UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 1, 2017 at 10:00 a.m.

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.

1.	16-28200-D-7	BENJAMIN RODRIGUEZ	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 12-14-16 [5]

2. 11-34330-D-7 WILLIAMS/BLESSING IYASERE MOTION FOR CONTEMPT
PGM-1 12-15-16 [181]

Final ruling:

This is a motion ostensibly of the debtors seeking an "Order to Show Cause Concerning the Violation of Discharge under 11 U.S.C. § 1328" against Isabella Garcia, dba Alliance Financial, and Rajinder Sharma. Order to Show Cause – Motion for Contempt, DN 181 ["Mot."], at 1:22-23.[1] The motion will be denied for the following reasons.

First, the motion and notice of hearing were signed by an attorney who is not the debtors' attorney of record in this case. The case has been closed and reopened twice, first on the motion of one attorney who was not the debtors' attorney of record, and this time, by yet another attorney who is not the debtors' attorney of record; that is, who has not substituted in as their counsel. The court understands that attorneys sometimes purchase other attorneys' practices and that may be what happened here. However, that does not relieve the new attorney from the duty to become attorney of record for the debtors before acting on their behalf.

Second, the amended notice of hearing incorrectly states the location where the hearing will be held as the 5th Floor, Courtroom 33.

Third, the motion seeks relief appropriately sought only by adversary proceeding. Although the motion begins by asserting the debtors seek an order to show cause for violation of the discharge, and although it includes a discussion of the law of civil contempt, the request for relief is as follows:

> **WHEREFORE, Debtors prays [sic] for a judgment against Alliance as follows:**
>
> **a. That the Court issue a judgment holding the abstract of Judgment lien recorded by Allaince [sic] to be an unsecured lien and therefore be treated as an unsecured claim;**
>
> **b. That the Court issue a judgment holding that the Abstract of Judgment recorded by Allaince [sic] is extinguished and has no further force and effect as a secured lien against the Debtors's [sic] real property;**
>
> **c. That the Court issue a judgment in a format allowed for recording that voids the Abstract of Judgment.**
>
> **d.-h. [For attorney's fees and costs and such further relief as the court deems just and proper.]**

These types of relief may be sought only by adversary proceeding and not by motion. Fed. R. Bankr. P. 7001(2) and (9).

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

---

1 The "motion" should not have been entitled Order To Show Cause, which implies it is an order of the court.

3. 16-26230-D-7 SANDRA NORMAN
RJM-1

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
12-21-16 [17]

Tentative ruling:

This is the debtor's motion for an order finding Comenity Bank (the "Bank") in contempt for violating the automatic stay, awarding the debtor no less than $500 in sanctions, granting the debtor's counsel leave to file a separate motion for attorney's fees, and ordering the Bank to immediately cease all collection activity. The Bank has not filed opposition. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

The debtor commenced this chapter 7 case on September 19, 2016. She listed "Comenity Bank/avenue" on her Schedule F as being owed $832. Notice of the bankruptcy was sent electronically to the Bank by the Bankruptcy Noticing Center on September 22, 2016. Nevertheless, the debtor thereafter received what she calls, variously, a collection invoice and a collection letter from the Bank stating that unless they heard from her soon, they would "permanently close your account and write it off as a bad debt" (Debtor's Decl., DN 19, at 2:1; Debtor's Ex. A) and the account would then be turned over to the Bank's Recovery team. The notice (which appears to the court to be an ordinary monthly billing statement with the language challenged by the debtor under the heading "Additional important messages") asks the debtor to visit the Bank's website to schedule a payment or to call an 800 number to make a payment or discuss payment options. The notice was dated October 22, 2016.

The debtor forwarded the notice to her bankruptcy attorney. Regarding her alleged damages, the debtor testifies: "I was under the impression that all of my creditors, including Comenity, would stop harassing me once I filed my bankruptcy case. This notice caused me great stress. I want my creditors to leave me alone while I work through my bankruptcy – a process that I initiated only as a last resort." Debtor's Decl. at 2:6-8. The motion adds that the debtor "has been feeling depressed, anxious, and hopeless because Comenity is threating [sic] to write off the account as bad debt and turn it over to collectors at the same time Debtor is trying to get back on her feet and rebuild her credit in order to move forward with her life." Debtor's Mot., DN 17, at 2:11-14.

The debtor's attorney testifies, "After the collection notice, my client asked me what could be done to force Comenity Bank to cease their collection activity. I have incurred in excess of five hours of attorney time to work on this matter for my client. I intend to file a separate Motion for Attorneys' Fees at the conclusion of this matter." R. Morin Decl., DN 20, at 2:1-4.

In other words, no one took the trouble to pick up the phone and call the 800 number to ensure the Bank was aware of the bankruptcy filing. There is no indication that if the debtor or her counsel had done that, the Bank would have refused to stop sending bills to the debtor. The motion states that "Comenity has given no indication to Debtor that it intends to stop violating the automatic stay." Mot. at 4:10-11. This speculation notwithstanding, in the two months between the date of the October 22, 2016 notice and the date this motion was filed, the Bank had apparently taken no further action to collect on the debt; in any event, the moving papers mention none.

Section 362(k) of the Bankruptcy Code provides that, with an exception not applicable here, "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k) (emphasis added). Thus, a prima facie case for damages "requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Fernandez v. GE Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (9th Cir. BAP 1998). The "injury" requirement means a debtor must show he or she suffered actual damages. Sorkilmo v. Countrywide Home Loans, Inc. (In re Sorkilmo), 2007 Bankr. LEXIS 4928, *13 (9th Cir. BAP 2007), citing Wolkowitz v. Shearson Lehman Bros. (In re Weisberg), 193 B.R. 916, 927 (9th Cir. BAP 1996).

The debtor does not allege any actual damages other than that her attorney should be compensated for his work in preparing and filing this motion. She does, however, refer to the "great stress" she suffered from the Bank's billing statement and she seeks an award of punitive damages. The court will take these in reverse order.

First, "[a]n award of punitive damages requires 'some showing of reckless or callous disregard for the law or rights of others.'" Snowden v. Check into Cash of Wash., Inc. (In re Snowden), 769 F.3d 651, 657 (9th Cir. 2014). Here, there is no showing the single billing statement issued by the Bank was anything other than a mistake, probably a situation where the right hand received the bankruptcy notice but the left hand sent out the billing statement. There is no showing of recklessness or callous disregard.

Second, although "actual damages" may include damages for emotional distress (Dawson v. Wash. Mut. Bank (In re Dawson), 390 F.3d 1139, 1148 (9th Cir. 2004)), to recover, the debtor must "(1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." Id. at 1149. "Fleeting or trivial anxiety or distress does not suffice . . . ." Id.

> A person may clearly establish significant emotional harm in several ways. First, the person may offer corroborating medical evidence. Second, the person may offer testimony by non-experts, including family members, friends, or coworkers that the person manifested serious mental anguish. Third, significant emotional harm may be established if the violator's conduct was egregious or if "the circumstances [] make it obvious that a reasonable person would suffer significant emotional harm."

Check Into Cash of Wash., Inc. v. Snowden (In re Snowden), 2013 U.S. Dist. LEXIS

33748, *4 (W.D. Wash. 2013), citing Dawson, 390 F.3d at 1149-50.

The debtor's only evidence is her testimony that a single instance of what looks like an ordinary billing statement, issued one month post-petition, with the notation that if she did not contact the creditor, it would close the account, write it off, and turn the matter over to its recovery team, caused her "great stress." She offers no corroborating evidence; the issuance of the billing statement has not been shown to be egregious; and the circumstances do not indicate a reasonable person would have suffered significant emotional harm from the billing statement. A single email to her attorney, which the debtor testifies she sent, should have sufficed to reassure her she did not need to pay the bill or to contact the Bank.

That email, in turn, should have prompted an attempt on the part of the debtor's attorney to resolve the matter short of seeking court intervention. A single phone call to the 800 number listed on the billing statement might well have sufficed to alert the Bank's billing department to the bankruptcy filing and have it adjust its billing program accordingly. Had the debtor's counsel took reasonable measures to resolve the matter without success, a motion for sanctions may well have been appropriate. But he did not. Instead, it appears he used the billing statement as a means of manufacturing an award of attorney's fees for himself.

This brings the court to the final form of relief requested: attorney's fees. Section 362(k) authorizes an award of attorney's fees for seeking a recovery of damages as well as fees incurred in bringing the stay violation to an end. America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1101 (9th Cir. 2015). However, "in determining reasonable damages under § 362(h) [now § 362(k)], the bankruptcy court must examine whether the debtor could have mitigated the damages." Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 12 (9th Cir. BAP 2002). "Courts especially scrutinize cases where the debtor's only injuries are those incurred in litigating the motion for sanctions, and where there exist no circumstances warranting punitive damages." Id. In this case, the debtor's only injuries – at any rate, her only compensable injuries, are the fees incurred by her counsel in bringing this motion. As counsel could likely have mitigated the damages by way of a simple phone call or letter, the court concludes that the fees were not reasonably incurred.

> Appellants have shown no actual damages. They were inconvenienced and annoyed, but fully intended to return the vehicle to the Appellee, anyway. The attorney's fees would not have been incurred but for the bringing of the motion. The Appellee's "invasion of [Appellants'] right to be left alone and the disruption its invasion caused in their lives" does not justify a monetary award for actual damages. The bankruptcy judge was correct in not making an award of actual damages. Only if an award of punitive damages were warranted would the debtors be justified in bringing the motion and in incurring additional attorney's fees relative thereto.

McHenry v. Key Bank (In re McHenry), 179 B.R. 165, 168 (9th Cir. BAP 1995).

For the reasons stated, the motion will be denied. The court will hear the matter.

4. 12-30140-D-12 DF-7 — PAUL/BETTY DAVIS — MOTION FOR ENTRY OF DISCHARGE 12-31-16 [116]

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 debtors' motion for entry of their discharge in this Chapter 12 case pursuant to 11 U.S.C. § 1228 is supported by the record. As such the court will grant the motion and moving party is to submit an appropriate order by minute order. No appearance is necessary.

5. 16-28247-D-7 — IVAN GRABLE — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 12-16-16 [5]

6. 16-21659-D-7 CDH-3 — TRONG NGUYEN — CONTINUED MOTION TO ABANDON 11-30-16 [73]

Final ruling:

The hearing on this motion is continued to March 15, 2017 at 10:00 a.m. No appearance is necessary on February 1, 2017.

7. 16-28360-D-7 — JOSEPH GLADNEY — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 12-21-16 [5]

8. 16-27470-D-7 TIANNA LIND
ASW-1
SUNTRUST MORTGAGE, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-16 [14]

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.

9. 16-26188-D-7 LISA BONNER
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-16 [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. The debtor received her discharge on January 6, 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.

10. 16-27921-D-7 ANGELINA/CARL CORSI
SKS-1

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-29-16 [9]

Final ruling:

The debtors appeared at the continued Meeting of Creditors on January 27, 2017 and the trustee concluded the proceeding at that time. Accordingly, the motion to dismiss will be denied by minute order. No appearance is necessary.

11. 17-20038-D-12 LANE FAMILY LIMITED PARTNERSHIP NO. ONE
MF-1

CONTINUED MOTION TO USE CASH COLLATERAL
1-6-17 [11]

Final ruling:

The hearing on this motion is continued to February 9, 2017 at 9:30 a.m. pursuant to the ordered entered on January 21, 2017. No appearance is necessary on February 1, 2017.

12. 16-25239-D-7 DIVINDER HUNDAL — CONTINUED MOTION FOR TURNOVER OF PROPERTY
CDH-3 — 12-21-16 [62]

13. 16-25239-D-7 DIVINDER HUNDAL — MOTION TO COMPEL ABANDONMENT
DAO-3 — 1-18-17 [77]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon a 2014 Dodge Ram 3500 truck. The motion will be denied because the moving party served only the chapter 7 trustee, her attorney, and the United States Trustee. She served no creditors. She failed to serve any of the several creditors who have filed claims in this case, the creditor that has requested special notice, or the other scheduled creditors.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of Fed. R. Bankr. P. 6007. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

Because the moving party failed to serve all creditors, the motion will be denied by minute order. In the alternative, the court will continue the hearing to allow the moving party to address the service defect. The court will hear the matter.

14. 16-27349-D-11 JACOB WINDING — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-9-17 [58]

Final ruling:

This case was dismissed on January 19, 2017. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

15. 16-27672-D-12 DAVID LIND — CONTINUED MOTION TO DISMISS CASE
JPJ-1 — 12-22-16 [32]

16. 16-27672-D-12 DAVID LIND — CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
11-18-16 [1]

17. 16-27672-D-12 DAVID LIND — MOTION TO CONVERT CASE FROM CHAPTER 12 TO CHAPTER 11
GMW-2 — 1-18-17 [42]

18. 13-35288-D-7 DUSTIN/KAREN BOLE — MOTION FOR SANCTIONS
14-2097 — 1-13-17 [213]
GENERAL COUNCIL OF THE ASSEMBLIES OF GOD V. BOLE ET

Final ruling:

This is the defendants' motion for sanctions against the plaintiff, an officer of the plaintiff, a publishing company, three law firms, and 11 attorneys. The certification of service of the motion purports to evidence service on December 23, 2016; however, the certification was not filed until January 13, 2017, in violation of LBR 9014-1(e)(2).[1] Further, none of the moving papers advised the potential respondents whether written opposition was required, and if so, when, as required by LBR 9014-1(d)(4). For both of these reasons, the court construes the motion as having been brought pursuant to LBR 9014-1(f)(2): no written opposition was

required and none has been filed. The court finds that regardless of whatever opposition one or more of the respondents might advance, the motion should be – and will be – denied for three reasons.

The motion states that the defendants are seeking sanctions against the plaintiff, its law firms, the firms' managing partners, and the associate in one of the firms who has been the most active attorney in this adversary proceeding, pursuant to Fed. R. Bankr. P. 9011 and the court's inherent powers. The motion begins:

> New evidence was found by the Defendants, proves what the Plaintiff's counsel was constantly denying, that the Northern California/Nevada District of the Assemblies of God and The General Council of the Assemblies of God use same the legal counsel. Exhibit D-143 is a copy of The General Council of the Assemblies of God "Organizational Manual" which is Article XII of the Plaintiff's own Constitution and Bylaws. [Exhibit D-143, page 8, paragraph 5]. This is just the beginning of the Bad Faith that the Plaintiff and their Counsel have given to the Defendants and to this Court. Clearly the Plaintiff's Counsel is unaware of neither their client business nor the structure of their business. [Exhibit D-143, page 8, paragraph 5]

Defendants' Motion, DN 213 ("Mot."), at 2:18-27. The defendants go on to quote at length from what they claim are the Constitution and Bylaws of the Assemblies of God, Northern California & Nevada District Council, Inc., apparently a local district council having some connection to the plaintiff, the General Council of the Assemblies of God. The quotations concern the goals of the General Council and the District Council, the internal government of both, and the relationship between the two. The defendants' point, so far as the court can make out, is to demonstrate the following:

> The Plaintiff and their Counsel were well aware that the Defendants purchased the entire inventory from the Northern California/Nevada District of the Assemblies of God, ALL documents provided as the Defendant's Exhibits were provided by the Plaintiff and their affiliate. This shows that the Plaintiff was well aware that their District was manufacturing and making copies of the items that the Defendants are being accused of Infringing on the Copyrights and Trademarks. This is another demonstration of Bad Faith and not only was the original lawsuit (case# 1: 10-cv-07050) filed frivolously, but this Adversarial Hearing is frivolous as well on the part of the Plaintiff and their counsel. It's the equivalent of purchasing product from a Disneyland store while at Disneyland, then Disney filing a lawsuit against you for Copyright and Trademark Infringement when selling the products that you purchased from Disney because the Disneyland store that you purchased the items from where [sic] making their own products.

Mot. at 6:14-25. The defendants charge the potential respondents with willful and malicious fraud and harassment, both in the filing and prosecution of this adversary proceeding and in the underlying federal district court litigation in Illinois that resulted in a judgment against them. They seek an award of sanctions under Fed. R. Bankr. P. 9011 or the court's inherent powers.

There are at least three problems. First, the defendants failed to comply with the "safe harbor" provisions of Fed. R. Bankr. P. 9011(c)(1). Second, the court

issued a final ruling on January 18, 2017 determining that the plaintiff's remaining claims against the defendants in this proceeding; that is, those claims not already disposed of, would be dismissed with prejudice, with each party to bear its or their own attorney's fees and costs. With the dismissal of the plaintiff's claims, there are no outstanding claims remaining in the adversary proceeding and, upon the plaintiff's submission of an appropriate form of order granting its motion to dismiss, the adversary proceeding will be closed. In short, this motion comes far too late, if it would ever have been appropriate at all, which, as discussed below, appears unlikely. The court notes that none of the allegations made in this motion was included in the defendants' opposition to the plaintiff's motion to dismiss.

Third, the court has previously determined that any claims the defendants might have against the plaintiff are property of the defendants' bankruptcy estate and not property of the defendants. The same is true of any claims the defendants may have against the other potential respondents named in this motion. The defendants listed no claims against anyone in their chapter 7 case, and all of their claims and causes of action against others, as of the petition date, are property of the estate. The conduct alleged in the defendants' present motion is overwhelming pre-petition conduct. The only allegations of post-petition conduct are that the plaintiff and its attorneys filed and prosecuted this adversary proceeding fraudulently and maliciously and for their own self-promotion and financial gain. These are general allegations with no specifics other than the defendants' speculation and are unsupported by admissible evidence. Further, the specific relief sought is precisely calculated based on the defendants' alleged inventory and business losses, and although the alleged business losses include alleged losses for post-petition years, as loss of future revenue, the conduct on which the claims are based was entirely pre-petition.[2] And although the motion is couched in terms of Rule 9011 and the court's inherent power to sanction, the amount sought is labeled "Total Relief for Damages and Losses Sought – $30,399,243.46." It is clear the amounts making up this total, although they include alleged business losses for post-petition periods, are all based on pre-petition conduct. Thus, the claims are property of the estate and the defendants have no standing to pursue them.

For the reasons stated, the court has no need to hear from the potential respondents and the motion will be denied by minute order. No appearance is necessary.

---

1 The motion itself, although dated December 23, 2016, was not filed until January 13, 2017, five days before the scheduled hearing on the plaintiff's motion to dismiss its remaining claims against the defendants. The defendants included a hearing date of January 18, 2017 on the motion, apparently to coincide with the hearing on the plaintiff's motion. In response to the clerk's office's notice that a separate notice of hearing would be required, the defendants, on January 17, 2017, filed a "Notice of Change of Hearing Date" by which they scheduled this matter for hearing on this date.

2 A tiny portion of the total, $5,694.65, is listed as "reimbursement for expenses of costs incurred to date." The expenses are not itemized or proven, and even if they had been, the motion comes too late, the court having already ruled that the parties are to bear their own fees and costs.