**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**February 23, 2015 at 10:00 a.m.**

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

1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 24

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 MARCH 23, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 9, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 16, 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. 15-20102-A-7 MUKHTIAR TAKHER — MOTION FOR
PA-3 — RELIEF FROM AUTOMATIC STAY
BANK OF FEATHER RIVER VS. — 2-9-15 [31]

**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, Bank of Feather River, seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of $750,000 and it is encumbered by claims totaling approximately $1,117,157. The movant's deed is in first priority position and secures a claim of approximately $795,369.

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.

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.

2. 14-31810-A-7 MAHMOOD DEAN
HCS-2

MOTION TO
SELL AND TO EMPLOY AUCTIONEER
1-26-15 [21]

**Tentative Ruling:** The motion will be granted.

The trustee is seeking to sell to the debtor an unencumbered 2006 Chevy Impala vehicle. The vehicle has a value of $3,975 and it is subject to an exemption of $2,900 by the debtor. The proposed purchase price is $1,075.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate, without the cost of selling the vehicle at an auction. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

The trustee is also asking for the court to approve the sale of seven unencumbered other vehicles via an auction to be conducted by West Auctions. The vehicles include a 1998 Ford F550, an USA 40 foot Goosneck trailer, a 1998 Ford F350, a 2009 16' flatbed trailer, a 17' flatbed fuel trailer, a 2004 freightliner truck, and a 1980 Invader boat with trailer.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

Finally, the trustee asks for approval of West's employment as auctioneer for the estate.

The proposed compensation arrangement is a 12% commission along with reimbursement of reasonable expenses incurred in preparing the property for sale, not exceeding $3,800. West anticipates to incur $2,000 for transportation expenses, $1,275 for storage expenses, and $525 for DMV processing fees.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. West is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Its employment will be approved.

3. 14-31019-A-7 MICHAEL ANDRADA
MPA-1

MOTION TO
REDEEM
1-20-15 [21]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor seeks to redeem a 2011 VW Jetta. The vehicle is subject to a claim held by VW Credit, Inc. for approximately $11,808. The debtor seeks to redeem the vehicle for $2,337.

The motion will be denied. The court does not have admissible evidence, in the form of exhibits authenticated by a declaration, about the value of the vehicle, the condition of the vehicle, the mileage of the vehicle, and the retail value of reconditioning the vehicle.

Further, the motion was not served properly. It was served on National Bankruptcy Services L.L.C. as "authorized agent for VW." Docket 24. But, VW is not the respondent creditor here. According to the motion, the respondent creditor here is VW Credit, Inc. And, according to the California Secretary of State, National Bankruptcy Services L.L.C. is not the agent for service of process for VW Credit, Inc. Accordingly, the motion will be denied.

4. 14-31625-A-7 JASON DYAS — MOTION FOR
CJO-1 — RELIEF FROM AUTOMATIC STAY
GREEN TREE SERVICING, L.L.C. VS. — 2-4-15 [11]

**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, Green Tree Servicing, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of $260,000 and it is encumbered by claims totaling approximately $316,185. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 26, 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.

5. 14-27937-A-7 BETTY SMITH — MOTION TO COMPEL ABANDONMENT
PLC-3 — 1-29-15 [57]

**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 creditors, 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 debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Oroville, California.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtor has produced evidence that the property has a value of $99,000. Docket 59 at 2. The property has no encumbrances. The debtor has exempted $155,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the value of the property and the exemption claim against the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

6. 14-32070-A-7 CAPITOL AIR SYSTEMS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 1-29-15 [40]
ALLY BANK 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, Ally Bank, seeks relief from the automatic stay with respect to a 2013 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $18,664 and its secured claim is approximately $36,644.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

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| 7. | 14-32070-A-7<br>SW-2<br>ALLY BANK VS. | CAPITOL AIR SYSTEMS,<br>INC. | MOTION FOR<br>RELIEF FROM AUTOMATIC STAY<br>1-29-15 [46] |

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $9,487 and its secured claim is approximately $20,049.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

8. 14-32070-A-7 SW-3 ALLY BANK VS.
CAPITOL AIR SYSTEMS, INC.
MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [16]

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2012 Chevrolet Colorado. The movant has produced evidence that the vehicle has a value of approximately $10,933 and its secured claim is approximately $17,113.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

9. 14-32070-A-7 SW-4 ALLY BANK VS.
CAPITOL AIR SYSTEMS, INC.
MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [52]

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $9,487 and its secured claim is approximately $19,322.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

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| 10. | 14-32070-A-7<br>SW-5<br>ALLY BANK VS. | CAPITOL AIR SYSTEMS,<br>INC. | MOTION FOR<br>RELIEF FROM AUTOMATIC STAY<br>1-29-15 [58] |

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $7,212 and its secured claim is approximately $12,596.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

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| 11. | 14-32070-A-7<br>SW-6<br>ALLY BANK VS. | CAPITOL AIR SYSTEMS,<br>INC. | MOTION FOR<br>RELIEF FROM AUTOMATIC STAY<br>1-29-15 [64] |

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2007 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $6,391 and its secured claim is approximately $11,809.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

12. 14-32070-A-7 SW-7 ALLY BANK VS.
CAPITOL AIR SYSTEMS, INC.
MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [22]

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Equinox. The movant has produced evidence that the vehicle has a value of approximately $14,822 and its secured claim is approximately $13,467.

The court concludes that there is minimal equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court notes that the trustee filed a non-opposition to the motion.

More, the movant has not received payments on account of the loan secured by the vehicle since July 2014. The court also notes that the debtor is a corporation that is no longer operating. The above is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

As the copy of the loan agreement submitted by the movant is illegible, 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. Docket 26, Ex. A.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

13. 14-32070-A-7 SW-8 ALLY BANK VS.

CAPITOL AIR SYSTEMS, INC.

MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [28]

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $10,440 and its secured claim is approximately $16,642.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

14. 14-32070-A-7 SW-9 ALLY BANK VS.

CAPITOL AIR SYSTEMS, INC.

MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [34]

**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, Ally Bank, seeks relief from the automatic stay with respect to a 2011 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $16,658 and its secured claim is approximately $20,427.

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

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

15. 10-40477-A-7 MICHAEL/STACIE RODRIGUEZ — MOTION TO AVOID JUDICIAL LIEN
MJR-4
VS. AMERICAN EXPRESS CENTURION BANK — 2-9-15 [53]

**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 Debtor Stacie Rodriguez in favor of American Express Bank for the sum of $17,553.81 on April 27, 2010. The abstract of judgment was recorded with San Joaquin County on July 1, 2010. That lien attached to the debtor's residential real property in Escalon, 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 $190,000 as of the petition date. Dockets 56 & 1. The unavoidable liens totaled $417,000 on that same date, consisting of a first mortgage in favor of JPMorgan Chase Bank for $224,400 and a second mortgage in favor of Wells Fargo Bank for $192,600. Dockets 56 & 1.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C and Amended Schedule C. Dockets 1 & 29.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

16. 14-29681-A-7 LAURYL ROELOFS — MOTION TO AVOID JUDICIAL LIEN
HLG-2
VS. TARGET NATIONAL BANK — 1-30-15 [22]

**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 Target National Bank for the sum of $11,005.35 on June 25, 2010. The abstract of judgment was recorded with Sacramento County on September 15, 2011. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $172,650 as of the petition date. Dockets 24 & 25. The unavoidable liens totaled $79,229.36 on that same date, consisting of a first mortgage in favor of Bank of America for $36,876.77 and a second mortgage in favor of Bank of America for $42,352.59. Docket 25. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended Schedule C. Docket 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 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).

17. 14-30888-A-7 ALEXANDRE MACK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JAE-1
VARUN PATEL VS. — 1-16-15 [59]

**Tentative Ruling:** The motion will be granted in part.

The movant, Varun Patel, seeks relief from the automatic stay as to a real property in El Monte, California.

The movant is the legal owner of the property and Rosalinda Pena leased it from the movant. Ms. Pena defaulted under the lease agreement on November 3, 2014, the same date the debtor filed the instant bankruptcy case as a chapter 13 proceeding.

Without knowledge of the instant bankruptcy case, the movant served Ms. Pena and all occupants of the property with a three-day notice to pay or quit on November 5, 2014. The three-day notice expired without payment or vacation of the property. On November 19, the movant filed an unlawful detainer action in state court. On December 22, 2014, the debtor filed an answer to the complaint and a notice of stay given the pending bankruptcy case. In the answer, the debtor asserted that she was an occupant of the subject property, although the lease did not list her as an occupant.

The movant had no knowledge of the pending bankruptcy case prior to December 22, 2014. An eviction trial was held on December 23 against Ms. Pena. As result, the state court awarded possession of the property to the movant and awarded the movant back rent, damages and attorney's fees against Ms. Pena.

The instant bankruptcy case was converted from chapter 13 to a chapter 7 proceeding on November 26, 2014.

The movant seeks annulment of the stay ratifying all actions taken from November 3, 2014 onward. In addition, the movant seeks prospective relief from stay. The movant asserts that this case was filed in bad faith.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

The court does not have sufficient evidence to award relief from stay on the basis of bad faith. The court has no evidence of prior bankruptcies by the debtor and it is not convinced that the debtor filed this case to hinder the movant's efforts to obtain possession of the property.

Nevertheless, the court will annul the stay for the period of November 3, 2014, when this case was filed, through December 23, 2014, when the movant discovered the pendency of this case.

The movant did not know of the bankruptcy case during this time and, once he found out about the case, the movant ceased prosecuting the eviction against the debtor and continued the prosecution only against Ms. Pena, the non-filing lessee under the lease agreement.

More, as a purported occupant of the property, the debtor's rights under state law are preserved and she is not prejudiced. The December 23 eviction trial is

not binding on him. The debtor is free to assert his rights as an occupant of the property in state court. He may ask the state court to determine his right for possession of the property.

More, it was the debtor who elected to wait approximately five weeks before informing the state court and the movant of the bankruptcy stay. While the debtor knew of the bankruptcy case since its filing on November 3, he did not apprise the state court and the movant of the bankruptcy until approximately December 22 or 23.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, the lessee under the lease agreement, Ms. Pena, has defaulted under the lease agreement by failing to pay the rent due from November 2014 onward.

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) to permit the movant and the debtor to go back to state court in order for that court to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

No fees and costs will be 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 waived.

18. 14-29292-A-7 JAMES KING — MOTION TO DISMISS CASE
MAS-1 — 2-2-15 [30]

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

Creditor Ethan Conrad seeks dismissal of this case solely pursuant to 11 U.S.C. § 707(b)(2), arguing that the debtor's debts are primarily consumer debts under section 707(b)(1), and that the presumption of abuse exists under section 707(b)(2)(A).

The movant is not seeking dismissal pursuant to 11 U.S.C. § 707(b)(3).

11 U.S.C. § 707(b)(1) provides that, after notice and a hearing, on its own motion or on a motion by the U.S. Trustee, the court may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it concludes that the granting of chapter 7 relief would be an abuse of the chapter 7 provisions.

A presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) when a debtor's current monthly income, reduced by the amounts permitted by subsections (ii), (iii), and (iv) of 11 U.S.C. § 707(b)(2)(A), and multiplied by 60, is no less than the lesser of 25% of the debtor's non-priority unsecured claims or $7,475, whichever is greater, or $12,475. See 11 U.S.C. § 707(b)(2)(A)(i), as amended by 78 F.R. 12089.

In other words, if after deducting all allowable expenses from a debtor's current monthly income, the debtor has less than $124.58 in net monthly income

(*i.e.*, less than $7,475 to fund a 60 month plan), a chapter 7 petition is not presumed abusive. If the debtor has monthly income of more than $207.92 (or $12,475) to fund a 60-month plan, a chapter 7 petition is presumed abusive. And, if the debtor has between $124.58 and $207.92 of monthly disposable income, a presumption of abuse exists if that sum, when multiplied by 60 months, will pay 25% or more of the debtor's non-priority unsecured debts.

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

A review of the debtor's petition documents shows that his debts are primarily consumer debts. A review of Schedule D shows that the collateral for the debtor's three secured debts - totaling approximately $301,564 - is a real property, a vehicle and a motorcycle, which are reflective of consumer debt. Schedule E lists no debt and Schedule F lists only approximately $48,340 in debt. Accordingly, the debtor's debts were incurred mainly for a personal, family or household purpose.

Further, the movant argues that the debtor's actual expenses should be less and not as represented on the debtor's schedules:

(1) Monthly tax payments by the debtor should be reduced from $1,482 to $328, which is a difference of $1,154. In other words, the debtor is over-withholding taxes from income.

(2) Monthly charitable donations by the debtor are not $1,000 as indicated in both the Original Schedule J and Amended Schedule J (Dockets 1 & 22), but they are approximately $704, which is a difference of $296.

(3) Monthly motorcycle loan payments of $100 should be $0.00 because the debtor indicated at the meeting of creditors that he intended to surrender his motorcycle, which is a difference of $100. American Express bank v. Smith (In re Smith), 418 B.R. 359, 369 (B.A.P. 9th Cir. 2009) (holding that expenses related to property being surrendered to a secured creditor are not reasonable and necessary expenses that may be deducted from current monthly income).

(4) Monthly motorcycle insurance payments of $188 should be $0.00 because the debtor indicated at the meeting of creditors that he intended to surrender his motorcycle, which is a difference of $188. American Express bank v. Smith (In re Smith), 418 B.R. 359, 369 (B.A.P. 9th Cir. 2009) (holding that expenses related to property being surrendered to a secured creditor are not reasonable and necessary expenses that may be deducted from current monthly income).

(5) Monthly voluntary 401(k) contributions of $395 should be $0.00 because, the movant argues, "[s]uch amounts are not necessary expenses within the meaning of 11 U.S.C. § 707(b)(2)(a)(ii) [*sic*]." Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (B.A.P. 9th Cir. 2012).

In other words:

- the amount in **line 22A** should decrease from $472 to $284 (subtracting the insurance cost for the motorcycle);

- the amount in **line 25** of Form B22A should decrease from $1,482.32 to $328.32

(due to over-withholding);

- the amount in **line 40** should decrease from $1,000 to $704 (subtracting the overstated charitable donations); and

- the amount in **line 42** should decrease from $1,654.65 to $1,516 (subtracting the motorcycle debt payment).

While the court agrees that voluntary 401(k) contributions are not viable deductions in the calculation of the debtor's disposable income, the court has been unable to locate such deductions in the debtor's Form B22A. Nor is the motion helpful in pointing out where such contribution is deducted in the calculation of the debtor's monthly disposable income, which is a negative $974.94, as reflected in line 50 of Form B22A.

Nevertheless, the foregoing will alter the debtor's monthly disposable income for purposes of section 707(b)(2).

The change in lines 22A and 25 reduces **line 33** from $4,699.67 to $3,357.67. The change in line 40 reduces **line 41** from $1,185.10 to $889.10. The change in line 42 reduces **line 46** from $1,668.75 to $1,530.10. This in turn reduces **line 47** and **line 49** from $7,553.52 to $5,776.87.

To calculate line 50 - the debtors' monthly disposable income under section 707(b)(2), the amount in line 49, $5,776.87, must be subtracted from the amount in line 48, $6,578.58. This yields $801.71 for **line 50** and the debtor's monthly disposable income under section 707(b)(2).

This amount obviously exceeds the statutory threshold of $207.92. The court concludes then that there is presumption of abuse under section 707(b)(2). The debtor has not rebutted that presumption, nor has he requested conversion of the case to chapter 13. Accordingly, the motion will be granted and the case will be dismissed.

19. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN
LBG-1
VS. FORD MOTOR CREDIT COMPANY, L.L.C.
DBA LAND ROVER CAPITAL GROUP
11-26-14 [15]

**Tentative Ruling:** The motion will be denied.

The court continued the hearing on this motion from December 29, 2014 to January 26, 2015, and then once again to February 23, 2015, in order for the debtor to supplement the record. An amended ruling from January 26 follows below.

A judgment was entered against Jesse Wheeler in favor of Ford Motor Credit Company for the sum of $68,531.17 on April 22, 2010. The abstract of judgment was recorded with Placer County on December 1, 2010. That lien allegedly attached to two residential real properties in Roseville, California (2054 Blackheath Ln. & 3005 Acton Way). The debtor is seeking to have the lien avoided as to both real properties.

Unless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, the debtor cannot avoid the fixing of the lien under 11 U.S.C. § 522(f)(1). Weeks v. Pederson (In re Pederson), 230 B.R. 158, 161 (B.A.P. 9th Cir. 1999).

A debtor, who now has a sole ownership of his residence, could avoid a judicial lien that was imposed on the residence while he held a community property interest in it. "We hold that [section] 522(f)(1) of the Bankruptcy Code requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest." Law Offices of Moore & Moore v. Stoneking (In re Stoneking), 225 B.R. 690, 693 (B.A.P. 9th Cir. 1998) (citing to Farrey v. Sanderfoot, 500 U.S. 291, 299 (1991) (prohibiting the avoidance of liens created by a divorce decree on newly-acquired property interest, where the lien never attached to the debtor's prior interest in the property. in property in a divorce decree that extinguished all prior )).

The court has evidence from the debtor that the debt giving rise to the judgment and lien against the properties resulted "by [the debtor's] ex-husband Jesse Wheeler through his business while [the couple] were married." Docket 48 at 2. The debtor and her former spouse were married on August 28, 2004. They legally separated in 2011 and the marital dissolution judgment was entered on August 30, 2012, with an effective date of September 3, 2012. Docket 48 at 2; Docket 49 at 2-3.

In addition, the debtor and her former spouse were both on the title of the Blackheath Lane property. And, the debtor's former spouse was never on title of the Acton Way property. Docket 48 at 2.

However, the court still does not have adequate evidence that the lien in question actually attached to the interest in the two properties held by the debtor at the time the abstract of judgment was recorded.

The court has evidence that the lien resulted from debt incurred by the business of the debtor's former spouse, while they were still married.

But, the court does not have evidence that the debt giving rise to the lien was in fact community debt that can be satisfied from community property. For instance, the court has no evidence about the nature of the business owned by the debtor's former spouse. There is no evidence as to the legal form of the business - namely, sole proprietorship, corporation, partnership, etc. - and there is no evidence of the debtor's interest in the business.

If the business was the separate property of the debtor's former spouse - and not a community property asset, the debts of the business were also the separate debt of the debtor's former spouse. As such debts cannot be satisfied from community property assets and the debtor's separate property assets, the recordation of the subject abstract of judgment would not have created a lien on the debtor's interest - whether community or separate property interest - in the properties.

Hence, if the lien was based on separate property debt and it never attached to the debtor's interest in the Acton Way property, then there is no lien for the court to avoid as to that property.

On the other hand, if the lien was based on community property debt, it likely still did not attach to the debtor's interest in the Acton Way property because the fact that the debtor's former spouse was never on title for that property strongly suggests that the debtor kept her interest in the Acton Way property her own separate property asset. Once again, then, there is no lien for the court to avoid as to that property.

The separate property nature of the interest of the debtor's former spouse in the business and the separate property nature of the debtor's interest in the Acton Way property are strongly implied by the absence of those assets from the couple's stipulated judgment for dissolution, also seeming to serve as the couple's marital settlement agreement. Docket 49 at 4-5. Under the rubric of "[t]he community property and debts are divided as follows," the stipulated judgment lists only the following assets and liabilities: "truck (Ford F150), motorcycle," and "House, mortgage, volvo." Docket 49 at 4.

The reference to "House" is more likely than not to the Blackheath Lane property and not the Acton Way property, as the debtor's former spouse was never on title of the Acton Way property and, based on the debtor's address at the time the dissolution judgment was entered, the parties appear to have lived as a family prior to the divorce in the Blackheath Lane property.

Conspicuously absent from this list is the business of the debtor's former spouse and the Acton Way property.

As to the Blackheath Lane property, the court needs additional information about the debtor's interest in that property prior to the recordation of the abstract of judgment. Telling the court that the debtor and her former spouse "were both on title" does not identify for the court the nature of their respective interests in that property. Just because they were both on title does not mean that the debtor held her interest in the property as community property. She could have held it as separate property. Although uncommon, married couples may own the same property jointly as separate property.

In any event, without the additional information about the property nature of the business, the court cannot determine whether the subject lien attached to the debtor's interest in the Blackheath Lane property. The motion will be denied.

20. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN
LBG-2 — 11-26-14 [20]
VS. JAN AND BLAIR HOMES

**Tentative Ruling:** The motion will be denied in accordance with the ruling on the related lien avoidance motion (DCN LBG-1). The supplemental pleadings filed in connection with this motion are identical to the supplemental pleadings filed in connection with the related lien avoidance motion (DCN LBG-1).

21. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN
LBG-3 — 11-26-14 [25]
VS. MICHAEL J. HALL

**Tentative Ruling:** The motion will be denied in accordance with the ruling on the related lien avoidance motion (DCN LBG-1). The supplemental pleadings filed in connection with this motion are identical to the supplemental pleadings filed in connection with the related lien avoidance motion (DCN LBG-1).

22. 14-30893-A-7 BARBARA MINER — MOTION FOR WAIVER AND EXEMPTION
FF-1 — 2-2-15 [13]

**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 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 offer 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 debtor asks that she be exempted from the requirement that she receive a credit counseling briefing as a condition to her eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). She asks for this exemption on the ground that she is disabled and does not have the ability take the required credit counseling.

11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a "briefing" from an "approved non-profit budget and credit counseling agency" before the petition is filed.

A debtor can apply for an exception of the counseling requirement under section 109(h)(4), in the event of incapacity, disability, or service in the military.

The debtor suffers from arthritis, severe obesity and congestive heart failure, and she is prescribed the use of a bariatric wheelchair. The bankruptcy petition was executed by her daughter via a power of attorney. The debtor, while alive and conscious, is no longer aware of her surrounding. As such, the court concludes that she is unable to obtain the credit counseling in person, via telephone or the Internet. Accordingly, the court will waive the requirement for credit counseling under section 109(h)(4). The motion will be granted.

23. 11-32595-A-7 WILLIAM/CAROLE WALTE — MOTION TO SELL
HMS-2 — 1-23-15 [39]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for $27,000 the estate's unencumbered interest in a real property in Oroville, California to Larry Odbert. The buyer will pay all closing costs associated with the sale. Based on his consultations with realtors, the trustee disputes the debtor's $90,000 valuation of the property. The trustee has been unable to retain realtors to list, market and sell 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 sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

24. 13-32295-A-7 LORRAINE LOPEZ
DNL-2

MOTION FOR TURNOVER OF PROPERTY AND FOR MONEY JUDGMENT
2-4-15 [47]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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 offer 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 trustee asks the court to order the debtor to turn over to the trustee (1) $5,576 on account of the non-exempt equity in a 2005 Honda Accord, (2) $3,235 on account of the debtor's 2013 federal tax refund, (3) $613 on account of the debtor's 2013 state tax refund, and (4) $625 on account of the aggregate nonexempt cash balance of the debtor's deposit accounts. In addition, the trustee requests the entry of a money judgment against the debtor for the aggregate of these amounts (totaling $10,049). The debtor has made a demand for turnover of the foregoing assets from the debtor to no avail.

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

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

If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

"If a debtor demonstrates that [he] is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman at 202 (quoting Rynda v. Thompson (In re Rynda), Case Nos. NC-11-1312-HDoD, 09-41568, 2012 WL 603657, at *3 (B.A.P. 9th Cir. Jan. 30, 2012)).

This case was filed on September 19, 2013 and the debtor received her discharge on February 3, 2014.

The assets sought by the trustee have not been claimed as exempt in the debtor's Amended Schedule C. Docket 12. The debtor amended her Schedule C to switch her exemptions from Cal. Civ. Proc. Code § 703.140 to Cal. Civ. Proc. Code § 704. Dockets 1 & 12.

Even though the trustee made a turnover demand for the assets, the debtor has done nothing thus far to comply. Docket 49 at 2. Also, the trustee has been informed by the debtor's now former counsel that she no longer possesses some of the requested assets.

Accordingly, the court will order turnover of the assets sought by the estate and will enter a money judgment for the value of the assets in favor of the estate. The motion will be granted.

25. 13-34696-A-7 JEFFREY JOHNSON — MOTION TO SET ASIDE DISCHARGE 3-13-14 [81]
JBJ-4

**Tentative Ruling:** The motion will be denied.

On March 13, 2014, the debtor filed a motion to vacate the discharge entered automatically by the clerk on March 4, 2014. Docket 81. The hearing on the motion was set on March 24, 2014. Docket 87. But, the debtor did not appear at that hearing on the motion to argue and/or dispute the court's tentative ruling. Docket 89. As result of the debtor's failure to appear and dispute the tentative ruling, the court adopted that ruling as the final ruling on the motion and entered an order denying the motion. On March 26, 2014, this court entered an order denying the debtor's motion to vacate the March 4, 2014 entry of the debtor's chapter 7 discharge. Docket 93. The debtor nevertheless appealed that order to the United States District Court for the Eastern District of California. Docket 95.

On January 30, 2015, the district court entered an order vacating this court's order denying the debtor's motion to vacate the discharge.

Specifically, the district court ordered "a determination of whether the bankruptcy court committed a clerical error under FRCP 60(a) [in entering the debtor's bankruptcy discharge] and whether Appellant's medical treatment between February 24, 2014 and March 4, 2014 constitutes excusable neglect under FRCP 60(b)." Case No. CIVS. No. 14-cv-00889-TLN, Docket 15 at 5.

Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave."

Fed. R. Bankr. P. 4004(c)(1) prescribes that:

"In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if:

(A) the debtor is not an individual;

(B) a complaint, or a motion under §727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;

(C) the debtor has filed a waiver under §727(a)(10);

(D) a motion to dismiss the case under §707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. §1930 (a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. §1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. §1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under §727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption is in effect under §524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under §521(f)."

A chapter 7 bankruptcy discharge is not entered upon a notice and a hearing. It is entered automatically and promptly "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)," provided all conditions for its entry are satisfied. The language that "the court shall forthwith grant the discharge," is mandatory and not permissive, indicating that the entry of discharge is mandatory "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)."

If all conditions for discharge entry are satisfied but the debtor desires to delay or avert discharge entry, it is incumbent on him to file a motion to delay the entry of discharge.

Fed. R. Bankr. P. 4004(c)(2) provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain."

The debtor may also file a waiver of a discharge under 11 U.S.C. § 727(a)(10), averting the entry of discharge altogether. Fed. R. Bankr. P. 4004(c)(1)(C).

A chapter 7 debtor knows the approximate date for the automatic entry of its chapter 7 bankruptcy discharge when the court issues a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines. In this case, that notice was issued by the court on November 19, 2013, one day after this case was filed on November 18, 2013. Docket 8.

The notice contains the deadline for filing objections to discharge and objections to the dischargeability of debts. Docket 8. Provided all conditions for the entry of discharge are satisfied, the discharge is entered on or soon after that date. Such conditions include, but are not limited to, the absence of a pending motion to delay the discharge, the absence of a waiver under section 727(a)(10), the filing of a personal financial management course certificate, and the absence of a complaint objecting to the debtor's discharge.

In other words, once all conditions for discharge entry are satisfied, the discharge is entered automatically, regardless of whether the debtor is ill, has a pending motion to convert the case to a chapter 13 proceeding or subjectively desires the entry of the discharge. These are not conditions to the automatic entry of discharge. See Fed. R. Bankr. P. 4004(c)(1).

When all conditions for the entry of discharge are satisfied, the only way for a debtor to delay or avert the entry of a discharge is to file a motion to delay the discharge entry or request discharge waiver under section 727(a)(10).

As noted by this court in its March 24, 2014 ruling on the debtor's motion to vacate the discharge:

"The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15." Docket 89 at 2.

"More, the debtor had filed a motion to convert the case on January 24, 2014, which was heard and denied on February 24. Dockets 50, 68, 73. The debtor also filed a personal financial management course certificate on February 12, 2014. Docket 60." Docket 89 at 2. "The court also notes that the debtor did not file a motion to delay the entry of discharge." Docket 89 at 2.

"The court entered the debtor's discharge timely, after the debtor filed his personal financial management course certificate, after his first conversion motion was denied, and before the debtor's second conversion motion appeared on the docket. The entry of discharge was not a mistake." Docket 89 at 2.

The court also notes that there was no pending complaint objecting to the debtor's discharge, at the time the debtor's discharge was entered.

Accordingly, there was no clerical mistake or a mistake arising from oversight or omission, in the entry of the debtor's discharge.

Next, the debtor's medical treatment between February 20, 2014 and March 4, 2014 was not excusable neglect that warrants the setting aside of the discharge. Docket 86 at 2 (indicating that the medical treatment started on February 20 and not February 24).

The debtor's argument is in essence that he would have timely filed a motion to delay the entry of discharge or request for discharge waiver under section

727(a)(10), but for his medical treatment between February 20, 2014 and March 4, 2014.

The first and foremost problem with this argument is that the debtor assumes he would have prevailed on his motion to delay the discharge or the court would have approved a written waiver of discharge. See 11 U.S.C. § 727(a)(10) (requiring that the court approve the written waiver of discharge).

Stated differently, the debtor's medical treatment could be excusable neglect only for his not filing a motion to delay the entry of discharge or not filing a waiver under section 727(a)(10). His medical treatment could not be excusable neglect for the automatic entry of his discharge.

The debtor's good medical condition or availability to file a motion to delay the discharge or waiver under section 727(a)(10) is not a condition to the automatic entry of the debtor's discharge. Unless the motion to delay or request for waiver are filed, the discharge is entered automatically.

Even if the debtor's medical treatment is excusable neglect for his not filing a motion to delay the entry of discharge or request for a section 727(a)(10) waiver, it could not be excusable neglect for the discharge entry as the court would still have to adjudicate the merits of the motion to delay and/or approve the waiver.

Fed. R. Bankr. P. 4004(c)(2) provides that "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain." 11 U.S.C. § 727(a)(1) also provides that "The court shall grant the debtor a discharge, unless . . . the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter."

The excusable neglect analysis under Rule 60(b) then is one step removed from the subject entry of discharge.

Additionally, the debtor's medical treatment between February 20, 2014 and March 4, 2014 was not excusable neglect.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

As noted by this court in its March 24, 2014 ruling on the debtor's motion to vacate the discharge:

"*The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15. The entry of discharge on March 4, 2014 could not have been a surprise to the debtor.*

"*More, the debtor had filed a motion to convert the case on January 24, 2014, which was heard and denied on February 24. Dockets 50, 68, 73. The debtor also filed a personal financial management course certificate on February 12, 2014. Docket 60. The debtor therefore was obviously aware of the date when the discharge would be entered. The debtor did not file another motion to convert the case until March 4, when the discharge was entered. Docket 75. The court also notes that the debtor did not file a motion to delay the entry of discharge.*

"*The court entered the debtor's discharge timely, after the debtor filed his personal financial management course certificate, after his first conversion motion was denied, and before the debtor's second conversion motion appeared on the docket. The entry of discharge was not a mistake and there was no surprise, or excusable neglect warranting the setting it aside. Newly discovered evidence, fraud, misrepresentation or misconduct are not implicated either.*"

Docket 89 at 2.

Even if this court were to somehow overlook the necessity for adjudication of the motion to delay discharge entry or approval of the section 727(a)(10) waiver, the debtor's treatment is not excusable neglect for his failure to file a motion to delay or waiver, given that the treatment came after the approximate date for the entry of discharge.

"The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15." Docket 89 at 2.

Therefore, the debtor's motion to delay entry of discharge or request for approval of the section 727(a)(10) waiver should have been filed with the court on or prior to February 10, 2015, the approximate date for entry of discharge. Nonetheless, his medical treatment did not start until approximately February 20, 2014. Docket 86 at 2.

This means that there was no causal link between his medical treatment and his failure to file the motion to delay entry of discharge. The treatment came after the approximate February 10, 2014 proposed discharge date.

Further, even if there is a causal link between the debtor's medical treatment and his failure to file a timely motion to delay discharge entry, the treatment was not excusable neglect for the failure to file the motion to delay or section 727(a)(10) waiver.

The debtor knew of the approximate date when his discharge was to be entered, within approximately several days of his filing the case on November 18, 2013. See Dockets 8, 13, 15. As noted in the court's March 24, 2014 ruling, the debtor was served with the notice of chapter 7 bankruptcy case on November 21, 2013. Docket 89 at 2.

The court also notes that the debtor's first motion for conversion to chapter 13 was filed on January 24, 2014, meaning that the debtor knew at the least then of his desire not to stay in chapter 7. Docket 50.

January 24, 2014 was more than two weeks prior to the approximate February 10, 2014 discharge date and was approximately one month prior to the start of the

debtor's medical treatment.

Hence, the neglect in not filing the motion to delay entry of discharge or section 727(a)(10) waiver, resulting from the treatment, was not excusable as it was within the debtor's reasonable control - since November 2013 and since January 24, 2014 - to seek a delay of discharge entry or waiver approval.

More, the failure to file the motion to delay discharge entry or waiver approval request prior to the March 4, 2014 bankruptcy discharge has significantly affected this bankruptcy proceeding. It has resulted in the entry of discharge and conclusion of this bankruptcy case. As the trustee had issued a report of no distribution on December 24, 2013, the only remaining event in the case was the entry of the debtor's discharge.

In addition, the court has reported the debtor's discharge to all of his creditors. Dockets 74 & 80. The creditors were served with the debtor's discharge on March 6, 2014. Docket 80. The creditors have relied on that discharge to finalize their accounts with the debtor and make appropriate credit reporting of the debtor.

Vacating the entry of discharge would prejudice the creditors in that they have relied already on the discharge to finalize their accounts with the debtor. It would require notifying the creditors that the discharge of the debtor's debts has been reversed, necessitating their reopening of the debtor's accounts, revisiting collection activities and reversing their credit reporting of the debtor.

This court is also unconvinced that the debtor has acted in good faith in not timely filing a motion to delay discharge entry or waiver approval request, when he had ample time to do so. As outlined above, the debtor knew of the approximate February 10, 2014 discharge date as early as November 2013 and had sufficient time to file a motion to delay, even after he filed his first motion to convert the case to chapter 13 on January 24, 2014.

Furthermore, even if somehow the debtor's medical treatment is excusable neglect for his failure to timely file a motion to delay discharge entry or waiver approval request, this does not warrant setting aside the discharge entry. The filing of a motion to delay discharge entry or to approve a discharge waiver does not automatically translate into a delay of discharge entry or waiver approval. The court could have easily denied such a motion by the debtor.

The debtor still should have filed and the court still should have had the opportunity to adjudicate his motion to delay discharge entry or to approve discharge waiver, before the automatic entry of discharge on March 4, 2014.

Filing a motion to delay discharge entry or to approve discharge waiver after actual discharge entry makes such a motion moot. Before the court could ever address such a motion, it must first set aside the debtor's entry of discharge, *i.e.*, the instant motion.

However, as outlined above, the court cannot set aside the discharge. There was no error under Rule 60(a) in the entry of the discharge and the medical treatment was not excusable neglect for the entry of the discharge, given that the discharge was entered automatically and all conditions for discharge entry were satisfied. Bootstrapping excusable neglect for the debtor's failure to file a motion to delay discharge entry or waiver approval request to the entry

of the discharge does not warrant setting aside of the discharge entry.

Finally, the debtor is seeking to have the entry of discharge set aside in order to have his motion to convert to chapter 13 heard by the court. "Without the Discharge of Debtor being set aside, my motion to convert will not be heard." Docket 83 at 3.

But, this is not true. As a general rule, 11 U.S.C. § 706(a) permits a chapter 7 "debtor [to] convert a case under this chapter to a case under chapter . . . 13 of this title at any time." 11 U.S.C. §706(a). The Tenth Circuit held in In re Young, 237 F.3d 1168, 1173-74 (10th Cir. 2001), that an eligible debtor has an unequivocal right to convert at any time, including converting after the debtor receives his discharge.

As in Young, other courts hold that under the plain language of the statute, conversion to a chapter 13 is allowed after a chapter 7 discharge. See In re Street, 55 B.R. 763, 765 (B.A.P. 9th Cir. 1985); In re Mosby, 244 B.R. 79, 83-84 (Bankr. E.D. Va. 2000) (both finding that "at any time" under § 706(a) includes post-discharge conversions).

According to the Tenth Circuit, "[t]he provisions of 11 U.S.C. § 1325 ensure that a Chapter 13 plan arising out of a conversion from Chapter 7 will be properly scrutinized by the bankruptcy court before the plan is confirmed, mitigating the danger of abuse." In re Young, at 1174.

Accordingly, the debtor may seek conversion to chapter 13, although he has received a chapter 7 discharge.

The court notes that the debtor's second motion to convert to chapter 13, filed on March 4, 2014 and heard by the court on March 24, 2014, was not resolved on the merits. The court dismissed it due to its violation of Fed. R. Bankr. P. 2002(a)(4). Dockets 75 & 91.

"Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days' notice of the hearing on a motion to convert. The debtor has given only 20 days notice of the hearing. The motion papers were served on March 4, 2014, 20 days prior to the March 24 hearing on the motion. Docket 79."

Docket 91.

The debtor's first conversion motion, filed on January 24, 2014 and heard by the court on February 24, 2014, was denied without prejudice. Dockets 50 & 68.

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

"*First, the motion has not been served on three creditors listed in the verified master address list, including Diversified Adjustments, Enhanced Recovery Company, and Stockton Boat Works. Dockets 12 & 61. Also, the motion has been served at the wrong address on the San Joaquin County Collections, 350 East Weber Avenue Stockton, CA 95202. Docket 61. According to the master address list, however, the address for the San Joaquin County Collections is 750 East Weber Avenue Stockton, CA 95202.*

"*Second, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: 'Every motion shall be*

*accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e).'*

"*Third, the motion violates Local Bankruptcy Rules 9014-1(d)(2) and (3), as it is not accompanied by a separate notice of hearing telling parties in interest whether and when to file opposition to the motion.*"

Docket 68.

The debtor has filed no further motions for conversion to chapter 13, after the court denied his motion to set aside the discharge entry and dismissed his second conversion motion, on March 27, 2014. Dockets 93 & 94.

26. 13-35308-A-7 DOROTHY PARENT
BJ-2

MOTION FOR SANCTIONS, ATTORNEY'S FEES AND COSTS, AND FOR EQUITABLE SUBORDINATION
1-9-15 [119]

**Tentative Ruling:** The motion will be disposed as provided in this consolidated ruling below.

This ruling disposes of four separate motions before the court, a motion for violation of the automatic stay, etc. (DCN BJ-2), a motion to reconsider (LCB-3), a motion to remove the chapter 7 trustee (LCB-4), and a motion to employ (DCN HCS-5).

This bankruptcy case, filed on December 2, 2013, involves a debtor who owns a 50% interest in a real property in Tehama County, California. The property is at the center of the dispute between the parties. It has been valued at as much as $6.12 million. One-half or the property is owned by the debtor's bankruptcy estate. The other one-half interest is owned by Kevin C. Butler and Anita A. Butler, as trustees of the 1990 Butler Family Trust, Established March 15, 1990. The trust is a successor in ownership interest to Airport Acres, Inc.

The property is subject to two encumbrances, a senior lien, consisting of a deed of trust, held by Vinding & Brady for $350,000 and a junior lien held by Robert Swendeman for $225,333.47.

At all times and in all proceedings mentioned in this ruling, Laurence Blunt has been counsel of record for Robert Swendeman, Kevin C. Butler, Anita A. Butler, the Butler Family Trust, Dooda, L.P. (of which the debtor was a general partner), and Airport Acres, the predecessor in ownership interest to the Butler Family Trust.

The court concludes that Mr. Blunt's and his clients' strategy in these matters has been to obtain an unfair litigation advantage over the bankruptcy estate and other parties in the bankruptcy case in order to recover or purchase the real property on the cheap. In furtherance of these goals, Mr. Blunt has been interfering with the bankruptcy trustee's administration of the real property and the overall estate by filing frivolous adversary proceedings, motions and pleadings, resulting in substantial unnecessary litigation costs to the estate and other parties in the bankruptcy case. Mr. Blunt's litigation tactics have included egregious, willful, and bad faith misconduct that must be addressed.

As described in more detail below, Mr. Blunt filed two adversary proceedings in violation of the automatic stay and in disregard for the trustee's sole standing to prosecute estate claims, including claims against Vinding & Brady, Michael Vinding and Michael Brady, and claims against the bankruptcy trustee. Despite the court apprising Mr. Blunt, in its ruling dismissing the first adversary proceeding, that his clients were violating the automatic stay and had no standing to prosecute the claims, Mr. Blunt filed a second adversary proceeding, which was dismissed for the same reasons.

In the second adversary proceeding, Mr. Blunt even made the false assertion that the trustee had specifically authorized his clients to file that case. When the absence of a written permission was questioned, Mr. Blunt resorted to claiming that the trustee had verbally authorized the filing of the second adversary proceeding, which the trustee forcefully disputed. Adv. Proc. No. 14-2166, Docket 12 at 2.

After dismissal of the second adversary proceeding, Mr. Blunt filed frivolous motions and pleadings opposing a motion by the trustee. Mr. Blunt filed a 15-page motion to set aside the court's order approving the employment of the trustee's realtor. The motion is supported by three declarations and 74 pages of exhibits. Dockets 73-81. Mr. Blunt also filed an 18-page motion to remove the bankruptcy trustee. The motion is supported by two declarations and 330 pages of exhibits. Dockets 83-102. As explained in more detail below, both motions have no basis in law or in fact.

The motions are designed to interfere with the trustee's administration of the estate, including the administration of the real property in Tehama County.

The motions are predominantly a rant about the trustee's lack of desirable communication with Mr. Blunt, the trustee's refusal to present the settlement offer of Mr. Blunt's clients to the court, the trustee's rejection of settlement offer(s) by Mr. Blunt's clients, the trustee's rejection of estate property valuation(s) proffered by Mr. Blunt's clients, the trustee's lack of amenability to resolve issues with Mr. Blunt's clients, the trustee's refusal to share litigation documents with Mr. Blunt, the trustee's failure to act on administration issues as desired by Mr. Blunt, and others.

Mr. Blunt's motion to remove the trustee contains no facts that are relevant to the legal standard for the removal of a bankruptcy trustee. With one negligible exception, his motion to reconsider also contains no facts that are relevant to the legal standard for reconsideration. While Mr. Blunt complains about the qualifications of the trustee's realtor, he conveniently ignores facts in the record providing sound basis for the realtor's qualifications.

In addition to filing the two adversary proceedings and the two motions, Mr. Blunt has filed an 18-page opposition to the trustee's motion to employ special counsel. Docket 175. The opposition, like the motions, raises issues that are not relevant to special counsel's employment. It disputes the trustee's right to market the property, it objects to a sale, it seeks adequate protection for the junior lienholder, and it seeks disallowance of the senior encumbrance, it accuses the trustee of ulterior motives. None of these are relevant to the employment of the trustee's special counsel. As special counsel's employment is limited solely to bringing an action to obtain an authorization to sell - if and when the trustee chooses to sell - Mr. Blunt's insistence on disputing and preventing an actual sale of the property at this time does nothing more than harass, hinder, unnecessarily delay and increase the estate's cost of litigation.

Although the opposition also questions whether the proposed special counsel has a conflict of interest, the motion makes clear that the proposed counsel does not have a conflict of interest. The opposition makes no effort to analyze and compare the interests of Mr. Dahl's other client(s) with the interests of the estate in selling the property. The opposition only summarily states that the interests are adverse.

Mr. Blunt's tactics have distracted and overwhelmed the trustee, his professionals and third parties with unnecessary litigation, causing them to have incurred substantial litigation costs.

This court makes this consolidated ruling on the four motions that pertain to Mr. Blunt's misconduct, in order to address the issuance of sanctions against him.

The court will address each of the four motions in the following order: (1) the motion for violation of the automatic stay, etc. (DCN BJ-2), (2) the motion to reconsider (DCN LCB-3), (3) the motion to remove the chapter 7 trustee (DCN LCB-4), and (4) the motion to employ (DCN HCS-5).

Ruling on Motion for Violation of the Automatic Stay, etc.

The motion will be granted in part and denied in part.

The movants are seeking the following relief:

(1) Individuals Michael Brady and Michael Vinding seek damages for violation of the automatic stay against Robert E. Swendeman, an individual (dba T'N'T Real Estate), Airport Acres, L.L.C., Kevin Butler and Anita Butler, as trustees of the 1990 Butler Family Trust, established March 15, 1990, Kevin C. Bulter, DOODA, LP, and Laurence Blunt. Mr. Blunt is counsel for the other respondents.

The stay violation assertions pertain to two adversary proceedings filed and prosecuted by the respondents. The first adversary proceeding, Adv. Proc. No. 14-2034, was filed and prosecuted by Robert E. Swendeman and Airport Acres, as to the original complaint, and Robert E. Swendeman and Kevin Butler and Anita Butler, as trustees of the 1990 Butler Family Trust, established March 15, 1990, as to the first amended complaint.

The second adversary proceeding, Adv. Proc. No. 14-2166, was filed and prosecuted by Robert E. Swendeman, Kevin C. Butler and Dooda, LP.

(2) Creditor Brady & Vinding (successor to or assignee of Scharff, Brady & Vinding), and individuals Michael Brady and Michael Vinding seek sanctions against Robert E. Swendeman, Airport Acres, Kevin Butler and Anita Butler, as trustees of the 1990 Butler Family Trust, established March 15, 1990, Kevin C. Bulter, DOODA, LP, and Laurence Blunt, pursuant to 11 U.S.C. § 105(a), Local Bankruptcy Rule 1001-1(g), and the court's inherent power to sanction.

(3) Creditor Brady & Vinding (successor to or assignee of Scharff, Brady & Vinding), and individuals Michael Brady and Michael Vinding seek sanctions against Laurence Blunt, pursuant to 28 U.S.C. § 1927.

(4) Creditor Brady & Vinding (successor to or assignee of Scharff, Brady & Vinding), and individuals Michael Brady and Michael Vinding seek equitable subordination under 11 U.S.C. § 510(c) of the sanctions the court is to award against the respondents, in the event the sanctions are not paid.

The respondents oppose the motion, contending that they were entitled and had standing to "object" to the movants' secured proof of claim, as they are secured creditors themselves, secured by the same collateral securing the movants' claims. The respondents are also disputing the standing of the movants to bring this motion and are asking the court to declare their pleadings in the two adversary proceedings privileged and not subject to sanctions, under Cal. Civ. Code § 47(b). The respondents also raise a defense of unclean hands and seek sanctions against the movants, including asking the court to compel the movants to present evidence for the basis of their amendment of their proof of claim.

Robert E. Swendeman, a judgment creditor of the debtor Dorothy Parent - the one-half owner of a real property in Red Bluff, California, holds the junior encumbrance on the property, an abstract of a $225,333.47 judgment, recorded only eight days after the recordation of the senior encumbrance, a deed of trust securing a $350,000 note held by Brady & Vinding, a partnership of which Michael Brady and Michael Vinding are members. Airport Acres apparently owns the other one-half interest in the property as a tenant in common with the debtor. Kevin Butler is the debtor's brother in law and Anita Butler is the debtor's sister, all of whom apparently held some interest in DOODA, LP.

**First**, the court will deny the equitable subordination request, as it is based on the eventuality that sanctions are not paid by the respondents. This is speculative at this time. "'[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. [83,] 96 [(1968)] . . . (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97...." Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001).

**Second**, the court will deny any relief sought by the respondents. The court does not award relief based on an opposition to a motion. The respondents should file their own motion, and serve it and set it for a hearing in accordance with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and this court's Local Bankruptcy Rules, if they want the court to award them relief. The request for sanctions and any other relief against the movants will be denied.

**Third**, Cal. Civ. Code § 47(b) does not apply here. California's litigation privilege rules are in conflict with the federal laws protecting the integrity of the federal bankruptcy system, the bankruptcy automatic stay and the laws providing for the award of damages for stay violations. 11 U.S.C. §§ 362(a) & (k).

"Pursuant to the Supremacy Clause, federal laws are the supreme law of the land, notwithstanding state laws to the contrary. U.S. Const. art. VI, cl. 2. 'Accordingly, it is axiomatic that state law that conflicts with federal law is without effect. Federal law may preempt state law under the Supremacy Clause in three ways. First, Congress may state its intent through an express preemption statutory provision. Second, in the absence of explicit statutory language, state law is preempted where it regulates conduct in a field that Congress intended the federal government to occupy exclusively. Such an intent may be inferred from a scheme of federal regulation ... so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it or where an Act of Congress touch[es] the field in which the federal interest is so dominant that the federal system will be assumed to

preclude enforcement of state law on the same subject. Finally, state law that actually conflicts with federal law is preempted ... In considering whether any of the three categories of preemption apply, however, the purpose of Congress is the ultimate touchstone of pre-emption analysis.' Kroske v. U.S. Bank Corp., 432 F.3d 976, 981 (9th Cir.2005) (internal citations omitted)."

Int'l Bhd. of Elec. Workers, Local 2376 v. City of Vallejo (In re City of Vallejo), 432 B.R. 262, 268-69 (E.D. Cal. 2010).

"The United States Constitution authorizes Congress to enact uniform bankruptcy laws. U.S. Const. art. 1, § 8, cl. 4. By virtue of the Supremacy Clause, federal laws are the supreme law of the land, notwithstanding state laws to the contrary. U.S. Const. art. VI, cl. 2."

In re City of Vallejo, 403 B.R. 72, 75 (Bankr. E.D. Cal. 2009).

"An excuse that is inconsistent with or violates federal law is not a valid excuse."

Howlett v. Rose, 496 U.S. 356, 371 (1990).

"The Supremacy Clause of the United States Constitution operates to cause federal bankruptcy law to trump state laws, including state constitutional provisions, that are inconsistent with the exercise by Congress of its exclusive power to enact uniform bankruptcy laws."

In re City of Stockton, Case No. 12-32118-C-9, WL 515602 at *12 (Bankr. E.D. Call Feb. 4, 2015) (citing to U.S. Const. art. VI, cl. 2 and Vallejo).

The asserted privilege of filing and prosecuting the complaints in the two adversary proceedings conflicts with the federal laws protecting the bankruptcy automatic stay. See 11 U.S.C. § 362(a) & (k). Assuming the complaints are indeed privileged under Cal. Civ. Code § 47(b), that is not a valid excuse for not enforcing the bankruptcy automatic stay, as the privilege rules of Cal. Civ. Code § 47(b) are in conflict with 11 U.S.C. § 362(k), which permits the court to award damages for violation of the bankruptcy automatic stay. There is no exception for the enforcement of the automatic stay under the Bankruptcy Code, when the complaint filed and prosecuted in the violation of the stay is privileged under state or any other law. As such, federal bankruptcy law trumps the applicability of Cal. Civ. Code § 47(b) here. To hold otherwise would make the litigation privilege of Cal. Civ. Code § 47(b) always a bar to the award of stay violation damages by the filing and prosecution of a California state court action.

**Fourth**, awarding sanctions for the filing and prosecution of a lawsuit is not inconsistent with California's litigation privilege, even if the privilege were applicable here. The sanctionable conduct is the filing and prosecution of the adversary proceeding complaints and not necessarily what was alleged or asserted in the complaints. In other words, by sanctioning the respondents' conduct, the court is not refuting the truthfulness, veracity or materiality of the allegations in the complaints. The laws pursuant to which the sanctions are issued are separate and independent protections from the protections of the litigation privilege.

**Fifth**, the court will award no damages for violation of the automatic stay against the respondents' counsel because he was not named as a party to the litigation in the two adversary proceedings. He was serving merely as counsel

for the respondents. While he represented the respondents, it was the respondents on whose behalf the two adversary proceedings were filed and prosecuted against the movants.

**Sixth**, the court is satisfied that the movants have standing to seek damages for violation of the automatic stay.

The respondents argue that the partnership Brady & Vinding lacks standing to seek stay violation damages. While this is true, Brady & Vinding is not seeking stay violation damages. It is only Michael Brady and Michael Vinding in their individual capacities that are seeking stay violation damages.

The court also disagrees with the respondents that "neither BRADY nor VINDING have standing to bring this motion because neither can allege that they have suffered actual damage as they are not creditors of the estate nor do the exhibits filed with the court in support of the motion . . . indicate which fees are specific to BRADY, VINDING or BRADY & VINDING. Claim 6 is submitted by BRADY & VINDING, not BRADY nor VINDING." Docket 167 at 10.

The respondents are estopped from contesting that Michael Brady and Michael Vinding in their individual capacities are not creditors of this estate, when the respondents sued them as creditors in both adversary proceedings. For instance, in the first adversary proceeding, the respondents expressly asserted that Michael Brady and Michael Vinding, along with Brady & Vinding, "are successors in interest to SCHARFF [- the original beneficiary of the deed of trust against the real property -] as beneficiaries of the deed of trust." Adv. Proc. No. 14-2034, Dockets 1 at 4 & 21 at 4.

"The statute allows *any* 'individual,' including a creditor, to recover damages." Dawson v. Washington Mutual Banmk, F.A. (In re Dawson), 390 F.3d 1139, 1146 (9th Cir. 2004) (addressing section 362(h), the predecessor of section 362(k)). "Normally pre-petition creditors . . . shall recover damages under 11 U.S.C. §§ 362(h) and 1109(b) for willful violations of the automatic stay." Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 618 (9th Cir. 1993); In re Int'l Forex of California, Inc., 247 B.R. 284, 291-92 (Bankr. S.D. Cal. 2000) (awarding stay violation damages sustained by creditors); see also Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 585 (9th Cir. 1993) (noting that the automatic stay is designed to protect creditors as well as debtors).

"The legislative history emphasizes that the stay is intended to be broad in scope. Congress designed it to protect debtors and creditors from piecemeal dismemberment of the debtor's estate. The automatic stay statute itself provides a summary procedure for obtaining relief from the stay. All parties benefit from the fair and orderly process contemplated by the automatic stay and judicial relief procedure."

Computer Commc'ns, Inc. v. Codex Corp. (In re Computer Commc'ns, Inc.), 824 F.2d 725, 731 (9th Cir. 1987).

The Ninth Circuit's reading of section 362(k) seems to be that, while individual creditors may recover damages under section 362(k), the statute is not limited only to creditors. It permits the recovery of stay violation damages by any individual.

The court's ruling dismissing the first adversary proceeding expressly includes Michael Brady and Michael Vinding as two of the three defendants in that

proceeding.

"Defendants Brady & Vinding (successor to or assignee of Scharff, Brady & Vinding), Michael Brady, and Michael Vinding move for dismissal of the second claim for relief pursuant to Fed. R. Civ. P. 12(b)(6)."

Adv. Proc. No. 14-2034, Docket 47 at 1.

The same is true as to the ruling dismissing the second adversary proceeding.

"The defendants, Scharff, Brady & Vinding, a partnership, Brady & Vinding, a partnership, Michael E. Vinding, as partner and individually, and Michael V. Brady, as partner and individually, seek dismissal of the subject complaint filed by the plaintiffs, Robert E. Swendeman, an individual (dba T'N'T Real Estate), Kevin C. Bulter, and DOODA, LP."

Adv. Proc. No. 14-2166, Docket 31 at 1.

The court takes judicial notice of the case dockets and dismissal motion rulings in both adversary proceedings. Fed. R. Evid. 201.

As Michael Brady and Michael Vinding were sued by the respondents in their individual capacities, and as creditors of the bankruptcy estate, they have standing to prosecute the instant motion, seeking stay violation damages resulting from the filing and prosecution of the two adversary proceedings.

**Seventh**, the court turns to the merits of the asserted stay violations. 11 U.S.C. § 362(a) provides that:

"*Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—*

"*(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;*

"*(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;*

"*(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.*"

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7 (B.A.P. 9th Cir. 2002); Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4)

violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002). "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003).

Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).

A creditor who has violated the automatic stay is required to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

This court has already adjudicated the issues of whether the filing and prosecution of the two adversary proceedings violated the automatic stay.

In the first adversary proceeding, Adv. Proc. No. 14-2034, the court held in its ruling granting a motion to dismiss the proceeding, that:

*"First, upon the filing of a voluntary bankruptcy petition, 11 U.S.C. § 362(a) institutes an automatic stay with respect to both the debtor and the bankruptcy estate. Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).*

*"A creditor who has violated the automatic stay is required to reverse its actions. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections, such as bank account or wage levy. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).*

*"The underlying bankruptcy case was filed on December 2, 2013. The instant adversary proceeding was filed on January 24, 2014. The amended complaint is seeking to have the subject real property partitioned and is seeking to avoid the senior encumbrance on the estate's one-half interest in the property. Both*

*causes of action in the amended complaint are asserted against the bankruptcy estate.*

*"As the causes of action were filed post-petition and concern an interest in property that is property of the bankruptcy estate, they were filed in violation of the automatic stay and are void. See 11 U.S.C. § 362(a)(1) (prohibiting the commencement of a process or proceeding against the debtor); see also 11 U.S.C. § 362(a)(3) (prohibiting 'any act . . . to exercise control over property of the estate').*

*"The plaintiffs have not sought relief from the automatic stay to commence the prosecution of the subject claims."*

Adv. Proc. No. 14-2034, Docket 47.

In the second adversary proceeding, Adv. Proc. No. 14-2166, the court held in its ruling granting a motion to dismiss the proceeding, that:

"*Furthermore, the plaintiffs have ignored 11 U.S.C. § 362(a)(3), which prohibits 'any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.'*

*"To the extent the complaint asserts claims for relief that the interest of the defendant's in the subject property are avoidable, those claims are property of the estate and must be asserted solely by the trustee at this time.*

*"To the extent the plaintiffs are attempting to prosecute the complaint, they are exercising control over property of the estate. Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).*

*"A creditor who has violated the automatic stay is required to reverse its actions. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections, such as bank account or wage levy. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).*

*"Even if the trustee had consented to the lifting of the automatic stay to allow the plaintiffs to prosecute the complaint, such consent must have been given in writing and must have been approved by the court. Fed. R. Bankr. P. 4001(d)(1)(A)(iii) requires that agreements for the lifting of the stay be approved by the court, 'A motion for approval of any of the following shall be accompanied by a copy of the agreement . . . (iii) an agreement to modify or terminate the stay provided for in §362.'*

*"Neither the plaintiffs, nor the trustee have applied with the court to approve an agreement for the lifting of the stay to allow the plaintiffs to prosecute the subject complaint.*

*Accordingly, the plaintiffs have no standing at this time to prosecute the subject complaint and in doing so are violating the automatic stay of 11 U.S.C. § 362(a)(3)."*

Adv. Proc. No. 14-2166, Docket 31.

The court will not be adjudicating again whether the filing and prosecution of the two adversary proceedings violated the automatic stay in the instant bankruptcy case. The court has done this already in the rulings dismissing the adversary proceedings and collateral estoppel applies as to those issues.

"Under . . . federal law, collateral estoppel applies only where it is established that (1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding."

Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir. 2000).

The issues - whether the respondents on this motion violated the automatic stay by filing and prosecuting the two adversary proceedings - are identical to the issues this court adjudicated when it dismissed the two adversary proceedings. In part, the court dismissed the two adversary proceedings because they violated the automatic stay.

The identity of the stay violation issues as to the first adversary proceeding, Adv. Proc. No. 14-2034, encompasses even Airport Acres, which had dismissed its claims against the movants prior to the hearing on their motion to dismiss in that proceeding, but not before the hearing on the dismissal motion. In its ruling dismissing that adversary proceeding, the court noted that:

"*The plaintiffs named in the original complaint included only Robert E. Swendeman, an individual doing business as T'N'T Real Estate, and Airport Acres, L.L.C., a Nevada limited liability company.*

"*After the movants filed and served the instant motion on February 26, 2014, an amended complaint was filed on March 7, 2014. Dockets 20 & 21; see also Fed. R. Civ. P. 15(a)(1)(B), made applicable here by Fed. R. Bankr. P. 7015 (permitting amendment of a pleading as a matter of course within 21 days after service of a responsive pleading).*

"*Airport Acres is no longer named a plaintiff in the amended complaint. The plaintiffs named in the amended complaint are Robert E. Swendeman, an individual doing business as T'N'T Real Estate and Kevin C. Butler and Anita A. Butler, trustees of the 1990 Butler Family Trust, established March 15, 1990. The Butlers are alleged to be "successor[s] in interest to Airport Acres."*

"*The court also notes that although the amended complaint names the same defendants as the original complaint - Dorothy Parent, Brady & Vinding, Michael Vinding and Michael Brady - the amended complaint also names the chapter 7 trustee of the underlying bankruptcy case, Alan Fukushima, as a defendant.*

"*As Airport Acres is not named as a plaintiff in this proceeding any longer, the court deems Airport Acres to have dismissed all its claims.*

"*Further, while the original complaint has been superseded by the amended complaint, the court will address the merits of the subject motion because the second causes of action in both complaints are identical, except for the change in parties.*"

Adv. Proc. No. 14-2034, Docket 47 at 2-3.

Although the court had deemed Airport Acres to have dismissed its two claims in the original complaint, when the amended complaint was filed, the dismissal of the claims by Airport Acres did not come until the movants had already filed their motion to dismiss. Also, upon further review of the original and amended complaints, the two claims in the original complaint are virtually identical to the two claims in the amended complaint, except for the change in plaintiffs and defendants: Airport Acres was no longer a plaintiff because it had transferred its 50% interest in the real property to another plaintiff - a new plaintiff, the Butler Family Trust, and the chapter 7 trustee was now added as a defendant. Adv. Proc. No. 14-2034, Dockets 1 at 2, 3, 4-6 & 21 at 2, 5-7.

In other words, by dismissing the two claims in the amended complaint for their violation of the automatic stay - the partition claim and the senior encumbrance avoidance claim, the court ruled that the same claims Airport Acres had asserted in the original complaint violated the automatic stay.

In the original complaint, Airport Acres had sought partition of the real property, owned by the debtor and Airport Acres, and had sought the avoidance of the senior encumbrance against the property, held by the movants. In the amended complaint, it was the Butler Family Trust now that was seeking partition of the real property, owned by the trust, and was seeking avoidance of the senior encumbrance against the property.

Specifically, in dismissing the first adversary proceeding, this court ruled that the claims violated the automatic stay because they "are asserted against the bankruptcy estate" and because they "were filed post-petition and *concern an interest in property that is property of the bankruptcy estate*," namely, the request to partition real property partially owned by the bankruptcy estate and the prosecution of an avoidance claim that belonged solely to the bankruptcy estate, both sought by Airport Acres in the original complaint.

As such, the adjudication that the property partitioning claim in the amended complaint violated the automatic stay, was an adjudication that the property partitioning claim of Airport Acres in the original complaint also violated the stay, as it concerned an interest in property of the bankruptcy estate.

But, the stay violation by Airport Acres ended by the filing of the amended complaint before the hearing on the movants' dismissal motion, yet not until after the filing of the movants' motion to dismiss the original complaint.

The stay violation determinations in the second adversary proceeding were based also on section 362(a)(3), in that "[t]o the extent the complaint asserts claims for relief that the interest of the defendant's in the subject property are avoidable, those claims are property of the estate and must be asserted solely by the trustee at this time." Adv. Proc. No. 14-2166, Docket 31 at 3.

As in the ruling dismissing the first adversary proceeding, the court noted that the filing and prosecution of the second adversary proceeding complaint is void. Adv. Proc. No. 14-2034, Docket 47 at 3; Adv. Proc. No. 14-2166, Docket 31 at 3. Consequently, both adversary proceedings were dismissed.

The stay violation determinations in both adversary proceedings, then, were necessarily decided. The court entered dismissal orders in both adversary proceedings, on May 8, 2014 in the first adversary proceeding and on September 22, 2014 in the second adversary proceeding. Adv. Proc. No. 14-2034, Docket

49; Adv. Proc. No. 14-2166, Docket 33. Both orders are also final. The orders were never appealed by anyone.

Accordingly, the stay violations by the respondents have been already adjudicated by this court and are subject to issue preclusion in this proceeding.

**Eight**, the law of the case doctrine also binds this court to its stay violation determinations.

"'Under the "law of the case" doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.' Old Person v. Brown, 312 F.3d 1036, 1039 (9th Cir.2002). As we held in Old Person, the law of the case doctrine is subject to three exceptions that may arise when '(1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial.'"

Minidoka Irrigation Dist. v. Dep't of Interior of United States, 406 F.3d 567, 573 (9th Cir. 2005).

"Under this doctrine, when the court decides upon a rule of law—for example, that the alter ego claims were not property of the estates—that decision should continue to govern the same issues in subsequent stages of the same case. "[A] court is ordinarily precluded from reexamining an issue previously decided by the same court ... in the same case." Wiersma v. Bank of the W. (In re Wiersma), 483 F.3d 933, 941 (9th Cir.2007)." Mosesian v. Kavanagh (In re Golden Empire Air Rescue, Inc.), Case Nos. EC-07-1086-JuMkPa, EC-07-1087-JuMkPa, 05-18746, 05-19955, WL 7540946, at *4 (B.A.P. 9th Cir. Oct. 25, 2007).

"Observing the law of the case, the bankruptcy court properly based its finding on its order dismissing the adversary proceeding and this Panel's decision to affirm that order.

. . .

"As was the bankruptcy court, we are bound by the law of the case. See Minidoka Irrigation Dist. v. Dep't of Interior, 406 F.3d 567, 573 (9th Cir.2005)"

Gonzales v. Aurora Loan Services LLL (In re Gonzales), No. CC-11-1162-MkCaPa, WL 603747, at *8 (B.A.P. 9th Cir. Feb. 2, 2012).

The court's determinations that the plaintiffs violated the stay by filing and prosecuting the two adversary proceedings are binding on this court. The court is precluded from examining the stay violation issues decided in the rulings dismissing the two adversary proceedings.

Additionally, none of the exceptions to the applicability of the doctrine apply here. The respondents have not even argued in their opposition to this motion that the decisions dismissing the two adversary proceedings are clearly erroneous and/or that their enforcement would work a manifest injustice. The court notes that the respondents did not appeal or request reconsideration of the dismissal orders. There is no intervening controlling authority warranting reconsideration either. Neither have there been subsequent trials to the adversary proceedings.

**Ninth**, the court is satisfied that the respondents' stay violations actually and proximately caused the damages sustained by Michael Brady and Michael Vinding, in having to defend themselves in the adversary proceedings. The stay violations consisted specifically of "exercis[ing] control over property of the estate." 11 U.S.C. § 362(a)(3).

In the first adversary proceeding, the respondents exercised control over estate claims for partitioning the real property by sale and for avoidance of the senior encumbrance on the real property. Adv. Proc. No. 14-2034, Dockets 1 at 7-8 & 21 at 9-10.

The following are the court's findings and conclusions in its ruling dismissing the first adversary proceeding.

"The instant adversary proceeding was filed on January 24, 2014. The amended complaint is seeking to have the subject real property partitioned and is seeking to avoid the senior encumbrance on the estate's one-half interest in the property."

"[W]hile the original complaint has been superseded by the amended complaint, the court will address the merits of the subject motion because the second causes of action in both complaints are identical, except for the change in parties."

Adv. Proc. No. 14-2034, Docket 47 at 3.

In the second adversary proceeding, the respondents exercised control over estate claims for offset and for avoidance of the deed of trust encumbrance held by Brady & Vinding. Adv. Proc. No. 14-2166, Docket 1 at 4-5 (pleading an offset of the claim "for professional errors and omissions in legal representation" of the debtor and pleading that the deed of trust encumbrance was "a preference" transfer). The court's relevant findings and conclusions in dismissing the second adversary proceeding are in Adv. Proc. No. 14-2166, Docket 31 at 2-3. The court takes judicial notice of and incorporates both of its dismissal rulings. Fed. R. Evid. 201.

As only the trustee of the bankruptcy estate could have asserted the partition by sale claim, the avoidance claims, and the offset claim, the assertion of these claims by the respondents amounted to an "exercise [of] control over property of the estate" by the respondents. 11 U.S.C. § 362(a)(3). As their assertion of the claims was directed against Michael Brady and Michael Vinding, Mr. Brady and Mr. Vinding were harmed by the respondents' stay violations. In other words, the respondents' stay violations by exercising control over the claims was the proximate cause of the harm sustained by Mr. Brady and Mr. Vinding, as they were named as defendants to those claims.

**Tenth**, the stay violations by the respondents were willful. A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002). "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003).

All respondents were well-aware of the pending subject bankruptcy case because both adversary proceedings were filed in the bankruptcy case. The respondents

would not have filed the adversary proceedings in this case if they were not aware of the pendency of this bankruptcy case.

More, Mr. Blunt, the attorney for the respondents, is a well-known collections and creditors' attorney in the Sacramento Area. If anyone should know of the ramifications of a pending bankruptcy case, it is Mr. Blunt.

The court also notes that counsel for the movants warned Mr. Blunt that the filing and prosecution of the first adversary proceeding could be a violation of the automatic stay. Docket 122 at 2; Docket 123, Ex. A.

In any event, neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

Further, the filing and prosecution of the adversary proceeding constituted actions by the respondents that were done intentionally. Obviously, their retention of Mr. Blunt to file and prosecute the two adversary proceedings and their filing and prosecution of the two adversary proceedings via Mr. Blunt was done intentionally, *i.e.*, with the purpose of filing and prosecuting the two adversary proceedings.

Hence, the respondents' stay violations in filing and prosecuting the two adversary proceedings was willful.

**Eleventh**, the court rejects the respondents' contentions that they had the right to file the two adversary proceedings because they had standing to assert the claims in those proceedings. The respondents' standing is not relevant to their violation of the automatic stay. Standing and the bankruptcy automatic stay are two very different issues and bases for the dismissal of the two adversary proceedings. The court distinguished these issues in its rulings dismissing the two adversary proceedings. For instance, in its ruling dismissing the second adversary proceeding, the court held that:

"Accordingly, the plaintiffs *have no standing* at this time to prosecute the subject complaint and in doing so *are violating the automatic stay* of 11 U.S.C. § 362(a)(3)." Adv. Proc. No. 14-2166, Docket 31 at 3 (emphasis added).

Even if the respondents had standing to bring the two adversary proceedings, this does not absolve any of their automatic stay violations. Whether or not there has been a violation of the stay does not hinge on whether or not the respondents had standing.

**Twelfth**, turning to the award of damages, 11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

A movant can recover attorney's fees and costs as actual damages under section 362(k) only as relating to the enforcement of the automatic stay and to remedying the stay violation. Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014); Sternberg v. Johnston, 595 F.3d 937, 940 (9th Cir. 2010).

Sternberg does not does not permit the recovery of attorney's fees and costs incurred in the prosecution of a claim for the damages sustained as result of

the stay violation. Sternberg at 947-48. Sternberg limited the phrase "actual damages" in section 362(k)(1) to *fees incurred as a result of the automatic stay violation itself*. "Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)." "Under the American Rule, a plaintiff cannot ordinarily recover attorney fees spent to correct a legal injury as part of his damages." Sternberg, at 947. In reaching its conclusion, the court in Sternberg reasoned that "[p]ermitting a debtor to collect attorney fees incurred in prosecuting a damages action would further neither the financial nor the non-financial goals of the automatic stay." Sternberg at 948.

Sternberg has been further interpreted and applied by two more recent Ninth Circuit cases, America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 765 F.3d 1096, 1100-02 (9th Cir. 2014) and Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

Attorney's fees for defending an appeal from a section 362(k) award are recoverable as actual damages under section 362(k) because such fees are "defensive" in nature and not the "offensive" fees proscribed by Sternberg. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 765 F.3d 1096, 1100-02 (9th Cir. 2014).

Attorney's fees incurred in prosecuting an action to rectify a stay violation are also not barred by Sternberg. Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014). The issue of whether Sternberg applies turns on whether the stay violation has ended. "To answer this question, we look to whether the petitioner is using '[t]he stay [a]s a shield, not a sword.' Id. at 948. As we explained in Sternberg, the limitation on recovery of attorneys' fees was aimed at reducing incentives for further litigation while providing a bankruptcy petitioner a remedy for the stay violation." Snowden at 658-59 (citing to and quoting Sternberg at 948).

"In other words, unlike in Sternberg, Schwartz-Tallard was not using the stay as a sword, but as a shield from stay violation." Snowden at 659 (citing to Sternberg and Schwartz-Tallard with approval but distinguishing the two cases). Snowden went on to hold that anything short of reversing the stay violation "with no strings attached," continues the stay violation.

Snowden held that a settlement offer falling short of the unequivocal reversing of the stay violation did not end the violation, prompting the use of the automatic stay as a shield rather than a sword. Snowden at 659. "Permitting the violator to short-circuit the remedies available under § 362(k)(1) by making a conditional offer to return the property wrongfully seized in violation of the automatic stay would undermine the remedial scheme of § 362(k)." Id. "The automatic stay prevents further litigation in order to provide a 'breathing spell' from creditors and preserves the petitioner's resources for creditors. Id. at 948. Attorneys' fees under § 362(k)(1) 'deter stay violators from continuing to disturb the breathing spell the stay aims to create.'" Snowden at 659-60 (citing to and quoting Sternberg at 948 and Schwartz-Tallard at 1102).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio

between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

The court will award to movants Michael Brady and Michael Vinding, in their individual capacities, their actual damages in defending the stay violations by the respondents in both adversary proceedings.

The movants have produced evidence that the aggregate attorney's fees and costs in defending both adversary proceedings - along with the Brady & Vinding partnership - amounted to $46,486.73, consisting of $19,532.76 in attorney's fees and $875.20 in costs for the first adversary proceeding (subtotal = $20,407.96) and $24,061.44 in attorney's fees and $2,017.33 in costs for the second adversary proceeding (subtotal = $26,078.77). Docket 122 at 1-3; Docket 123, Exs. C, D.

As the above attorney's fees represent the defense of all three defendants in the adversary proceedings, Brady & Vinding and Michael Brady and Michael Vinding, in their individual capacities, the court will reduce the aggregate attorney's fees and costs spent to defend against the two adversary proceedings by one-third. The one-third reduction represents the defense costs of Brady & Vinding only, while the remaining two-thirds are attributable to Michael Brady and Michael Vinding.

However, the court cannot grant all of the defense costs of Michael Brady and Michael Vinding, given that the stay violation argument was only one of the basis upon which the adversary proceeding was dismissed. The court dismissed the first adversary proceeding on several grounds, including violation of the stay, the Butler Family Trust not having constitutional standing to prosecute the claims, and only the bankruptcy trustee having authority to file and prosecute claims belonging to the estate. Adv. Proc. No. 14-2034, Docket 47 at 2-4.

In evaluating the weight of each basis for dismissal, the court is compelled to reduce the recoverable defense costs of Michael Brady and Michael Vinding by another 50%, to account for only the partial weight of the stay violation basis for dismissal.

Hence, as to Robert E. Swendeman, the court will award Michael Brady and Michael Vinding 50% of two-thirds, or $6,802.65 in actual damages, of the attorney's fees and costs expended to defend the first adversary proceeding.

Airport Acres and the Butler Family Trust will have joint and several liability, along with Robert E. Swendeman, as co-plaintiffs in the first adversary proceeding. The liability of Airport Acres and the Butler Family Trust will be limited, however, given their only partial participation in the first adversary proceeding.

As discussed above, Airport Acres was dismissed as a plaintiff upon the filing of an amended complaint, after the filing of the motion to dismiss by the movants but before the hearing on that motion. The Butler Family Trust replaced Airport Acres as plaintiff - and 50% owned of the property - upon the filing of the amended complaint.

Thus, the court will make Airport Acres liable jointly and severally along with Robert E. Swendeman, only as to 50%, or $3,401.32, of the $6,802.65 liability of Robert E. Swendeman. The court will make the Butler Family Trust liable jointly and severally along with Robert E. Swendeman, for the other 50%, or

$3,401.32, of the $6,802.65 liability of Robert E. Swendeman.

In connection with the second adversary proceeding, the court will reduce by one-third the aggregate attorney's fees and costs spent to defend that adversary proceeding. The one-third reduction represents the defense costs of Brady & Vinding only, while the remaining two-thirds are attributable to Michael Brady and Michael Vinding.

However, the court cannot grant all of the defense costs of Michael Brady and Michael Vinding, given that the stay violation argument was only one of the basis upon which the adversary proceeding was dismissed. The court dismissed the second adversary proceeding on several grounds, including violation of the stay, lack of standing for the assertion of avoidance claim(s), and lack of constitutional standing. Adv. Proc. No. 14-2166, Docket 31 at 1-3.

In evaluating the weight of each basis for dismissal, the court is compelled to reduce the recoverable defense costs of Michael Brady and Michael Vinding by another 50%, to account for the only partial weight of the stay violation basis for dismissal.

Hence, as to the three plaintiffs in the second adversary proceeding, Robert E. Swendeman, Kevin Butler, and Dooda, the court will award Michael Brady and Michael Vinding 50% of two-thirds, or $8,692.92 in actual damages, of the attorney's fees and costs expended to defend the second adversary proceeding. The plaintiffs will be each jointly and severally liable for those damages.

The court will award no punitive damages to any of the movants pursuant to section 362(k), given the court's inclination to exercise its discretion under Fed. R. Bankr. P. 9011(c)(1)(B), later in this ruling.

A review of the time entries of the movants' counsel reveals that the attorney's fees, as represented in the actual damages being awarded, are reasonable.

But, as to the cost summaries, the court does not have sufficient evidence to determine whether they are reasonable. The court has been unable to locate an itemization of the costs sought by the movants.

**The movants shall file a separate declaration in support of this motion, summarizing their costs in defending the adversary proceedings and providing evidence that establishes the reasonableness of such costs.**

If the court determines any of the costs to be unreasonable and disallows such costs - at the February 23 hearing or a subsequent hearing, the court will adjust the actual damages, if necessary, accordingly.

The court notes that the respondents have not identified any issues with the reasonableness of the attorney's fees and/or costs of the movants' counsel in defending the two adversary proceedings.

Accordingly, absent the disallowance of costs expended by the movants, the breakdown of the section 362(k) actual damages is as follows:

<u>As to Michael Brady</u>:

The court will award $3,401.32 in actual damages, representing 50% of one-third of the aggregate defense costs in the first adversary proceeding. Robert E.

Swendeman will be jointly and severally liable as to 100% of that amount, Airport Acres will be jointly and severally liable only as to 50%, or $1,700.66, of the $3,401.32 amount, and the Butler Family Trust will be jointly and severally liable as to the other 50%, or $1,700.66, of the $3,401.32 amount (given their partial participation in the first adversary proceeding, as discussed by the court above).

The court will award $4,346.46 in actual damages, representing 50% of one-third of the aggregate defense costs in the second adversary proceeding. Robert E. Swendeman, Kevin Butler, and Dooda will be each jointly and severally liable for 100% of that amount.

As to Michael Vinding:

The court will award $3,401.32 in actual damages, representing 50% of one-third of the aggregate defense costs in the first adversary proceeding. Robert E. Swendeman will be jointly and severally liable as to 100% of that amount, Airport Acres will be jointly and severally liable only as to 50%, or $1,700.66, of the $3,401.32 amount, and the Butler Family Trust will be jointly and severally liable as to the other 50%, or $1,700.66, of the $3,401.32 amount (given their partial participation in the first adversary proceeding, as discussed by the court above).

The court will award $4,346.46 in actual damages, representing 50% of one-third of the aggregate defense costs in the second adversary proceeding. Robert E. Swendeman, Kevin Butler, and Dooda will be each jointly and severally liable for 100% of that amount.

As provided in this ruling, the respondents shall pay the damages awarded by this court to Michael Brady and Michael Vinding no later than March 9, 2015.

**Thirteenth**, the court will deny the movants' request for sanctions against the respondents pursuant to 11 U.S.C. § 105(a), which prescribes that:

"The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The damages provided for under section 362(k) adequately rectify the misconduct perpetrated by the respondents. The invocation of the court's authority under 11 U.S.C. § 105(a) is not warranted.

The court will deny also sanctions under 28 U.S.C. § 1927, which provides that:

"Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

As bankruptcy courts are not "court of the United States," this court does not have the authority to award sanctions under 28 U.S.C. § 1927. See Perroton v. Gray (In re Perroton), 958 F.2d 889, 893-96 (9th Cir. 1992).

Nevertheless, the court will award sanctions in favor of all three movants - including, without limitation, the same compensatory sanctions it is awarding under section 362(k) - under its inherent sanction authority.

This court has inherent authority to impose sanctions. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). The authority covers a broad range of conduct that goes beyond the violation of an order. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009). While it may be used to impose civil contempt sanctions, this inherent authority may be applied without resorting to contempt proceedings, but only so long as the sanctions are intended to coerce compliance or compensate. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that the inherent sanction authority, and civil penalties in general, must either be compensatory in nature or designed to coerce compliance); see also Miller v. Cardinale (In re Deville), 280 B.R. 483, 495 (B.A.P. 9th Cir. 2002) (citing and discussing Chambers at 42-51 and Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278 (9th Cir. 1996)).

Chambers at 43 holds that the inherent sanction authority includes power to control admission to the court's bar and to discipline attorneys who appear before the court. See also Lehtinen at 1059 (reminding the suspended attorney that attorney disciplinary proceedings are neither civil nor criminal in nature and are not for the purpose of punishing but to maintain the integrity of the courts and the profession).

To exercise its inherent authority to sanction, a court must make explicit finding of bad faith or willful conduct, which is conduct more egregious than mere negligence or recklessness. Lehtinen at 1058.

Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). The misrepresentation of facts, the unfair manipulation of the Bankruptcy Code, the history of filings and dismissals, and the presence of egregious behavior are all factors to be considered in determining whether bad faith exists." Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

All respondents were well-aware of the pending subject bankruptcy case because both adversary proceedings were filed in the bankruptcy case. The respondents would not have filed the adversary proceedings in this case if they were not aware of the pendency of this bankruptcy case.

The respondents were also well-aware of the trustee's appointment and charge to administer the estate. In fact, when Mr. Blunt filed the original complaint in the first adversary proceeding, he served the summons and complaint on the trustee and his counsel. Adv. Proc. No. 14-2034, Dockets 8-9. Notwithstanding this, the respondents filed and prosecuted the adversary proceedings.

More, Mr. Blunt is a well-known collections and creditors' attorney in the Sacramento Area. If anyone should know of the ramifications of a pending bankruptcy case, it is Mr. Blunt.

The court also notes that counsel for the movants warned Mr. Blunt that the

filing and prosecution of the first adversary proceeding could be a violation of the automatic stay. Docket 122 at 2; Docket 123, Ex. A.

Despite the foregoing and despite the court's dismissal of the first adversary proceeding for violation of the automatic stay and the lack of standing, the respondents filed and prosecuted the second adversary proceeding.

Further, the filing and prosecution of the adversary proceedings constituted actions by the respondents that were done intentionally. Obviously, their retention of Mr. Blunt to file and prosecute the two adversary proceedings and their filing and prosecution of the two adversary proceedings via Mr. Blunt was done intentionally, namely, with the purpose of filing and prosecuting the two adversary proceedings.

Hence, the respondents' filing and prosecution of the two adversary proceedings was in bad faith and was willful.

Although a finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law, the court infers of the respondents an affirmative attempt to violate the law from their disregard for the pending bankruptcy case, the automatic stay and the trustee's administration of the bankruptcy estate.

Accordingly, in the alternative, the court will award the identical actual damages it is awarding under section 362(k), as sanctions pursuant to the court's inherent authority to award sanctions.

The sanctions being awarded under the court's inherent authority are solely compensatory in nature. They are designed to compensate Michael Brady and Michael Vinding for their costs of defending the two adversary proceedings.

In addition to the actual damages awarded to Michael Brady and Michael Vinding under section 362(k) - and awarded here as inherent authority sanctions, the court will award as inherent authority sanctions to them the other 50% of the two-thirds in aggregate costs for the defense of each adversary proceeding. The sanctions here entitle them to 100% of their costs in defending the adversary proceedings, not just the stay violation portion of their actual damages.

Also, Brady & Vinding are not precluded from recovering their actual damages for defending the adversary proceedings. As Brady & Vinding has requested such sanctions under the court's inherent authority, the court will award such sanctions. The facts and corresponding analysis of the facts giving rise to the sanctions awarded to Michael Brady and Michael Vinding are identical to those giving rise to the sanctions being awarded to Brady & Vinding. The inherent authority sanctions analysis and outcome in this ruling as to Michael Brady and Michael Vinding apply with the same force to Brady & Vinding.

Thus, the breakdown of the inherent authority sanctions is as follows:

<u>As to Michael Brady</u>:

The court will award $6,802.65 in actual damages, representing one-third of the aggregate defense costs in the first adversary proceeding. Robert E. Swendeman will be jointly and severally liable as to 100% of that amount, Airport Acres will be jointly and severally liable only as to 50%, or $3,401.32, of the $6,802.65 amount, and the Butler Family Trust will be jointly and severally

liable as to the other 50%, or $3,401.32, of the $6,802.65 amount (given their partial participation in the first adversary proceeding, as discussed by the court above).

The court will award $8,692.92 in actual damages, representing one-third of the aggregate defense costs in the second adversary proceeding. Robert E. Swendeman, Kevin Butler, and Dooda will be each jointly and severally liable for 100% of that amount.

As to Michael Vinding:

The court will award $6,802.65 in actual damages, representing one-third of the aggregate defense costs in the first adversary proceeding. Robert E. Swendeman will be jointly and severally liable as to 100% of that amount, Airport Acres will be jointly and severally liable only as to 50%, or $3,401.32, of the $6,802.65 amount, and the Butler Family Trust will be jointly and severally liable as to the other 50%, or $3,401.32, of the $6,802.65 amount (given their partial participation in the first adversary proceeding, as discussed by the court above).

The court will award $8,692.92 in actual damages, representing one-third of the aggregate defense costs in the second adversary proceeding. Robert E. Swendeman, Kevin Butler, and Dooda will be each jointly and severally liable for 100% of that amount.

As to Brady & Vinding:

The court will award $6,802.65 in actual damages, representing one-third of the aggregate defense costs in the first adversary proceeding. Robert E. Swendeman will be jointly and severally liable as to 100% of that amount, Airport Acres will be jointly and severally liable only as to 50%, or $3,401.32, of the $6,802.65 amount, and the Butler Family Trust will be jointly and severally liable as to the other 50%, or $3,401.32, of the $6,802.65 amount (given their partial participation in the first adversary proceeding, as discussed by the court above).

The court will award $8,692.92 in actual damages, representing one-third of the aggregate defense costs in the second adversary proceeding. Robert E. Swendeman, Kevin Butler, and Dooda will be each jointly and severally liable for 100% of that amount.

**Finally**, the court rejects the respondents' unclean hands assertions. The respondents assert that:

"By this motion, MOVANTS attempt to recover attorney fees which MOVANTS incurred opposing adversary proceedings which but for MOVANTS false claims would not have been brought to the attention of the court. The irony of the situation, i.e., the person submitting the false claim seeks sanctions against the CREDITORS who brought the falsity to the court's and the TRUSTEE's attention. Clearly, this is not the purpose for which the statutes were implemented."

Docket 167 at 13.

The respondents do not seem to understand the scope and applicability of the automatic stay. The automatic stay applies regardless of the good deed that led to its violation. There are no exceptions to the automatic stay for good

deeds. Specifically, there are no exceptions to the stay when its violators are convinced that the parties harmed by the stay violations have made false claims or perpetrated other misconduct. Every plaintiff who sues for damages but violates the stay asserts that the parties harmed by the stay violations have perpetrated some misconduct. The automatic stay would never apply to the commencement or continued prosecution of litigation if the court were to agree with the respondents.

Even if the court were to agree with the respondents that the movants are asserting a false claim against the estate - of which there is no evidence cited to in the record - the filing and prosecution of the adversary proceedings still violated the trustee's sole authority to file and prosecute claims belonging to the estate and violated the automatic stay, which came into effect when the debtor filed this bankruptcy case on December 2, 2013. Docket 167 at 13; 11 U.S.C. § 362(a).

In other words, whether or not the respondents are correct in their adversary proceeding complaint allegations of the movants is irrelevant. The filing and prosecution of the adversary proceedings was egregious, willful, in bad faith and improper not because the court disagreed with the truthfulness of the respondents' allegations pertaining to the movants, but because the respondents ignored the pending bankruptcy case, the automatic stay and the trustee's sole right to administer assets of the estate.

The motion for violation of the stay, etc. will be granted in part and denied in part.

Ruling on Motion to Reconsider

The motion will be denied.

Creditors Robert Swendeman (dba T'n'T Real Estate), Kevin Butler, and Anita Butler, in her capacity as general partner of Dooda, LP, seek the reconsideration of this court's December 12, 2014 order approving the employment of Terry Cheney as realtor for the estate.

The debtor and the trustee oppose the motion.

The motion is based on Fed. R. Civ. P. 59(e) and 60(b).

Fed. R. Civ. P. 59(a)&(e) provides as follows:

"(a) . . . (1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues–and to any party–as follows: (A) after a jury trial . . . ; or (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

. . .

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."

But, in bankruptcy proceedings, Rule 59 is subject to Fed. R. Bankr. P. 9023, which provides that:

"Except as provided in this rule and Rule 3008 [pertaining to the allowance and disallowance of claims], Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment."

Thus, the deadline for filing a motion for new trial or to alter or amend a judgment and for the court to order sua sponte a new trial is 14 days after entry of the judgment.

"The Court's authority to reconsider an order is governed by the doctrine that a court will generally not reexamine an issue previously decided by the same or higher court in the same case. Lucas Auto. Eng'g, Inc. v. Bridgestone / Firestone, Inc., 275 F.3d 762, 766 (9th Cir.2001); United States v. Cuddy, 147 F.3d 1111, 1114 (9th Cir.1998).

"Accordingly, a court has discretion to depart from a prior order when (1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law. Turner v. Burlington N. Santa Fe R. Co., 338 F.3d 1058, 1063 (9th Cir.2003) (quoting McDowell v. Calderon, 197 F.3d 1253, 1254 n.1 (9th Cir.1999) (en banc)).

"More specifically, reconsideration of an interlocutory order may be appropriate if (1) the court is presented with newly discovered evidence, (2) has committed clear error, or (3) there has been an intervening change in controlling law. Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.2000). 'There may also be other, highly unusual, circumstances warranting reconsideration.' School Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.1993).

"On the other hand, a motion for reconsideration is properly denied when the movant fails to establish any reason justifying relief. Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir.1985). A motion to reconsider must set forth the following: (1) some valid reason why the court should revisit its prior order; and (2) facts or law of a 'strongly convincing nature' in support of reversing the prior decision. Frasure v. United States, 256 F.Supp.2d 1180, 1183 (D.Nev.2003)."

Mkhitaryan v. U.S. Bank, N.A., Case No. 2:11-cv-01055-JCM-CWH, 2013 WL 3943552, at *2 (D. Nev. July 30, 2013).

As to Fed. R. Civ. P. 60(b), it is made applicable here by Fed. R. Bankr. P. 9024, allowing 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."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

Generally, a motion for reconsideration should not be granted absent highly unusual circumstances, unless the trial court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law. Kona Enterprises, Inc. v. Estate of Bishop, 229 F3d 877, 890 (9th Cir. 2000); see also Brown v. Wright, 588 F.2d 708, 710 (9th Cir. 1978).

The deadline for filing a motion for new trial or to alter or amend a judgment has been met. The order at issue was entered on December 12, 2014 and this motion was filed on December 22, 2014, only 10 days after entry of the order. The motion is also timely, filed within reasonable time, for purposes of Rule 60(b).

11 U.S.C. § 327(a) provides that, subject to court approval, a trustee may employ professionals to assist him in the administration of the estate. Such professionals must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis."

First, the motion will be denied because it makes no effort to brief the legal authority for the relief the movants are seeking. While Rules 59(e) and 60(b) are mentioned in the motion, they are not briefed. Nor are Fed. R. Bankr. P. 9023 and 9024 briefed. 11 U.S.C. § 327(a) is not mentioned or briefed either.

Second, the movants were not entitled to a notice and hearing in the granting of the motion to employ Terry Cheney. Section 327 does not require the employment approval to be on notice and a hearing. Therefore, there was no deficiency in the procedure by which the subject order was entered or obtained.

Third, the movants argue that they were entitled to review the recommended listing price for the property Terry Cheney is to market and sell for the estate.

The listing price for the property is irrelevant to the employment of Terry Cheney. The court approved only Terry Cheney's employment. It did not approve a listing price for the property. The order at issue states nothing about a listing price, much less court approval of such a price. Docket 72. It is up to the trustee to decide what should be the listing for the property. Neither the realtor, nor the court tell the trustee what should be the listing price for the property.

Fourth, the motion to employ did not have to disclose the value of the property or pending offers for the purchase of the property. The motion was not seeking permission to sell the property. It was merely seeking permission to employ a realtor who will list and market the property for the estate.

Nothing pertaining to a sale was required to be submitted with the motion to

employ Terry Cheney.

Nor was the trustee required to demonstrate that the property has equity. It is the market, once the property is listed and marketed, that will determine the value of the property. This is so especially where the trustee has conflicting appraisals of the property, which is what the movants are contending is the case here.

The movants' complaining about not having the opportunity to present evidence about the value of the property and about their pending offer to the trustee to purchase the property is irrelevant. The court would not have considered such evidence in determining whether to employ Terry Cheney.

The court rejects the movants' complaining about their "conditional offer" to the trustee for the purchase of estate assets and the trustee not desiring to accept such an offer.

As the court explains in its ruling on the movants' motion to remove the trustee, nothing forces the trustee to accept the movants' offer. The court's ruling on the movants' motion to remove the trustee, also heard on this calendar, is incorporated here by reference. The court also takes judicial notice of that ruling. Fed. R. Evid. 201.

Additionally, the court will not compel the trustee to explain his reasoning for not accepting the movants' offer for the purchase of the estate's interest in the real property. As mentioned in the ruling on the motion to remove the trustee, this has to do probably with the movants' litigious approach in interacting with the trustee.

Fifth, the court also fails to see how the trustee's failure to accept the movants' offer to purchase property of the estate defeats the employment of Terry Cheney as realtor.

Conversely, the estate's employment of a realtor is necessary for the estate to list and market the real property the movants are seeking to purchase from the trustee, in order for the market to determine the value of the property and not the movants' offer to purchase the property.

Sixth, Terry Cheney's realtor office location being "more than 41 miles from the City of Red Bluff" does not disqualify his employment as a realtor. This would not have served to disqualify court approval of Terry Cheney as realtor for the estate. Trustees often select professionals not based on location but based on familiarity with the bankruptcy process and ability to work with the trustees.

Further, in light of today's advancements in technology and the Internet, much of the listing, viewing and marketing work for a real property is done remotely. The court is not persuaded that the location of Terry Cheney's realtor office disqualifies him as a realtor.

Seventh, the motion to employ Terry Cheney sufficiently stated the terms of his employment agreement with the trustee. His commission fee is identified and the scope of his employment is described in the motion. Docket 67 at 2-3.

More, Terry Cheney's compensation is subject to court approval on a notice and hearing. See 11 U.S.C. § 330(a). Thus, the court will have the benefit of reviewing Terry Cheney's compensation prior to him receiving payment for his

services. The movants will have also the opportunity to review the reasonableness and necessity of his fees.

While the length of the listing agreement is not disclosed, this did not preclude the court from approving Terry Cheney's employment as realtor. Typically, listing agreement terms are six months.

The court refuses to micro manage the trustee's decision about the length of a listing agreement for the sale of a real property. This is true especially in the absence of evidence that the length of the listing agreement is basis for disapproving employment. There is no evidence or argument from the movants that the length of the listing agreement between the estate and Terry Cheney is sufficiently material to warrant the setting aside of the order approving his employment.

Eight, the court's rejects the movants' challenge to Terry Cheney's experience with commercial properties. Terry Cheney's experience only started in agricultural properties. He is not at the present specializing solely in agricultural properties. His qualifications state that since "the latest residential and commercial market crash," which started in approximately 2008, he began gaining experience in commercial properties. Docket 70, Ex. C. As such, he has experience in commercial properties today.

The movants' complaining of Terry Cheney's experience lacks merit also because he is part of an office of realtors with substantial experience, since 1963, "in all types of commercial properties." Docket 70, Ex. C.

Ninth, the motion identifies Terry Cheney as disinterested and not holding an interest adverse to the estate. Docket 67 at 3-4; Docket 69 at 2-3.

The movants have presented no errors of law or fact, no newly discovered or previously unavailable evidence that would have precluded the approval of Terry Cheney's employment, and there was no manifest injustice in approving Terry Cheney's employment. Fed. R. Civ. P. 59(e). Rule 60(b) has not been satisfied either. No mistake, inadvertence, surprise, excusable neglect or newly discovered evidence has been asserted or established by the movants.

In short, the movants have advanced no actionable reason for the revisiting of the order approving the employment of Terry Cheney, much less for the setting aside of that order. This motion will be denied.

Ruling on Motion to Remove the Chapter 7 Trustee

The motion will be denied.

Creditors Robert Swendeman (dba T'n'T Real Estate), Kevin Butler, and Anita Butler, in her capacity as general partner of Dooda, LP, seek the removal of the chapter 7 trustee Alan Fukushima.

The United States Trustee, the trustee, the debtor, and creditors Brady & Vinding, Michael Vinding and Michael Brady, oppose the motion.

11 U.S.C. § 324(a) prescribes: "The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause."

Removal of the trustee for cause is at the discretion of the bankruptcy court.

"Once assigned to a particular case, a panel trustee can be removed from a pending case only if the bankruptcy court finds 'cause' after notice and a hearing. Brooks v. United States, 127 F.3d 1192, 1193 (9th Cir.1997); 11 U.S.C. § 324(a). '[A]lthough sufficient cause is not defined in the Bankruptcy Code, it is left for the courts to determine on a case by case basis.' 3 Collier on Bankruptcy ¶ 324, 02, at 324-3 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.2006)." Dye v. Brown (In re AFI Holding, Inc.), 530 F.3d 832, 845 (9th Cir. 2008).

"*It is well established that 'cause' may include trustee incompetence, violation of the trustee's fiduciary duties, misconduct or failure to perform the trustee's duties, or lack of disinterestedness or holding an interest adverse to the estate. Id. at 324-3 to 324-4. Such cause must be supported by specific facts, Schultz Mfg. Fabricating Co., 956 F.2d at 692, and the party seeking removal has the burden to prove them. Alexander v. Jensen-Carter (In re Alexander), 289 B.R. 711, 714 (8th Cir.BAP2003), aff'd, 80 Fed.Appx. 540 (8th Cir.2003). This listing is illustrative, but not exhaustive.*

*"In relevant part, the Code defines a 'disinterested person' as one that: (E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor ..., or for any other reason.*

*"11 U.S.C § 101(14)(E)."*

Dye v. Brown (In re AFI Holding, Inc.), 530 F.3d 832, 845 (9th Cir. 2008).

Despite the motion citing to the AFI Holding decision, the motion makes no assertions that are on the typical list of cause warranting the removal of a trustee.

The motion makes no assertions that the subject trustee lacks competence. The word "competence" does not even appear in the motion. Docket 83.

The motion makes no assertions that the subject trustee violated or is violating his fiduciary duties. The phrase "fiduciary duties" does not even appear in the motion. Docket 83. The word "duty" appears only once in the motion and it does not pertain to the trustee. There are no references in the motion to any violations by the trustee, let alone fiduciary duty violations. Docket 83.

The motion makes no assertions that the subject trustee lacks disinterestedness or holds interest that is adverse to the bankruptcy estate. The word "disinterestedness" appears only once in the motion, in a quote from AFI Holding. Docket 83 at 2. The word "adverse" does not appear in the motion. Docket 83.

The motion makes no assertions that the subject trustee is not fulfilling his duties as a trustee. Docket 83.

The motion makes no assertions of any misconduct by the subject trustee. Docket 83.

The motion complains only of "issues in conflict which creditors and trustee have been unable to resolve." The motion is a litany of complaints about the trustee not agreeing with the movants' ideas about how this bankruptcy estate

should be administered. The motion complains that:

- the trustee is not acting with respect to the claim(s) asserted by Brady & Vinding,

- the trustee is refusing to provide the movants with the billing records of Brady & Vinding,

- the trustee refuses to continue prosecution of a litigation in state court, previously initiated by Kevin Butler against the debtor (for a commission in representing the debtor in the sale of a real property to Enterprise Rancheria), who filed cross-claims against Mr. Butler and the Rancheria,

- the trustee is not accepting the movants' appraisal of the estate's most valuable assets, which the movants wish to purchase,

- the trustee is too slow to administer the estate,

- the trustee has done nothing to "remedy the debtor's embezzlement of Dooda assets,"

- the trustee refuses to pay the estate's portion of the real estate taxes for the real property jointly owned with the Butler Family Trust, and

- the trustee refuses to present the movants' offer of settlement with the estate, to the court.

This motion is meritless. Most of the reasons advanced for the removal of the trustee are irrelevant.

The trustee may object to proofs of claim at any time. The court will not interfere with the trustee's timing for objecting to proofs of claim. The movants cite no legal authority obligating the trustee to share records/documents with them.

The court will not interfere with the trustee's management of the state court litigation. It is the trustee's prerogative to administer estate assets pursuant to his own business judgment. The state court litigation is complex and it is the trustee's right and obligation to be careful in whether and how he prosecutes the cross-claims, as well as who he picks for special counsel to represent the estate.

The trustee also does not have to explain to the movants why he will not accept their settlement offer. The trustee is entitled to keep his opinions to himself.

The trustee does not have to pursue a revocation of discharge action either. He is not obligated to file such an action.

The court will not question the trustee's administration of the estate, much less accept the movants' contentions that their ideas and opinions will better benefit the estate and its creditors. The trustee does not have to accept anything the movants are stating or proffering as true. This is especially so given that the movants introduced themselves to the trustee in this case by suing him in an adversary proceeding that violated the automatic stay. The movants have proven themselves as difficult and litigious in their interaction with the trustee. No wonder the trustee is reluctant and suspicious of their

ideas and opinions about what he should be doing. This motion will be denied.

Ruling on Motion to Employ Special Counsel

The motion will be granted.

The trustee seeks approval to employ Walter Dahl as special counsel for the estate to prosecute a claim under 11 U.S.C. § 362(h) and to obtain an order, judgment or stipulation authorizing the trustee to sell an entire real property in Tehama County, in which the estate owns 50% interest.

The other 50% interest in the property is owned by Kevin C. Butler and Anita A. Butler, as trustees of the 1990 Butler Family Trust, Established March 15, 1990. The property is subject to two encumbrances, a senior lien held by Vinding & Brady for $350,000 and a junior lien held by Robert Swendeman for $225,333.47. The trustee is in the possession of an appraisal valuing the property at $6.12 million as of December 19, 2013. While the appraisal may have overvalued the property, the trustee is convinced that there is substantial equity in the property. He wants to maximize the equity in the property by selling the entire property.

The proposed compensation arrangement is a contingency fee agreement. The contingency is dual, requiring Mr. Dahl (1) to obtain an order, judgment or stipulation authorizing the trustee to sell the entire property, and (2) the trustee must consummate a sale of either the entire property or at the least the estate's one-half interest in the property. Mr. Dahl's fee will be:

- 20% of the gross sales price based on the estate's one-half interest in the property, if the order, judgment or stipulation allowing the trustee to sell the entire property is obtained before the commencement of a trial in the adversary proceeding or contested matter contemplated to be filed by Mr. Dahl on behalf of the estate, and if the trustee sells the entire property or solely the estate's interest in the property, or

- 25% of the gross sales price based on the estate's one-half interest in the property, if the order, judgment or stipulation allowing the trustee to sell the entire property is obtained after the commencement of a trial in the adversary proceeding or contested matter contemplated to be filed by Mr. Dahl on behalf of the estate, and if the trustee sells the entire property or solely the estate's interest in the property.

Under any scenario, Mr. Dahl's fee is subject to a maximum of $100,000 and a minimum of $30,000. As typical, his fees are subject to further bankruptcy court approval.

As the court understands Mr. Dahl's compensation terms, if either of the contingencies are not met, he will not be entitled to any fees, but he may request from the bankruptcy court authorization for reimbursement of his expenses as an administrative expense claim.

Creditors Robert Swendeman (dba T'n'T Real Estate), Kevin Butler, Anita Butler, in her capacity as general partner of Dooda, LP, and Kevin C. Butler and Anita A. Butler, as trustees of the 1990 Butler Family Trust, Established March 15, 1990 oppose the motion. The opposition, 18 pages in length, is largely meritless and misplaced.

The opposition disputes the trustee's right to market the property prior to the

"meeting the requirements of 11 U.S.C. § 363(h)" (Docket 175 at 5); it objects to the sale of the co-owner's interest in the property it (Docket 175 at 7-8); it seeks adequate protection for the junior lienholder against the property, Robert Swendeman (Docket 175 at 10-11); it seeks the court to disallow the senior encumbrance on the property held by Vinding & Brady now, in order to allow Robert Swendeman to credit bid his lien against the property at the sale (Docket 175 at 12-13); it accuses the trustee of seeking "to obtain a commission based upon the sales proceeds from the sale of the SUBJECT PARCEL ahead of the desires of CREDITORS (Docket 175 at 13); and it questions whether Mr. Dahl has a conflict of interest (Docket 175 at 14).

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

11 U.S.C. § 101(14) prescribes that:

"The term "disinterested person" means a person that—
(A) is not a creditor, an equity security holder, or an insider;
(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."

But, 11 U.S.C. § 327(c) provides: "In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment <u>if there is an actual conflict of interest</u>."

The opposition shows ignorance for the bankruptcy process and the procedures governing the administration of bankruptcy estates. This court will not unnecessarily interfere with the trustee's administration of the estate. The trustee is needing to employ special counsel to prosecute a section 363(h) action because of the litigiousness and scorched litigation mentality of the respondents and their counsel. The court will not adjudicate issues pertaining to section 363(h) or 363(b) at this time. This is a motion solely for the approval of employment of the estate's special counsel. It is not a motion to authorize a sale of the property under section 363(h) or a motion to approve a sale of the property under section 363(b).

The court will deny any relief sought by the respondents. The court does not award relief based on an opposition to a motion.

As to Mr. Dahl's representation of the debtor, this is not a concern because, as pointed out by the trustee, the interests of the estate and the debtor are identical, the sale of the Tehama real property.

More, Mr. Dahl's representation of the estate is limited solely to the obtaining of permission for the estate to sell the entire property. Mr. Dahl will not be the one seeking to have the sale of the property approved. The

estate will be represented by other counsel in the approval of the sale itself.

Finally, even though the debtor is a trustee for each of the claimant trusts in proofs of claim 3, 4, and 5 (MHP Trust, CHP Trust and HEP Trust, respectively), Mr. Dahl's name does not appear in any of those proofs of claim. From this, the court infers that Mr. Dahl does not represent the trusts. This is substantiated also by the fact that the motion states nothing about the proofs of claim and Mr. Dahl's relationship to those creditors.

But, even if Mr. Dahl did represent the trusts in the proofs of claim, their claims are fully secured. Each proof of claim is for $45,500 and it is secured by the debtor's partnership interest in Dooda, LP. The proofs of claim each value the debtor's interest in Dooda at $140,000, whereas the aggregate amount of the proofs of claim is $136,500.

Hence, even if Mr. Dahl represented the trusts, they have claims that are secured by an asset other than the real property. They will look to that collateral to satisfy their claims. The trusts will not look to the real property to receive payment on account of their claims, meaning that their interests in this bankruptcy case are neutral to the sale of the property.

And, even if the trusts' claims are under-secured - as to which the respondents have not argued or submitted evidence, their interests as unsecured creditors (to the extent of their deficiency claims) are aligned with the sale of the real property because it is from the equity in the real property that their unsecured claims will be paid. That is why 11 U.S.C. § 327(c) provides that "In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor . . . ."

Once again, Mr. Dahl is not being employed to sell the real property. He is being employed solely to obtain authorization for the trustee to sell the entire property. Therefore, his services to the estate will not have any bearing on whether or not the property is sold, how much it is sold for, who will bid on the property, who will credit bid on the property, who will purchase the property, who will be paid from the sales proceeds, how much anyone will be paid from the sale of the property, and/or whether and how much any creditor of the estate will receive from the property's sales proceeds.

Whether or not the debtor eventually decides to bid to purchase the property does not present a conflict for Mr. Dahl because his proposed representation of the estate - in the filing and prosecution of a section 363(h) action - does not entail any representation in the actual sale of the property. If the debtor is indeed anticipating to bid to purchase the property, her interests in the filing of the section 363(h) action are aligned with those of the estate, to have a sale of the entire property.

Mr. Dahl's representation of the debtor and/or the trusts in proofs of claim 3, 4 and 5 is not adverse to his duties as special counsel to file and prosecute a section 363(h) action. There is no actual or potential conflict of interest in the estate's employment of Mr. Dahl to file and prosecute a section 363(h) action. See 11 U.S.C. § 327(c).

The court concludes that the terms of employment and compensation are reasonable. Mr. Dahl's employment as special counsel will be approved. The motion will be granted.

Order to Show Cause Pursuant to Fed. R. Bankr. P. 9011(c)(1)(B)

Given the egregiousness of Mr. Blunt's misconduct, as described in this consolidated ruling, the court will issue an order to show cause under Fed. R. Bankr. P. 9011(c)(1)(B), which prescribes that:

"*(c) Sanctions*

"*If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.*

"*(1) How initiated*

"*(A) By motion*

"*A motion for sanctions under this rule shall be made separately from other motions or requests . . . .*

"*(B) On court's initiative*

"*On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.*"

Fed. R. Bankr. P. 9011(b) provides that:

"*(b) Representations to the court*

"*By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --*

"*(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;*

"*(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;*

"*(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and*

"*(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.*"

The court will continue the hearings on each of the four motions being disposed by this ruling, for Mr. Blunt to show cause why he has not violated Fed. R. Bankr. P. 9011(b)(1), (2), (3) and/or (4) and why this court should not

sanction him pursuant to Fed. R. Bankr. P. 9011(c).

27. 13-35308-A-7 DOROTHY PARENT — MOTION TO EMPLOY
HCS-5 — 1-26-15 [135]

**Tentative Ruling:** This motion will be disposed by the court's consolidated ruling posted for the motion for violation of the automatic, etc. (DCN BJ-2), also being heard on this calendar.

28. 13-35308-A-7 DOROTHY PARENT — MOTION TO RECONSIDER
LCB-3 — 12-22-14 [73]

**Tentative Ruling:** This motion will be disposed by the court's consolidated ruling posted for the motion for violation of the automatic, etc. (DCN BJ-2), also being heard on this calendar.

29. 13-35308-A-7 DOROTHY PARENT — MOTION TO REMOVE TRUSTEE AND TO OBTAIN A SCHEDULING ORDER
LCB-4 — 12-29-14 [83]

**Tentative Ruling:** This motion will be disposed by the court's consolidated ruling posted for the motion for violation of the automatic, etc. (DCN BJ-2), also being heard on this calendar.

***FINAL RULINGS BEGIN HERE***

30. 15-20104-A-7 ANTONE/FALLON PAUL — MOTION TO COMPEL ABANDONMENT 1-26-15 [11]
HLG-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 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.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Antelope, California.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtors have scheduled the value of the property at $280,515. The property is encumbered by a single mortgage in the amount of $198,030 and the debtors have claimed an exemption of $82,485 in the property under Cal. Civ. Proc. Code § 704.730.

Given the scheduled value of the property, the mortgage and the exemption claim against the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

31. 13-35308-A-7 DOROTHY PARENT — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-2-15 [144]
LCB-5
ANITA BUTLER VS.

**Final Ruling:** The movant has provided only 21 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

32. 11-49912-A-7 GINA FLAHARTY
DNL-14

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
1-26-15 [187]

**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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,681 in fees and $5.75 in expenses, for a total of $1,686.75. This motion covers the period from April 8, 2013 through December 17, 2014. The court approved the movant's employment as the estate's accountant on April 16, 2013. In performing its services, the movant charged hourly rates of $190 and $300.

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 reviewing documents provided by the trustee, preparing 505(b) letters, preparing tax returns, and communicating with the trustee about tax-related issues.

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

33. 11-49912-A-7 GINA FLAHARTY
DNL-15

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
1-26-15 [192]

**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 $83,425.50 in fees and $761.21 in expenses, for a total of $84,186.71. This motion covers the period from January 5, 2012 through December 22, 2014. The court approved the movant's employment as the trustee's attorney on January 10, 2012. In performing its services, the movant charged hourly rates of $50, $150, $175, $195, $210, $225, $275, $350, $375 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing and analyzing petition documents to assist the trustee in the investigation of estate assets, (2) propounding discovery in a legal malpractice litigation, (3) communicating with the malpractice defendants about liability insurance, (4) reviewing the defendants' insurance policy, (5) reviewing a report about the merits of the malpractice claims, (6) assisting the estate's special counsel in preparing the malpractice complaint, (7) reviewing and revising special counsel's contingency fee agreement with the estate, (8) negotiating a settlement with a large judgment creditor, holding large judgments against the debtor and the debtor's nursing corporation, (9) preparing the settlement agreement, (10) preparing, filing and prosecuting a motion to approve the settlement, (11) reviewing the books and records of the debtor's corporation, (12) conducting research about issues pertaining to the debtor's corporation, (13) communicating with the debtor about the settlement with the judgment creditor and the debtor's resignation as officer of the corporation, (14) preparing, filing and prosecuting a motion for turnover relating to the debtor's corporation, (15) preparing for and attending necessary court hearings, (16) preparing and obtaining approval of a litigation agreement with the debtor's corporation, (17) preparing for and attending a mediation of the malpractice claims, (18) researching, preparing, filing and prosecuting a motion for 998 offer, (19) preparing settlement agreement resolving the malpractice cases, (20) communicating with the trustee and the estate's accountant, and (21) 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.

34. 11-47630-A-7 FOR BABIES TO TEENS INC — MOTION TO APPROVE COMPENSATION OF TRUSTEE
HSM-11 — 1-26-15 [103]

**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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final

motion for approval of compensation. The requested compensation consists of $40,230 in fees and $3,626.87 in expenses, for a total of $43,856.87. This motion covers the period from December 2, 2011 through the present. The court approved the movant's employment as the trustee's attorney on December 21, 2011. In performing its services, the movant charged hourly rates of $285, $295, $300, $360, $380 and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing and analyzing petition documents, (2) reviewing and analyzing estate assets, (3) communicating with the trustee about strategy, (4) communicating with creditor holding lien on personal property, (5) negotiating sale of personal property assets and carve-out for the estate, (6) preparing, filing and prosecuting motion to sell, (7) analyzing preference claims, (8) analyzing real properties and advising the trustee on abandonment issues, (9) prosecuting the estate's preference claims, including preparing demand letters, complaints, negotiating settlements, conducting discovery, etc., (10) obtaining court approval of settlements, (11) advising the trustee about unexpired real property leases and effectuating lease rejections, (12) addressing a reclamation demand, (13) analyzing and communicating with a landlord about the landlord's claim, and (14) 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.

35. 11-47630-A-7 FOR BABIES TO TEENS INC — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
SMD-2 — 1-26-15 [109]

**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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $14,683.50 in fees and $655.14 in expenses, for a total of $15,338.64. This motion covers the period from May 2, 2012 through January 19, 2015. The court approved the movant's employment as the estate's accountant on May 15, 2012. In performing its services, the movant charged hourly rates of $325 and $345.

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

financial records, (2) preparing preferential transfer summaries, (3) preparing five years of tax returns, (4) communicating with the trustee, and (5) preparing and/or filing employment and compensation related pleadings.

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

36. 14-25431-A-7 HAK/MUN YUN — OBJECTION TO EXEMPTIONS
DNL-2 — 1-9-15 [25]

**Final Ruling:** This objection has been voluntarily dismissed. Docket 36.

37. 15-20032-A-7 DAVID PUGH — MOTION FOR RELIEF FROM AUTOMATIC STAY
KSR-1 — 1-21-15 [10]
RAPTOR ENTERPRISES, 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.

The movant, Raptor Enterprises, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The movant has produced evidence that the property has a value of $165,000 ($155,000 in Schedule A) and it is encumbered by claims totaling approximately $263,620. Docket 12 at 2-3. The movant's deed is the only encumbrance against the property.

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

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.

38. 14-31337-A-7 PRESENTACION HAW — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 1-15-15 [34]
THE BANK OF NEW YORK MELLON VS.

**Final Ruling:** The motion will be dismissed without prejudice because it was not served on the debtor's counsel, Arasto Farsad, who substituted as attorney for the debtor on December 24, 2014. See Dockets 40 & 20. This motion, on the other hand, was filed subsequently, on January 15, 2015.

39. 14-32244-A-7 SAMUEL MAY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 1-23-15 [11]
TD AUTO FINANCE, 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, TD Auto Finance, seeks relief from the automatic stay with respect to a 2012 Dodge Ram 3500. The vehicle has a value of $35,573 (Schedules B and D) and its secured claim is approximately $47,326.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

40. 14-30049-A-7 SAMUEL/DEBORAH CROSS — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
U.S. BANK, N.A. VS. — 1-16-15 [16]

**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, U.S. Bank, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on January 27, 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 $198,000 and it is encumbered by claims totaling approximately $299,045. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 17, 2014.

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

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

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.

41. 13-26551-A-7 MICHAEL HOLT
PEQ-1

MOTION TO
APPROVE COMPENSATION OF ACCOUNTANT
1-21-15 [200]

**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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $7,550 in fees and $0.00 in expenses. This motion covers the period from June 24, 2013 through December 24, 2014. The court approved the movant's employment as the estate's accountant on July 9, 2013. In performing its services, the movant charged hourly rates of $175 and $250.

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 communicating with the trustee, preparing tax returns, analyzing tax issues, and preparing letters to the tax authorities.

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

42. 14-30859-A-7 MIGUEL/MARIA PEREZ
RCO-1
THE GOLDEN 1 CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-12-15 [14]

**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, The Golden 1 Credit Union, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on February 6, 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 $175,000 and it is encumbered by claims totaling approximately $225,364. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2014.

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

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

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.

43. 15-20568-A-7 BROOKE TERRY — MOTION FOR RELIEF FROM AUTOMATIC STAY
J.B. STEVENS VS. — 2-3-15 [11]

**Final Ruling:** The motion will be dismissed without prejudice because the debtor was not served with the motion. Only counsel for the debtor was served. See Docket 15.

Fed. R. Bankr. P. 9014(b) provides that a motion must be served in the manner provided for service of a summons and a complaint.

Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail.

Fed. R. Bankr. P. 7004(b)(9) provides that service "[u]pon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, [may be made] by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Also, Rule 7004(g) says that "[i]f the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the

debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P." But, nothing in Fed. R. Bankr. P. 7004 permits service on the debtor's attorney to the exclusion of the debtor.

44. 14-28775-A-7 THOMAS/ANGELA BUTLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 1-15-15 [28]
WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Vacaville, California.

Given the entry of the debtor's discharge on December 16, 2014, 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 $500,000 and it is encumbered by claims totaling approximately $817,225. The movant's deed is in first priority position and secures a claim of approximately $678,118.

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 18, 2014.

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

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

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.

45. 14-28786-A-7 UMASH/SUNITA PRASAD — MOTION TO AVOID JUDICIAL LIEN
JKU-02
VS. CITIBANK, N.A. — 1-16-15 [30]

**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 Debtor Umash Prasad in favor of Citibank for the sum of $5,664.16 on November 7, 2012. The abstract of judgment was recorded with Sacramento County on July 23, 2013. 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 has an approximate value of $393,067 as of the date of the petition. The unavoidable liens total $254,710 on that same date, consisting of a single mortgage in favor of Seterus in the amount of $254,000 and an HOA lien in favor of Stonelake Master Association in the amount of $710. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C.

The debtors have established their entitlement to the exemption, under Cal. Civ. Proc. Code § 704.730(a)(3)(B), which provides that:

"(a) The amount of the homestead exemption is one of the following:

. . .

. . .

"(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

. . .

"(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment."

Sunita Prasad is disabled and receives disability insurance benefit payments under Title II of the Social Security Act. Dockets 32 at 2 & 33, Ex. 3.

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).

46. 14-30888-A-7 ALEXANDRE MACK — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 1-13-15 [50]
BANK OF AMERICA, N.A. 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, Bank of America, seeks relief from the automatic stay under section 362(d)(4), as to a real property in San Bruno, California.

The movant is the first deed holder on the property and, although it has been attempting to foreclose on the property, it has been unable to do so because the original borrower on the loan secured by the property, Cecille Paed, has been transferring fractional interests in the property to various individuals who have been filing bankruptcy cases.

This is the third bankruptcy case involving the property. The first case, filed in the United States Bankruptcy Court for the Central District of California, involved Gloria Perez (Case No. 13-20258), who received a 10% interest in the property with another person, Christina Alvarado, as joint tenants, from the original borrower. Docket 54, Exs. 4, 5.

The second case, filed in the United States Bankruptcy Court for the Northern District of California, involved Eufrocina Ramos (Case No. 13-32493), who received a 10% interest in the property with his wife, as joint tenants, from the original borrower. Docket 54, Exs. 6, 7.

The third case, filed in the United States Bankruptcy Court for the Central District of California, involved Juan De Cruz (Case No. 14-24182), who received a 10% interest in the property from the original borrower. Docket 54, Exs. 8, 9.

Each of the above cases were filed in pro per as chapter 13 proceedings, then were converted to chapter 7, and each of the cases were finally dismissed due to the respective debtor's failure to prosecute the case.

The instant case is no exception.

The court will grant relief under section 362(d)(4), which prescribes that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

The original borrower on the loan secured by the property transferred a one-eight fractional interest in the property to this debtor on July 8, 2014. Docket 54, Ex. 10.

The debtor filed this case in pro per as a chapter 13 on November 3, 2014. She converted the case to chapter 7 on November 26, 2014 and then she promptly failed to appear at the meeting of creditors set for December 31, 2014. Dockets 1, 18, 45.

From the debtor's modus operandi in prosecuting this case, and the fact that this is a second stay relief motion pertaining a partial real property interest transferred to the debtor, the court infers that the debtor knew of the property transfer before filing this case and that she filed this case with intent to delay hinder or defraud the movant. The instant filing then was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of the property. 11 U.S.C. § 362(d)(4)(A).

But, even if the debtor did not know of the property transfer before filing this case, the court still concludes that the instant filing was part of a scheme to delay, hinder, or defraud creditors. Nothing in section 362(d)(4) requires that the debtor be aware of the property transfer at the time of filing or that the debtor is part of the scheme. As long as the instant filing furthers the purposes of the scheme, based on a prior transfer of the property, with or without knowledge of the debtor, the filing becomes part of that scheme.

Accordingly, the court will grant section 362(d)(4) relief. The motion will be granted to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

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 court has no evidence of value for the property.

The court has no admissible evidence from the movant establishing that it is an oversecured creditor. See Dockets 50, 52, 53.

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

47. 14-32199-A-7 KATHERINE RAINEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 1-16-15 [10]
NATIONSTAR MORTGAGE, 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, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Suisun City, California. The property has a value of $240,200 and it is encumbered by claims totaling approximately $326,728. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 28, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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.