contends that the debtor has claimed an exemption of $1.00 in the property. Docket 36 ¶ 10f; Docket 38 ¶ 5.

Neither the original, nor the Amended Schedule C reflects an exemption in the property. Docket 1, Schedule C; Docket 14, Amended Schedule C. Those schedules contain an exemption only in the debtor's vacation time share.

The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." The absence of an exemption claim in Schedule C reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of liens, he may not claim an impairment of such an exemption.

3. 15-26013-A-7 ROBERT BALLANTYNE — MOTION TO RECONSIDER 12-7-15 [24]
MOH-2

Tentative Ruling: The motion will be denied.

The debtor asks for reconsideration of the court's December 9, 2015 order denying the debtor's motion to avoid a lien. Docket 28. The ruling on the lien avoidance motion states:

"*Final Ruling: The motion will be denied without prejudice.*

A judgment was entered against the debtor in favor of Citibank for the sum of $6,673.16 on November 2, 2011. The abstract of judgment was recorded with Butte County on December 5, 2011. That lien attached to the debtor's residential real property in Chico, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor's evidence of value for the property is inadmissible. Although the debtor purports to value the property himself, he states that his valuation is based on what zillow.com says about the value of the property.

But, what zillow.com says about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from anyone working at zillow.com in this record, much less a declaration qualifying zillow.com as an expert and establishing the methodology by which zillow.com determined the value of the property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible."

Docket 22.

The debtor complains that his opinion of value for the property is not based on the zillow.com valuation of the property. He points out that his declaration in support of the lien avoidance motion states: "I personally believe that the value of the property is not in excess of $155,000.00 due to the fact that on my limited income I cannot afford to spend money to keep the property maintained and there is a lot of deferred upkeep." Docket 24 at 2.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024,

allows the court to set aside or reconsider an order or a judgment for "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

There is no mistake in the court's interpretation of the debtor's opinion of value for the property. The debtor omits from his quotation of his prior testimony that his Schedule A "estimate of value of $159,233.00 [is] based on a 7/28/15 Zillow.com estimate of value." Then, the debtor states: "I personally believe that the value fo the property is not in excess of $155,000.00 due to the fact that on my limited income I cannot afford to spend money to keep the property maintained and there is a lot of deferred upkeep." Docket 16 at 2.

In other words, the debtor is deriving his opinion of value for the property from the zillow.com valuation, and not only from the fact that he owns the property. The debtor is not disagreeing with the zillow.com value of the property. Rather, the debtor starts with the zillow.com valuation and then alters that valuation based on unaccounted for deferred maintenance costs.

If the zillow.com valuation of the property is irrelevant - as the court has pointed out repeatedly in numerous rulings on lien avoidance motions – why does the debtor mention the zillow.com value? With respect to the debtor's lien avoidance motion, what zillow.com states about the value of the property is irrelevant. The reason the debtor has repeated the zillow.com value is because his opinion is derivative of it.

To the extent the movant's opinion of value is repeating statements made on websites or by other experts, such opinion is inadmissible hearsay, in violation of Fed. R. Evid. 802.

Hence, there is no mistake in the court's interpretation of the debtor's opinion of value and there is no basis for the court to reconsider its ruling on the debtor's lien avoidance motion. This motion will be denied. The valuation motion should be refiled with a declaration from a competent expert and/or from the debtor that gives a value based only on the fact that the debtor owns the property. The debtor must not gild the lily by informing the court that his opinion is supported by, or in line with, another's opinion of value.

Valuation evidence based on reports from "zillow.com" and other similar Internet based sources is not admissible. It is hearsay. See Fed. R. Evid. 801. And, while Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria. The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are

not compilations made admissible by Fed. R. Evid. 803(17). Id.

Finally, if the debtor truly disagrees with his valuation of the property in Schedule A, that schedule should be amended. The debtor has not amended his Schedule A, even though the Schedule itself states that the debtor's valuation of the property is based on what zillow.com states about the property. Docket 1, Schedule A. And, it is irrelevant what the value of the property is at this time, as the debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date, July 30, 2015. Culver, L.L.C. v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

4. 12-41025-A-7 PATRICK MULLIN — MOTION TO SELL
CWC-8 — 11-19-15 [62]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $145,000 the estate's undivided 50% interest in a real property in Oroville, California, along with the co-owner's interest in the property, to Mark Romig. The debtor's brother, George Mullin owns the other 50% interest in the property. The sale of the co-owner's interest in the property is based on a stipulation between the estate and Mr. Mullin. The trustee asks for approval of the payment of the real estate commission.

The trustee also asks for authority to pay from escrow:

- $11,601.58 to the co-owner, Mr. Mullin, for his maintenance of the property and payment of fees, taxes, insurance and utilities on the property;

- $4,586.89 to the estate's surveyor, Frank Lehmann, for his assistance with curing title defects associated with the property; and

- $5,298.20 to the estate's counsel, Carl Collins, for his assistance with curing title defects associated with the property.

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

The motion will be denied for several reasons. First, the motion does not state what are the encumbrances on the property and it says nothing about the net benefit to the estate from the sale, after payment of all encumbrances, fees, expenses, and other charges.

Second, there is no declaration from Mr. Mullin authenticating the exhibit to the motion evidencing the property's expenses he paid. Docket 65, Ex. 5.

Third, the requests for payment of fees owed to Mr. Lehmann and Mr. Collins, for their assistance with curing title defects associated with the property are in fee motions under 11 U.S.C. § 330(a).

Yet, the motion is devoid of declarations from Mr. Lehmann and Mr. Collins, authenticating the exhibits reflecting the services they have provided to the estate, indicating whether and when they were employed by the estate, indicating whether their services for which compensation is sought are within

the scope of services for which they were employed, indicating whether any of their fees will be shared, etc.

Finally, the motion does not explain why Mr. Collins - as counsel for the estate - is seeking payment of compensation for title defect services directly from escrow, separately from the compensation for his other services to the estate. The court has seen no evidence that Mr. Collins is secured by any of the sales proceeds.

5.	09-20140-A-7 MPD-16	SHASTA REGIONAL MEDICAL CENTER, L.L.C.	MOTION TO APPROVE COMPENSATION OF OTHER PROFESSIONAL 11-23-15 [774]

Tentative Ruling: The motion will be denied.

The trustee is seeking approval to pay $15,000 in compensation to one of its professionals, The Tech Group, Inc., for analyzing and collecting unbilled accounts receivable.

The evidence in support of the motion consists of:

- the declarations of the trustee (Docket 777) and the trustee's counsel Michael Dacquisto (Docket 779),

- the invoices submitted by TG to the estate (Docket 778, Exs. A-K),

- two email exchanges between the estate and TG (Docket 778, Exs. N, O),

- a portion of a July 20, 2009 declaration by Richard Martinez, managing partner and project manager of TG (Docket 778, Ex. R),

- an October 24, 2011 declaration of Richard Martinez filed with the court as Docket 572 on the same date (Docket 778, Ex. S), and

- an October 23, 2011 declaration of Renee Tannehill filed with the court as Docket 570 on October 24, 2011 (Docket 778, Ex. T).

The National Labor Relations Board objects to approval of the compensation. The trustee has filed a reply.

As the court authorized employment of TG under section 327, its compensation is governed by section 330(a). Docket 248 at 2.

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."

In its fullness, 11 U.S.C. § 330(a) provides:

"*(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--*

"*(A) reasonable compensation for actual, necessary services rendered by the*

trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

"(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

"(A) the time spent on such services;

"(B) the rates charged for such services;

"(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

"(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

"(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

"(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

"(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for--

"(I) unnecessary duplication of services; or

"(ii) services that were not--

"(I) reasonably likely to benefit the debtor's estate; or

"(II) necessary to the administration of the case.

"(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

"(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to

the estate.

"*(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.*

"*(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.*"

The court approved TG's employment on August 25, 2009. The employment motion was filed on July 20, 2009 and heard on August 17, 2009. The employment order allowed the trustee to pay TG up to $15,000 per month, plus no more than additional 80 hours of services. The order authorizing the employment of TG by the estate specifically required that "TG shall apply at least every 6 months . . . to the court for interim approval of its compensation, including fees and expenses. The last compensation application by TG shall seek approval on a final basis of all interim compensation awards." Docket 260 ¶ 4.

Nevertheless, the first compensation motion by TG was not filed until September 1, 2011. Docket 545. In that motion, TG sought approval of $31,625 in compensation, incurred from May 1, 2009 through August 26, 2010. In denying the motion, the court ruled:

"*The motion has not established that TG's services conferred a benefit to the estate, i.e., that the compensation is for necessary services rendered by TG, because the motion (including additional papers) has not accounted for the negative impact of TG's failure to meet the deadline for the billing of the receivables. TG was retained by the estate to both analyze and collect unbilled receivables. While TG apparently analyzed some receivables, the motion does not state what is the impact of TG's failure to collect receivables within the February 2011 deadline for the collection of the receivables.*

"*The court will not permit payment of any compensation to TG at this time. Rather, TG shall wait until the estate has analyzed and collected all receivables, and has assessed the negative impact of the missed deadline for the collection of the receivables. At that time, TG may reapply for compensation. Any future compensation application must establish that the negative impact of the missed deadline for the collection of receivables is outweighed by the benefits conferred by TG to the estate in analyzing the receivables.*

"*The additional papers filed in support of the motion do not address the consequences to the estate from TG's failure to meet the deadline for the collection of the receivables. This court is required by 11 U.S.C. § 330(a)(1)(A) to determine whether TG's services benefitted the estate. Based on the record made thus far, the court is unable to determine whether TG's services benefitted the estate.*

"*Lastly, the motion does not address why the court should grant retroactive compensation to TG, when the order approving TG's employment required TG to apply for compensation 'at least every 6 months, unless this deadline is shortened or extended by the court pursuant to a separate application.' Docket 260 ¶ 4. The court entered the employment order on August 26, 2009, over two years ago. However, this motion, filed on September 1, 2011, is the first application for compensation of TG. The court will not approve compensation to TG when TG has disobeyed this court's order for approximately two years. The*

motion will be denied without prejudice.

"*Because TG has received compensation from the estate without prior court approval, the court will require TG to disgorge any compensation it has received from the estate, other than any retainer TG received when it was employed by the estate. Any such retainer may be kept by TG, but in a trust account, subject to further court order.*"

Docket 578.

Not much has changed with the filing of this motion. As the invoices and October 2011 declarations of Richard Martinez and Renee Tannehill were part of the record on the September 1, 2011 compensation motion - which was denied, they bring nothing new to this record, warranting a different outcome for this motion. The court already assessed those declarations in connection with the September 1, 2011 motion and found them wanting. "The additional papers filed in support of the motion do not address the consequences to the estate from TG's failure to meet the deadline for the collection of the receivables." Docket 578.

The portion of the July 20, 2009 declaration of Richard Martinez is also unhelpful in assessing the net benefit of TG's services to the estate, as it merely provides background employment and experience information of management and employees of TG. Nothing in that partial declaration pertains to services actually performed by TG for the estate.

The two email exchanges between the estate and TG are also devoid of information helpful to assess the net benefit of TG's services to the estate. The emails are merely about what the court ordered in disposing of the September 1, 2011 compensation motion.

This leaves only the November 23, 2015 declarations of the trustee and his counsel Michael Dacquisto. Dockets 777 & 779. Neither of the declarations establishes that "the negative impact of the missed deadline for the collection of receivables is outweighed by the benefits conferred by TG to the estate in analyzing the receivables." Docket 578. The declaration of Michael Dacquisto defers to the trustee's declaration on the net benefit of TG's services to the estate.

The trustee's declaration, however, falls short of establishing the impact of TG's failure to meet the deadline for the collection of the estate's receivables.

First, the trustee is not qualified as an expert to render an opinion on the impact of TG's failure to timely institute collection of receivables in the health care industry. The trustee is not a professional in the health care industry, much less an expert in that industry's collection practices and outcomes. His opinion then violates Fed. R. Evid. 701(c), which prohibits a witness not testifying as an expert to render an opinion based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Fed. R. Evid. 702 is limited only to witnesses qualified as experts. Once again, the trustee here has not been qualified as an expert in the area of health care industry receivable collections. The trustee is a chapter 7 panel trustee in the Eastern District of California.

Second, the trustee's opinion about the impact of TG's failure to timely

institute collection of receivables is based on inadmissible hearsay. In his declaration, he states: "I was advised by representatives of Prime the standard in the health care industry for hospitals similar to the debtor was that between 18% and 22% of the total stated amount of receivables was actually collected." Docket 777 at 7. The statements of Prime's representatives - who are not even identified by the trustee - are out of court statements proffered for the truth of the matter asserted therein, making them inadmissible hearsay. Fed. R. Evid. 801(c) & 802.

The trustee relies on the hearsay statements for his ultimate opinion on the impact of TG's failure to timely collect. He asserts, "*I was advised by representatives of Prime the standard in the health care industry for hospitals similar to the debtor was that between 18% and 22% of the total stated amount of receivables was actually collected. Using these figures, a more realistic value for the receivables the estate could expect to collect was between $4,140,000.00 (at 18%) and $5,060,000.00 (at 22%). At this time all of the receivables of the debtor have been collected. The estate has received approximately $7.1 million in receivables. One inference from this fact, because the amount exceeds the industry average, is that the failure of TG to timely collect receivables did not financially impact the estate.*" Docket 777 at 7.

The court then has no probative and admissible evidence of the financial impact of TG's failure to timely bill the receivables. As a result, there is no showing of a net benefit of TG's services to the estate.

Third, even if the trustee is correct, and the failure of TG to timely collect receivables did not financially impact the estate, this is grounds for denying any compensation to TG because its services were not necessary. TG was retained by the estate for the sole purpose of collecting the receivables. But, if TG's failure to collect the receivables did not financially impact the estate, TG's services were unnecessary.

Fourth, the court is unpersuaded that the services rendered by TG, leading up to the February 2, 2011 deadline for billing, were necessary as mandated by section 330(a)(1)(A), given that the missed deadline made all prior work obsolete.

Fifth, the court rejects the trustee's lauding of TG's collection charges being substantially lesser than the collection charges of the estate's prior collector, as a benefit to the estate. It is TG's services and not the compensation arrangement that sets the measure for the benefit to the estate. The principal purpose of the estate in retaining TG was not to enter into a good compensation arrangement. It was for TG to provide valuable and time-sensitive services to the estate.

11 U.S.C. § 330(a)(3)(C) focuses on "whether the services were . . . beneficial." See also 11 U.S.C. § 330(a)(4)(A)(ii)(I) (referring to "services . . . not reasonably likely to benefit the debtor's estate").

If that were not the case, and the compensation arrangement is central to measuring benefit to the estate, then the trustee could establish a benefit to the estate even with a con-artist, willing to be paid below market rates in exchange for work he does not intend to perform.

While the court does not deny that a compensation arrangement is relevant in calculating benefit to the estate, it is the services - for which the

professional was retained - that are the foundational measure of the benefit.

Sixth, the court rejects the contention that the "minimal assistance" to Renee Tannehill in receiving a document from TG is evidence of the benefit of TG's services. The trustee admits that if TG had not failed to timely institute collection, Ms. Tannehill's services would have been unnecessary.

"*After it became clear that TG would not undertake the actual collection work in a timely fashion, the estate hired Consumer Services, Inc. ('CSI') to assist with analysis and collection of accounts receivable. The principal at CSI who performed the work for which it was retained, Renee Tannehill ('RT'), filed a declaration on October 24, 2011, in which she stated she received a document titled Health Claim Analyzer from TG, which document provided some 'minimal assistance' to her in performing the work for which CSI, but that when she received this document she 'had already performed the vast majority of [her] analysis.' I believe this is additional evidence showing the work performed by TG provided a benefit to the estate.*"

Docket 777 at 6.

TG's failures resulting in more administrative expenses to the estate and more work for TG is not evidence of TG having provided a benefit to the estate. TG would not have had to provide any assistance to Ms. Tannehill had TG done what it promised to do.

Seventh, while there was a delay in TG receiving receivable information from Perot Systems, there is nothing in the record indicating that this is what led to TG missing the February 2, 2011 deadline for billing. By missing that deadline, TG's services were not performed within a reasonable amount of time commensurate with the importance and nature of the problem. 11 U.S.C. § 330(a)(3)(D).

Finally, TG does not explain why it has failed to comply with court orders, including failing to apply for interim compensation approval every six months, especially during the period for which the subject compensation is sought. Also, TG has not filed this motion. It is the trustee prosecuting this motion on behalf of TG, while TG is no longer in existence. It has been dissolved and the trustee has lost contact with TG's principal. TG filed a certificate of dissolution with the California Secretary of State on April 22, 2013. Docket 778, Ex. P. This is a separate and independent basis for denying this motion.

6.	10-40550-A-7 SABRINA BARNES	MOTION TO
	EJS-1	AVOID JUDICIAL LIEN
	VS. CITIBANK SOUTH DAKOTA, N.A.	11-30-15 [35]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank (South Dakota) for the sum of $4,500.15 on October 29, 2009. The abstract of judgment was recorded with Sacramento County on February 10, 2010. That lien attached to the debtor's residential real property in Elk Grove, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor filed an Amended Schedule C on November 30, 2015, to alter her exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the altered exemption. Docket 31. Parties in interest have

30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

7. 10-40550-A-7 SABRINA BARNES — MOTION TO AVOID JUDICIAL LIEN
EJS-2 — 11-30-15 [40]
VS. HOUSEHOLD FINANCE CORP.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Household Finance Corp. of California for the sum of $5,869.44 on May 22, 2008. The abstract of judgment was recorded with Sacramento County on October 15, 2008. That lien attached to the debtor's residential real property in Elk Grove, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor filed an Amended Schedule C on November 30, 2015, to alter her exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the altered exemption. Docket 31. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

Another reason for denial of the motion is that service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Household Finance Corp. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 44.

Also, while CT Corporation System was also served with the motion papers as an agent for service of process, the court cannot tell whether CT Corporation was served as an agent of Household or another entity. The motion papers were served on at least one other entity as well. Docket 44.

And, while the debtor served Household's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

8. 15-28953-A-7 KAREN OGA — ORDER TO APPEAR AND SHOW CAUSE WHY PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED
11-19-15 [5]

Tentative Ruling: The order to show cause will be discharged.

This order to show cause was issued because the debtor has indicated on her petition that her business is a health care business. The debtor, Karen Oga, is a dentist.

11 U.S.C. § 333(a)(1) provides that:

"If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case."

The term "health care business" means "means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for-- (I) the diagnosis or treatment of injury, deformity, or disease; and (ii) surgical, drug treatment, psychiatric, or obstetric care." 11 U.S.C. § 101(27A)(A).

As the debtor is a dentist, she offers services for the diagnosis and treatment of dental issues. Treating dental patients also necessarily involves various drug treatments. Accordingly, the appointment of a healthcare ombudsman is necessary under 11 U.S.C. § 333(a)(1).

9. 15-23465-A-7 ROBERT COONS — MOTION TO AVOID JUDICIAL LIEN
CAH-6
VS. FORD MOTOR CREDIT COMPANY L.L.C. — 12-7-15 [78]

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 in favor of Ford Motor Credit Company, L.L.C. for the sum of $8,228.14 on January 3, 2012. The abstract of judgment was recorded with Sacramento County on March 6, 2012. That lien attached to the debtor's residential real property in Elk Grove, 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 $697,500 as of the petition date. Dockets 48 & 20.

The unavoidable liens totaled $679,326.69 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services for $673,245.13 and outstanding property taxes for $6,081.56. Dockets 80 & 20.

In addition to the unavoidable liens, the property is subject to a senior judicial lien in favor of Ford Motor Credit Company, L.L.C. for $7,717.99. That lien was recorded in February 2011, prior to the creation of the subject lien. Docket 20, Schedule D.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,455.32 in Schedule C. Dockets 80 & 20.

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 subject judicial lien held by Ford Motor Credit Company. 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. 15-23465-A-7 ROBERT COONS — MOTION TO AVOID JUDICIAL LIEN
CAH-7
VS. FORD MOTOR CREDIT COMPANY L.L.C. — 12-7-15 [84]

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 in favor of Ford Motor Credit Company, L.L.C. for the sum of $9,182.51 on June 12, 2012. The abstract of judgment was recorded with Sacramento County on August 16, 2012. That lien attached to the debtor's residential real property in Elk Grove, 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 $697,500 as of the petition date. Dockets 86 & 20.

The unavoidable liens totaled $679,326.69 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services for $673,245.13 and outstanding property taxes for $6,081.56. Dockets 86 & 20.

In addition to the unavoidable liens, the property is subject to a senior judicial lien in favor of Ford Motor Credit Company, L.L.C. for $7,717.99. That lien was recorded in February 2011, prior to the creation of the subject lien. Docket 20, Schedule D.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,455.32 in Schedule C. Dockets 86 & 20.

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 subject judicial lien held by Ford Motor Credit Company. 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. 15-23465-A-7 ROBERT COONS — MOTION TO AVOID JUDICIAL LIEN
CAH-8
VS. FORD MOTOR CREDIT COMPANY L.L.C. — 12-7-15 [90]

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 in favor of Ford Motor Credit Company, L.L.C. for the sum of $7,520.43 on June 5, 2012. The abstract of judgment was recorded with Sacramento County on August 16, 2012. That lien attached to the debtor's residential real property in Elk Grove, 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 $697,500 as of the petition date. Dockets 92 & 20.

The unavoidable liens totaled $679,326.69 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services for $673,245.13 and outstanding property taxes for $6,081.56. Dockets 92 & 20.

In addition to the unavoidable liens, the property is subject to a senior judicial lien in favor of Ford Motor Credit Company, L.L.C. for $7,717.99. That lien was recorded in February 2011, prior to the creation of the subject lien. Docket 20, Schedule D.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,455.32 in Schedule C. Dockets 92 & 20.

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 subject judicial lien held by Ford Motor Credit Company. 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. 15-23465-A-7 ROBERT COONS — MOTION TO AVOID JUDICIAL LIEN
CAH-9
VS. FORD MOTOR CREDIT COMPANY L.L.C. — 12-7-15 [96]

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 in favor of Ford Motor Credit Company, L.L.C. for the sum of $7,788.60 on February 24, 2014. The abstract of judgment was recorded with Sacramento County on June 26, 2014. That lien attached to the debtor's residential real property in Elk Grove, 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 $697,500 as of the petition date. Dockets 98 & 20.

The unavoidable liens totaled $679,326.69 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services for $673,245.13 and outstanding property taxes for $6,081.56. Dockets 98 & 20.

In addition to the unavoidable liens, the property is subject to a senior judicial lien in favor of Ford Motor Credit Company, L.L.C. for $7,717.99. That lien was recorded in February 2011, prior to the creation of the subject lien. Docket 20, Schedule D.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,455.32 in Schedule C. Dockets 98 & 20.

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 subject judicial lien held by Ford Motor Credit Company. 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).

13. 15-27568-A-7 JEFFREY/MARIA BAUANEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
JMA-17 — 12-7-15 [18]
DFI PROPERTIES, L.L.C. VS.

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

The motion will be granted.

The movant, DFI Properties, L.L.C., seeks relief from the automatic stay as to

real property in Galt, California.

The movant purchased the property at a pre-petition foreclosure sale, on August 19, 2015. On September 24, 2015, the movant served the debtors with a notice to vacate. The debtors filed the instant petition on September 28, 2015.

This is a liquidation proceeding and the debtors have no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with an unlawful detainer action against the debtors in state court. The parties are to go to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtors. The movant is limited to recovering possession of the property if such is permitted by the state court.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

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

14. 15-27969-A-7 DARRYL MILLER — MOTION TO DISMISS CASE 11-18-15 [21]
JMH-1

Tentative Ruling: The motion will be denied.

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on November 18, 2015. The debtor responds that he did not receive notice of the meeting because service of the notice omitted his apartment number.

Although the debtor listed his address by including "Apt 4" on the petition, the notice of the meeting of creditors was served on the debtor without including his apartment number. Docket 1 at 1; Docket 16 at 1.

Accordingly, the motion will be denied and the case will not be dismissed. Because the meeting of creditors was continued to January 13, 2016 (at 3:00 p.m.), the court will order that the deadlines for filing complaints under section 523 and 727 and filing motions to dismiss under section 707 be extended to 60 days after the January 13, 2016 continued meeting, or March 14, 2016.

15. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 11-16-15 [149]
MPD-5

Tentative Ruling: The motion will be granted.

Michael Dacquisto, Esq., attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $16,065 in fees and $480.50 in expenses, for a total of $16,545.50. This motion covers the period from September 27, 2013 through the present. The court approved the movant's employment as the trustee's attorney on October 14, 2013. In performing its services, the movant charged an hourly rate of $350.

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) investigating pending litigation between the debtors and a neighbor, and also involving the City of Yreka, (2) reviewing petition documents and assisting the trustee with conducting the meeting of creditors, (3) negotiating with the debtors' neighbor and the City of Yreka, (4) preparing settlement agreements and motion to approve those agreements, (5) appearing at hearings, (6) preparing and prosecuting abandonment motion pertaining to the litigation with the neighbor, (7) further negotiating with the City, (8) preparing a revised settlement agreement with the City and a motion for approval of the settlement, (9) reviewing and responding to opposition to settlement motion by the debtors, (10) assisting the trustee with the review of claims, and (11) preparing and filing employment and compensation motions.

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.

16. 14-25675-A-7 MARJORIE LOPEZ — MOTION TO APPROVE COMPROMISE
BHS-2 — 11-30-15 [36]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and Phillip and Stephanie Kuppinger, resolving a fraudulent conveyance claim involving the transfer of a real property to the Kuppingers. Under the terms of the compromise, the Kuppingers will pay $45,000 to the estate in full satisfaction of the claim.

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 motion will be denied without prejudice because the court cannot tell whether the settlement is fair and equitable. The motion provides no information about the value of the transfer being compromised. Without such information, the court cannot evaluate the fairness of the settlement payment.

While there is only one unsecured creditor in this case and that creditor has approved the settlement, this is a chapter 7 proceeding and late-filed proofs of claim are also entitled to a distribution. See 11 U.S.C. § 726(a)(3). Even though there are no such late-filed claims in the case at this time, late-filed claims can be filed late at any time.

Further, as representative of the estate, the trustee "owes a fiduciary duty to debtor and creditors *alike* to act fairly and protect their interests." Martin-Trigona v. Ferrari (In re Whet, Inc.), 750 F.2d 149 (1st Cir. 1984); see also In re Haugen, No. 04-00034, 2008 WL 1995359, at *5 (Bankr. D. Hawaii May 6,

2008) & In re Suntastic U.S.A., Inc., 269 B.R. 846, 849 (Bankr. D. Ariz 2001) (both cases citing Whet favorably).

In other words, the settlement agreement must be fair and equitable not only as to the creditor that approved it, but also as to creditors with late-filed claims and the debtor. The motion does not establish that the settlement is fair and equitable as to creditors with late-filed claims and the debtor.

THE FINAL RULINGS BEGIN HERE

17. 15-28910-A-7 PATRICK LARSCHEID — ORDER TO SHOW CAUSE 11-30-15 [11]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on December 1, 2015. No prejudice has resulted from the delay.

18. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE 11-23-15 [857]
GJH-1

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 settlement agreement between the estate, on one hand, and GE Commercial Finance Business Property Corporation and General Electric Credit Equities Inc., on the other hand, resolving pending avoidance claims, involving $2.8 million in transfers, against the GE entities. The claims were precipitated by debtor's transfer of $2.8 million to GE Commercial Finance, toward the purchase price of a building financed by GE. The building was not purchased by the debtor; it was purchased by a related entity, Bear Properties, L.L.C.

Under the terms of the compromise, the GE entities will pay $500,000 in full satisfaction of the estate's avoidance claims. The parties will exchange mutual releases.

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 the asserted "good faith" defenses by the GE

entities, given the "all or nothing" recovery nature of the claims, 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.

19. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDF-2 — 11-11-15 [850]
TAYLOR MORRISON SERVICES OF CA, L.L.C. VS.

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

The motion will be granted.

The movant, Taylor Morrison Services of CA, L.L.C., seeks relief from the automatic stay to proceed in state court with its construction defect claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to collect on or enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

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

20. 14-31413-A-7 TERRY HALES AND DEANNA — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 JOHNSON-HALES — 11-18-15 [16]
CITIMORTGAGE, INC. VS.

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

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

The motion will be granted in part and dismissed as moot in part.

The movant, Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on February 23, 2015, 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 $200,000 and it is encumbered by claims totaling approximately $470,667. The movant's deed is in first priority position and secures a claim of approximately $403,003.

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 November 30, 2015.

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.

21. 15-27213-A-7 GINA WEST — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 11-18-15 [28]
U.S. BANK, N.A. VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on November 24, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). Also, the motion does not request in rem or nunc pro tunc relief.

22. 15-28124-A-7 GARY/GRACE PALMA — MOTION TO AVOID JUDICIAL LIEN
JM-1
VS. CITIBANK, N.A. — 10-28-15 [9]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Agent for Service of Process." Docket 12. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

Another reason for dismissal of the motion is that the notice of hearing is not accurate. It states that written opposition "shall be heard at the hearing, pursuant to Local Rule 9014-1(f)(2)." Docket 10. In other words, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. Docket 12. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

23. 10-39525-A-7 CAROLYN CUNNINGHAM — MOTION TO AVOID JUDICIAL LIEN
RHM-6
VS. DISCOVER BANK — 11-20-15 [61]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $4,947.83 on April 12, 2010. The abstract of judgment was recorded with Solano County on June 14, 2010. That lien attached to the debtor's residential real property in Vallejo, 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 $150,000 as of the petition date. Dockets 1 & 63. The unavoidable liens totaled $258,277.16 on that same date, consisting of a first mortgage for $184,277.16 in favor of JPMorgan Chase Bank and a second mortgage for $74,000 in favor of Citibank. Dockets 1 & 63. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,075 in Amended Schedule C. Dockets 31 & 47.

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).

24. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SSA-3 — 11-19-15 [123]

Final Ruling: The motion will be dismissed without prejudice.

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

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

25. 15-22144-A-7 PEGGY BOSWORTH — MOTION TO APPROVE COMPROMISE
MPD-2 — 11-16-15 [33]

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 settlement agreement between the estate and the debtor, resolving:

- the estate's interest in the debtor's interest in two real properties in Red Bluff, California, jointly owned with the debtor's estranged husband; and

- the trustee's objections to and the merits of the debtor's $75,000 exemption claim in the properties.

Under the terms of the compromise, the trustee will not object to the present $75,000 exemption claim of the debtor, the debtor relinquishes her right to make further amendments to her exemptions in the properties, and the debtor's present exemption claim will be calculated and paid as follows: (1) the trustee will sell the properties, which will require consent of the non-filing husband or prosecution of a section 363(h) adversary proceeding, (2) the sales costs and encumbrances will be paid, (3) the debtor's husband will receive his share from the sales proceeds, (4) funds to satisfy the estate's administrative costs will be segregated, to be paid subject to court order, (5) the remaining funds will be split evenly, one-half to satisfy the debtor's exemption claim and the other one-half to satisfy other creditors' claims. As part of the agreement, the debtor will agree also to cooperate with the trustee in the administration of the properties.

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 there is some uncertainty over the estate's interest in the properties, given the debtor's right to make further changes to her exemptions and the potential basis for her to increase the present exemption, given that the properties are the only potential asset for administration, given that both parties are desiring the properties to be sold, 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.

26. 09-25471-A-7 DOUG EVANS AND ENEDINA ARMENDARIZ
DNL-3
MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
11-23-15 [54]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $15,976.95 in fees and $726.63 in expenses, for a total of $16,703.58. This motion covers the period from June 18, 2009 through November 22, 2015. The court approved the movant's employment as the trustee's attorney on July 2, 2009. The compensation request is based on a contingency fee arrangement, 33% of any recovery from the collection of a claim against Ignacio Andrade or 40% of any such recovery if the collection is resolved less than 30 days prior to the setting of the first trial date.

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) investigating the estate's interest in the debtor's claims against Mr. Andrade, (2) instituting litigation against Mr. Andrade, (3) obtaining a $48,415 default judgment against Mr. Andrade, (4) collecting the full amount of the judgment, and (5) objecting to the debtors' exemption in the recovery from Mr. Andrade.

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.

27. 15-20485-A-7 JOSEPH/MALOURDES SPINALI
FF-5
VS. PORTFOLIO RECOVERY ASSOC., L.L.C.
MOTION TO AVOID JUDICIAL LIEN
11-16-15 [86]

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

The motion will be granted.

A judgment was entered against the debtor Joseph Spinali in favor of Portfolio Recovery Associates, L.L.C. for the sum of $4,613.04 on May 20, 2011. The abstract of judgment was recorded with Sacramento County on October 28, 2011. That lien attached to the debtor's residential real property in Carmichael, 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 $272,000 as of the petition date. Docket 88 ¶ 3; Docket 89, Ex. 1. The court rejects the $288,000 valuation of the property by appraiser Jessica Dutra, as that valuation is as of July 8, 2015, approximately six months after the January 23, 2015 petition date. Docket 89, Ex. 3. The debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. Culver, L.L.C. v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

The unavoidable liens against the property totaled $281,601.27 on that same date, consisting of a single mortgage in favor of JP Morgan Chase Bank. Docket 89, Ex. 4. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $19,000 in Schedule C. Docket 89, Ex. 2.

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).

As a final note, even if the court were to consider Ms. Dutra's $288,000 valuation of the property, the subject judicial lien still fully impairs the debtor's exemption claim, given that the exemption is in the amount of $19,000, exhausting the entire $6,398.73 of equity in the property.

28. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN
FF-6
VS. LVNV FUNDING, L.L.C. — 11-16-15 [76]

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

The motion will be granted.

A judgment was entered against the debtor Joseph Spinali in favor of LVNV Funding, L.L.C. for the sum of $14,749.35 on November 5, 2010. The abstract of judgment was recorded with Sacramento County on January 17, 2012. That lien attached to the debtor's residential real property in Carmichael, 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 $272,000 as of the petition date. Docket 78 ¶ 3; Docket 79, Ex. 1. The court rejects the $288,000 valuation of the property by appraiser Jessica Dutra, as that valuation is as of July 8, 2015, approximately six months after the January 23, 2015 petition date. Docket 79, Ex. 3. The debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. Culver, L.L.C. v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

The unavoidable liens against the property totaled $281,601.27 on that same date, consisting of a single mortgage in favor of JP Morgan Chase Bank. Docket 79, Ex. 4. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $19,000 in Schedule C. Docket 79, Ex. 2.

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).

As a final note, even if the court were to consider Ms. Dutra's $288,000 valuation of the property, the subject judicial lien still fully impairs the debtor's exemption claim, given that the exemption is in the amount of $19,000, exhausting the entire $6,398.73 of equity in the property.

29. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN
FF-7
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 11-16-15 [81]

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

The motion will be granted.

A judgment was entered against the debtor Joseph Spinali in favor of Portfolio Recovery Associates, L.L.C. for the sum of $1,569.43 on September 30, 2013. The abstract of judgment was recorded with Sacramento County on February 27, 2014. That lien attached to the debtor's residential real property in Carmichael, 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 $272,000 as of the petition date. Docket 83 ¶ 3; Docket 84, Ex. 1. The court rejects the $288,000 valuation of the property by appraiser Jessica Dutra, as that valuation is as of July 8, 2015, approximately six months after the January 23, 2015 petition date. Docket 84, Ex. 3. The debtor's rights to avoid a judicial lien on exemption-

impairment grounds is determined as of the petition date. Culver, L.L.C. v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

The unavoidable liens against the property totaled $281,601.27 on that same date, consisting of a single mortgage in favor of JP Morgan Chase Bank. Docket 84, Ex. 4. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $19,000 in Schedule C. Docket 84, Ex. 2.

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).

As a final note, even if the court were to consider Ms. Dutra's $288,000 valuation of the property, the subject judicial lien still fully impairs the debtor's exemption claim, given that the exemption is in the amount of $19,000, exhausting the entire $6,398.73 of equity in the property.

30. 15-26985-A-7 SCOTT HOMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 11-20-15 [26]
U.S. BANK, N.A. VS.

Final Ruling: This motion has been continued to February 29, 2016 at 10:00 a.m. Docket 32.

31. 15-26488-A-7 ERIC/KARRI BENSON — MOTION TO DISMISS CASE
UST-1 — 11-10-15 [24]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the trustee, 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 and the case will be dismissed.

The United States Trustee moves for dismissal under 11 U.S.C. § 707(b)(3), which provides that the court can determine the existence of abuse under section 707(b)(1) by considering (A) whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances of the debtor's financial situation demonstrates abuse.

The debtors have checked the box on their petition indicating that their debts are primarily consumer debts. Docket 1 at 1.

The totality of the circumstances of the debtor's financial affairs demonstrates abuse in this case. The debtors have not provided the movant with

documentation of their purported $150 a month charitable donations. Their purported $830 a month health care expense does not appear to be an actual and on-going expense, as the debtor testified that the expense involved "the likely prospect of additional services related to substance abuse rehabilitation." Docket 26 at 10.

Further given the ready availability of public schools in the area where the debtors live, the $670 a month private school tuition for their nine-year old daughter is not a reasonably necessary expense.

With the above adjustments to the debtors' monthly budget, their disposable income in Schedule J increases from a negative $816.59 to a positive $833.41. This will enable the debtors to pay $45,004.14 or 33% dividend to general unsecured creditors in a chapter 13 case.

In addition to the foregoing, upon receiving financial records from the debtors, the movant discovered that they spent approximately $37,000 between November 20, 2014 and January 22. Just before filing this case on August 14, 2015, the debtors went on two vacations. The movant also discovered a savings bank account the debtors had not disclosed on their petition.

The totality of the foregoing amounts to abuse under section 707(b)(3)(B). Accordingly, the case will be dismissed. It is unnecessary to address other basis for dismissal.