UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 2, 2015 at 10:00 a.m.

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1. 14-24002-A-11 BELLA PROPIEDAD L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
SR-1 — 1-15-15 [71]
CREDIT UNION HOME LOAN, INC. VS.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed as moot because the case was dismissed on February 23, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). The movant is not seeking retroactive relief from stay or in rem relief.

2. 14-24002-A-11 BELLA PROPIEDAD L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
SR-2 — 1-15-15 [76]
CREDIT UNION HOME LOAN, INC. VS.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed as moot because the case was dismissed on February 23, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). The movant is not seeking retroactive relief from stay or in rem relief.

3. 14-30833-A-11 SHASTA ENTERPRISES — STATUS CONFERENCE
10-31-14 [1]

Tentative Ruling: None.

4. 14-30833-A-11 SHASTA ENTERPRISES — MOTION FOR RELIEF FROM AUTOMATIC STAY
DL-1 — 12-8-14 [67]
REDDING BANK OF COMMERCE VS.

Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 355 Hemsted Drive Redding, California.

Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

5. 14-30833-A-11 SHASTA ENTERPRISES
DL-2
REDDING BANK OF COMMERCE VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-8-14 [75]

Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 381, 391, 393 and 401 Hemsted Drive Redding, California.

Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

6. 14-30833-A-11 SHASTA ENTERPRISES
DBJ-3

MOTION TO
USE CASH COLLATERAL AND TO MAKE
ADEQUATE PROTECTION PAYMENTS
11-25-14 [43]

Tentative Ruling: The motion will be conditionally granted.

The chapter 11 trustee is seeking permission to use cash collateral and make $20,000 monthly adequate protection payments (except for March 2015, when the payment will be only $10,000) for a six month period, from March 3, 2015 through August 31, 2015. On December 30, 2014, the court entered an interim order, authorizing cash collateral use from December 29, 2014 through and including March 2, 2015. Docket 217.

Subject to hearing from the creditors secured by the debtor's cash collateral, the court is inclined to grant the motion.

7. 14-20348-A-11 JOE/CAROL MOBLEY
CAH-7

MOTION TO
CONFIRM PLAN
11-21-14 [120]

Tentative Ruling: The motion will be denied.

The debtors ask the court to confirm their chapter 11 plan filed on November 21, 2014. The court approved the debtors' disclosure statement on January 12, 2015. Docket 132.

The court cannot confirm the debtors' plan because it has not been proposed in good faith.

11 U.S.C. § 1129(a)(3) requires that all chapter 11 plans are proposed in good faith. Regardless of whether an objection to plan confirmation has been lodged, the bankruptcy court is under an obligation to make certain that the requirements of section 1129(a) have been satisfied. In re Mid Pac. Airlines, Inc., 110 B.R. 489, 490 (Bankr. D. Hi. 1990). The chapter 11 plan proponent bears the burden of proving that the confirmation requirements of section 1129(a) are met. In re Zaleha, 162 B.R. 309, 313 (Bankr. D. Id. 1993); Mid Pac. Airlines at 490.

The debtors are not making a good faith effort to repay their unsecured creditors in full. Their lack of good faith is exacerbated by their over-stating of monthly expenses in the calculation of monthly disposable income

available to make plan payments.

Here, the debtors have administrative expense estimated at $10,000, consisting solely of the fees incurred by their bankruptcy attorney.

The debtors have no secured debt because they lost or are losing both of their real properties to foreclosure (one in Rescue, California and the other in Richmond, California). The debtors are currently renting a real property in Elk Grove, California.

They have priority debt totaling only $3,977.47, consisting of taxes of $3,619.31 owed to the IRS and $358.16 to the California State Board of Equalization. Docket 120 at 8-9.

The debtors' general unsecured debt totals only $9,321.59 and, while their plan proposes to pay their administrative expense debt and priority debt in full, it proposes to pay only a 25% dividend to the general unsecured creditors. It proposes to pay the general unsecured creditors only $2,330.40.

This is in spite that the debtors' projected monthly budget - as outlined by their disclosure statement - shows a monthly disposable income of $2,698.24 (including $216.67 of United States Trustee quarterly fees) that is available to be used toward plan payments. Docket 121 at 31.

In other words, while the debtors are willing to pay $10,000 to be represented by counsel in this bankruptcy proceeding, they are not willing to pay the less than $10,000 in general unsecured claims, although they clearly can do so with their disposable income in only several months. This is not good faith.

The lack of good faith is further substantiated because the debtors have grossly understated their monthly disposable income available for them to make plan payments, by substantially overstating their monthly expenses.

Even though the debtors have included the quarterly fees to the United States Trustee as part of their monthly expenses, they will stop paying the fees once there has been a substantial consummation of the plan and the court enters a final decree and closes the case. Docket 121 at 31. Thus, counting quarterly fees toward the debtors' monthly expenses is disingenuous.

The debtors are also deducting $200 for savings as monthly expenses. Savings are not proper expenses, however, when the debtors are not paying their creditors in full. Docket 121 at 31.

In addition, the debtors have counted their telephone/Internet/cable expense package twice, once listed at $222 and another time at $253. Docket 121 at 30. The debtors have counted their pet expenses twice as well, once as pet food at $75 and another time as pet care at $65.

On the face of the disclosure statement, then, the debtors have overstated their monthly expenses by at least $703.67 (assuming the telephone/Internet/cable expense package is $253 and the pet expenses are $75).

The debtors have listed other monthly expenses that are clearly outside the bounds of reason. They have $636 for medical and dental expenses, $300 for personal care products and services, $825 for transportation expenses, $300 for tuition and $532 for auto insurance. Docket 121 at 30-31.

However, the debtors are retired, are not driving to work, are not going to school, and highly unlikely have the need to purchase medical insurance, given their age and the benefits they are receiving, including CalPERs benefits, DFAS benefits, Social Security benefits and Veteran's benefits.

The court is also perplexed about why the debtors are paying $532 a month for auto insurance and questions the necessity for $300 in personal care products and services.

Accordingly, plan confirmation will be denied.

8. 14-28468-A-11 BUALAI WHITE — MOTION TO APPROVE DISCLOSURE STATEMENT 1-6-15 [65]
MRL-4

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks approval of her disclosure statement filed on January 6, 2015. Docket 65.

The motion will be denied for the following reasons:

(1) The debtor has not filed the operating report for January 2015. That report was due February 16, 2015.

(2) The disclosure statement makes no mention of the absolute priority rule and the debtor's ability to confirm a plan in spite of the rule. The debtor is seeking to retain property while there appears to be no prospect of plan acceptance by the general unsecured class, which totals $888,851.62 in amount and will receive a dividend of less than 100%. Docket 67 at 11-12.

(3) The disclosure statement should provide more information about the history of the rental income the debtor has projected from each of the rental properties. The creditors should know about the lease agreement term period for each property and the debtor's history with each of the present tenants. This is important as the plan lists no leases it is assuming, implying that none of the debtor's rental properties are subject to lease terms but are rather month-to-month.

(4) The disclosure statement is not clear about the debtor's sources of income and about how or why her income has changed since 2012. The history of the debtor's income for 2012 and 2013, on pages five and six of the disclosure statement, refers only to three sources of income: rental income, social security income, and retirement income.

Yet, in listing her projected income and expenses, on pages seven and eight of the disclosure statement, the debtor refers to "VA Dependency Indemnity Compensation," "US Office of Personnel Management Retirement Annuity" compensation, and two separate entries for "Social Security Income."

The court cannot tell how the sources of income in the forward-looking budget correspond to the sources of income in the 2012 and 2013 history of income.

For instance, the disclosure statement is not clear about what "retirement income" includes. The court cannot tell whether it includes the "VA Dependency Indemnity Compensation" income and/or the "US Office of Personnel Management Retirement Annuity" income.

In addition, the court cannot tell how or why the different sources of income vary from year to year. For example, the court cannot tell why the debtor's annual "Social Security Income" has increased from $16,000 in 2013 to over $22,128 in 2015.

The court also does not understand why the debtor has two entries for her forward-looking projected "Social Security Income," one with $844.90 a month and the other with $1,000.90 a month. Docket 65 at 7. What is the significance of this?

The disclosure statement should reconcile and explain the above issues.

(5) The disclosure statement does not address the debtor's admission to probably not having sufficient income to fund the plan. The plan promises that the dividend to general unsecured creditors will be 8%, but then it also states that "[t]he following payment amounts are subject to change upon receipt of Proofs of Claim, fluctuations in the amounts owed, and fluctuations in Debtor's disposable income" and "the payment to the unsecured class could be reduced by as much as 20%." Docket 67 at 11; Docket 65 at 25.

At least one interpretation of the foregoing is that the plan is acknowledging that the debtor may pay general unsecured creditors nothing and, moreover, not have sufficient funds to pay other creditors either.

Hence, the disclosure statement is either unclear or fails to address this eventuality. For instance, the disclosure statement says nothing about whether and to what extent the plan provides a minimum dividend to general unsecured creditors. It does not say what is that dividend either.

(6) As the debtor is not promising a fixed dividend to general unsecured creditors, the disclosure statement should have a discussion about the debtor's good faith in proposing the plan. A conclusory statement that the debtor is doing something in good faith does not make the debtor's plan proposal a good faith proposal.

(7) The disclosure statement provides no liquidation analysis under the heading "Liquidation Analysis." It merely references 17 pages of other parts of the disclosure statement. It refers the reader to Parts III and IV of the disclosure statement, which start on page 9 and end on page 26. The analysis should be done entirely under the heading "Liquidation Analysis." Readers should not be required to piece the liquidation analysis together from other parts of the disclosure statement.

(8) the disclosure statement should state whether the debtor is current with all payments for insurance, property taxes and utilities, for each of the rental properties.

Future amendments of the disclosure statement should be accompanied by a red/black-lined version.

9. 14-28468-A-11 BUALAI WHITE — MOTION TO VALUE COLLATERAL
MRL-5
VS. THE BANK OF NEW YORK MELLON — 2-15-15 [71]

Tentative Ruling: The hearing on the motion will be continued and the court will set a briefing schedule for the filing of opposition to the motion and reply to the opposition.

The debtor asks the court to strip down the $212,662.22 mortgage held by The Bank of New York Mellon on a rental triplex real property on Forrest Street, Sacramento, California. According to the motion, the property is also subject to a "statutory lien" in the amount of $1,029.74 held by Sacramento County.

The debtor requests that the court value the property, based on her opinion as owner, at $190,000. The debtor is seeking to strip down the mortgage to $188,970.26 ($190,000 minus $1,029.74).

The hearing on this motion will be continued as the motion was filed under Local Bankruptcy Rule 9014-1(f)(2) and the respondent creditor has indicated - in a response to the motion for approval of the disclosure statement (Docket 87) - its intention to oppose this motion to dispute the debtor's valuation of the property. The court will set a briefing schedule.

Finally, the court expects the debtor to apprise the court of the status and priority of a "statutory lien" for $316.76 in favor of the City of Sacramento on the subject property, listed in Schedule D. Docket 1. The motion makes no mention of this lien. The court also needs to know whether any part of the tax lien(s) on the property was incurred post-petition.

10. 14-28468-A-11 BUALAI WHITE — MOTION TO VALUE COLLATERAL
MRL-6
VS. GSAA HOME EQUITY TRUST 2007-1 — 2-15-15 [74]

Tentative Ruling: The motion will be denied without prejudice.

The debtor asks the court to strip down the $456,032.49 only mortgage held by GSAA Home Equity Trust et al., of which U.S. Bank is a trustee, on a rental real property on Gratia Avenue in Sacramento, California. The property is also subject to a statutory lien held by Sacramento County in the amount of $3,148.74.

The debtor requests that the court value the property, based on her opinion as owner, at $220,000. The debtor is seeking to strip down the mortgage to $216,851.26 ($220,000 minus $3,148.74).

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

A debtor's opinion of value is evidence of value and it may be conclusive in

the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion will be denied because GSAA's claim is not listed in the debtor's Schedule D. See Docket 1. The only mortgage listed in Schedule D, encumbering the subject property, is that of Nationstar Mortgage, in the amount of $327,996.71. The motion does not explain the discrepancy and the court will not speculate about it. This motion will be denied.

11. 14-28468-A-11 BUALAI WHITE — MOTION TO VALUE COLLATERAL
MRL-7
VS. GREEN TREE SERVICING, L.L.C. — 2-15-15 [77]

Tentative Ruling: The motion will be denied without prejudice.

The debtor asks the court to strip down the $469,420.55 only mortgage held by Green Tree Servicing on a rental real property on Plumas Arboga Road in Olivehurst, California.

The debtor requests that the court value the property, based on her opinion as owner, at $250,000. The debtor is seeking to strip down the mortgage to $250,000.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion will be denied because the respondent creditor's claim is listed in Schedule D (Docket 1) only in the amount of $160,010.28. The difference between the creditor's claim in the motion and the creditor's claim in Schedule D exceeds $309,000. And, the motion does not explain the discrepancy. It is difficult for the court to understand how the creditor's claim increased from $160,010.28 to $469,420.55 in the approximate six months since this case was filed on August 21, 2014.

12. 14-28468-A-11 BUALAI WHITE
MRL-8
VS. FEDERAL HOME LOAN MORTGAGE CORP., AND JPMORGAN CHASE

MOTION TO VALUE COLLATERAL
2-15-15 [80]

Tentative Ruling: The hearing on the motion will be continued and the court will set a briefing schedule for the filing of opposition to the motion and reply to the opposition.

The debtor asks the court to strip down the $470,968.39 first mortgage held by Federal Home Loan Mortgage Corporation (Ocwen Loan Servicing in Schedule D) on a rental real property on Guildford Way in Plumas Lake, California.

The debtor also asks the court to strip off the $87,281.64 second mortgage on the property, held by JPMorgan Chase Bank.

According to the motion, the property is also subject to a senior "statutory lien" held by Yuba County Tax Collector, in the amount of $12,000.

The debtor requests that the court value the property, based on her opinion as owner, at $200,000. The debtor is seeking to strip down the first mortgage to $188,000 ($200,000 minus $12,000) and strip off the second mortgage to $0.00.

The hearing on this motion will be continued as the motion was filed under Local Bankruptcy Rule 9014-1(f)(2) and the respondent creditor (Ocwen Loan Servicing) has indicated - in a response to the motion for approval of the disclosure statement (Docket 90) - its intention to oppose this motion to dispute the debtor's valuation of the property. The court will set a briefing schedule.

Finally, the court expects the debtor to explain why the Yuba County lien is not listed in Schedule D. It is difficult for the court to understand how the debtor could incur a $12,000 claim with Yuba County Tax Collector in the last six months, since the August 21, 2014 filing of the case. The court also needs to know whether any part of Yuba County Tax Collector's claim has been incurred post-petition.

13. 14-27083-A-11 RCK CONSERVATION CO-OP, L.L.C.
DBH-7

MOTION TO APPROVE LEASES
1-9-15 [121]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from February 2, 2015, in order for the debtor to supplement the record. The debtor has filed additional papers in support of the motion. An amended ruling from February 2 follows below.

The debtor in possession is asking the court to approve its entry into two lease agreements pertaining to the debtor's two parcels of land. One lease is for 35 acres and the other is for 20 acres of the debtor's real property.

The principal creditors in this case, Teresa Jones and Charles Hawley, whose claims are secured by the properties being leased, have filed a statement of non-opposition. Docket 141.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain

exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to sell or lease property of the estate pursuant to section 363. Section 363(b) allows, then, a debtor-in-possession to sell or lease property of the estate, other than in the ordinary course of business. The lease must be fair, equitable, and in the best interest of the estate. See, e.g., Mozer v. Goldman (In re Mozer), 302 B.R. 892, 897 (C.D. Cal. 2003). Lease of property outside the ordinary course of business requires the estate to show good faith and valid business justification for the lease. See, e.g., 240 N. Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). Good faith "encompasses fair value, and further speaks to the integrity of the transaction." Id.

The 35-acre lease is for a one year term and will generate $69,000 in gross rental proceeds for the estate. The lease includes three cabins and does not include the areas the debtor uses for its gardening and festival operations. The lessee is Peggie Salazar, who is leasing the property for her family, including her son and daughter, to reside on the property and to use the property for keeping livestock, for recreation, for wood cutting - but no commercial logging, for gardening, and for storing vehicles and a water craft. The lessee will have the right to sublease parts of the 35 acres for camping. Docket 144.

Peggie Salazar has deposited $20,000, or approximately 29% of the total annual lease payment under the lease agreement. Docket 144.

The 20-acre lease is with Dana Pickard and is for a term of three years, at a rate of $20,000 a year. At the end of the three years, the lessee will have a right to renew the lease for additional three years at a new rate, to be negotiated in good faith. The lease does not include the areas the debtor uses for its camping and festival operations. The lessee will use the property for constructing a small residence, for camping, for recreation (including off-road use), for gardening, and for wood cutting. At the end of the lease, the lessee will have no right to compensation for any of the improvements done to the property. Docket 145.

Dana Pickard has deposited $8,400, or 42% of the total annual lease payment under the lease agreement. Docket 145.

Both leases were negotiated by the debtor via a licensed real estate broker. Docket 146. Given the substantial deposits made by each lessee, the court is also satisfied that the lessees appear to have the financial means to perform under the lease agreements. The leases are in the best interest of the creditors and the estate as they will generate substantial proceeds for the estate, funding its administration and the plan the debtor is anticipating to confirm. The court will authorize the debtor to enter into the leases. The motion will be granted as provided in this ruling.

14. 14-22884-A-11 RAYMOND/ROSA KING — MOTION FOR FINAL DECREE 1-10-15 [131]
CAH-10

Tentative Ruling: The motion will be denied without prejudice.

The debtor moves to close the case and enter a final decree, contending that the plan was confirmed, the confirmation order is now final, there are no pending matters, and payments under the confirmed plan have commenced.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

This court confirmed the debtor's chapter 11 plan on October 8, 2014. Docket 93. The confirmation order is final. Property has revested in the debtors pursuant to the terms of the plan. Docket 93 at 13.

However, the court has no evidence that the debtor is current on plan payments and that all post-confirmation quarterly reports have been filed. The debtor's declaration states nothing about being current with plan payments and with post-confirmation quarterly reports. The declaration states only that the plan was confirmed, the confirmation order is final, "[a]ll motions and contested matters, have been resolved," and plan payments started in November 2014. Docket 133. The motion will be denied. Nevertheless, the court is also willing to continue the hearing in order for the debtor to supplement the record.

15. 14-22884-A-11 RAYMOND/ROSA KING — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CAH-9 — 1-10-15 [123]

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

The motion will be granted.

The debtor's counsel, C. Anthony Hughes, has filed a first and final motion for approval of compensation. The requested compensation consists of $13,180 in fees and $263.94 in expenses, for a total of $13,443.94. This motion covers the period from March 25, 2014 through the present. The court approved the movant's employment as the chapter 11 debtor's attorney on April 3, 2014. In performing services, the movant charged hourly rates of $120 and $280.

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) analyzing estate asset issues, such as valuation, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing pleadings and documents, such as motions and reports, (5) attending court hearings, (6) preparing, filing and prosecuting valuation motions, (7) preparing plan and disclosure statement, (8) communicating with various parties about plan confirmation, (9) reviewing and analyzing proofs of claim, (10) communicating with the debtor about various administration issues, and (11) preparing and filing employment and compensation motions.

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

16. 14-31890-A-11 SHAINA LISNAWATI
PD-1
BAYVIEW LOAN SERVICING, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-30-15 [40]

Tentative Ruling: The motion will be granted in part and denied in part.

The movant, Bayview Loan Servicing, L.L.C., seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1), (2), (4), asserting bad faith due to multiple prior bankruptcy filings, as to a real property in Roseville, California (Willow Glen Drive).

The debtor opposes the motion, arguing that the movant has no standing to bring the motion, disputing that the movant is the holder of the note secured by the property, and arguing that this motion is premature given that the case has been pending only since December 6, 2014.

The court rejects the debtor's contention that the movant has no standing to bring this motion.

Motions for relief from stay are summary proceedings, meaning that the court does not finally determine the validity of the movant's claim. Veal v. American Home Mortgage Servicing, Inc., (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998). Such final determination requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

The movant has produced evidence that it holds the promissory note secured by the subject property. Docket 63 at 2. The note is endorsed and payable in blank. Docket 62, Ex. 1 at 6. The note is secured by a deed of trust on the subject property, recorded on September 14, 2005. Docket 62, Ex. 2 at 1, 18.

On the other hand, M&T Bank - which sends the monthly mortgage statements to the debtor - is the servicer of the loan owned by the movant. This is not inconsistent with the letter the debtor's counsel received from the movant's counsel, where the movant claims that M&T Bank is a "Lender/Servicer." Docket 54 at 4.

The movant has established a colorable claim to enforce a right against the

property and, thus, has standing to bring this motion.

The court will grant relief from stay under section 362(d)(1), based on the debtor's seven prior bankruptcy filings in the last four years.

On February 17, 2010, the debtor filed a chapter 13 bankruptcy case in the **Northern District of California** (In re Lisnawati, **case no. 10-51499** (Bankr. N.D. Cal.)). The case was dismissed on April 20, 2010 due to the debtor's failure to make plan payments.

On May 13, 2010, the debtor filed a chapter 13 bankruptcy case in the **Northern District of California** (In re Lisnawati, **case no. 10-55002** (Bankr. N.D. Cal.)). The case was dismissed on June 30, 2010 due to the debtor's failure to file a chapter 13 plan, schedules and statements. The debtor also did not disclose her prior bankruptcy filing when she filed this case.

On July 25, 2011, the debtor filed a chapter 13 bankruptcy case in the **Eastern District of California** (In re Lisnawati, **case no. 11-38120** (Bankr. E.D. Cal.)). The case was dismissed on October 12, 2011, pursuant to the debtor's request for dismissal filed on September 27, 2011. The debtor never filed a plan, schedules or statements in the case. The debtor also did not disclose any of her prior bankruptcy filings when she filed this case.

On October 26, 2011, the debtor filed a chapter 13 bankruptcy case in the **Eastern District of California** (In re Lisnawati, **case no. 11-45430** (Bankr. E.D. Cal.)). The case was dismissed on March 6, 2012, pursuant to the debtor's request for dismissal filed on February 6, 2012. The debtor failed to appear at the meeting of creditors, failed to make plan payments, failed to file and prosecute a motion for plan confirmation, failed to provide the chapter 13 trustee with payment advices or evidence of income received within the 60-day period prior to the filing, and failed to provide the trustee with her most recent tax year for which a return was filed. Case No. 11-45430, Docket 27 at 2-3. The debtor also did not disclose all of her prior bankruptcy filings when she filed this case.

On October 18, 2012, the debtor filed a chapter 13 bankruptcy case in the **Eastern District of California** (In re Lisnawati, **case no. 12-38520** (Bankr. E.D. Cal.)). The case was dismissed on January 10, 2013, pursuant to the debtor's request for dismissal filed on January 9, 2013, after the chapter 13 trustee had objected to plan confirmation and requested dismissal of the case because the debtor had failed to provide him with her business records. The debtor also did not disclose all of her prior bankruptcy filings when she filed this case.

On January 16, 2013, the debtor filed a chapter 13 bankruptcy case in the **Northern District of California** (In re Lisnawati, **case no. 13-50266** (Bankr. N.D. Cal.)). The case was dismissed on April 30, 2013, pursuant to the debtor's request for dismissal at the April 25, 2013 hearing on her motion to convert to chapter 11, after the trustee had already filed an objection to plan confirmation due to the debtor's ineligibility for chapter 13 relief, the debtor's failure to timely file a plan, her failure to provide the trustee with payment advices or evidence of income within the 60-day period prior to the filing, her failure to provide the trustee with her most recent tax year for which a return was filed, her failure to disclose all bankruptcy cases filed within the last eight years, and her failure to make plan payments. Case No. 13-50266, Dockets 30 & 36.

On July 24, 2013, the debtor filed a chapter 13 bankruptcy case in the **Northern District of California** (In re Lisnawati, **case no. 13-53941** (Bankr. N.D. Cal.)). The case was dismissed on September 19, 2013, pursuant to the trustee's motion for dismissal due to the debtor's failure to make the initial plan payment. Case No. 13-53941, Docket 21. The debtor also did not disclose all of her prior bankruptcy filings when she filed this case. She disclosed only two cases. Case No. 13-53941, Docket 1.

On August 16, 2013, Francisca T. Ingegneri filed a chapter 13 bankruptcy case in the Northern District of California (Case No. 13-54409). Ms. Ingegneri apparently claimed an interest in the subject property. On December 19, 2014, the movant obtained an order for relief from stay under section 362(d)(4) with respect to the subject property. Case No. 13-54409, Docket 48.

The debtor filed the instant bankruptcy case on December 6, 2014.

The court takes judicial notice of all cases, case dockets and pleadings referenced or cited above. Fed. R. Evid. 201(c)(1).

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).

The debtor has not disputed any of the facts pertaining to the filing of any of her prior cases. In fact, the debtor makes no effort to explain her prior filings. Docket 53, Debtor Decl.

The debtor's filing of seven reorganization bankruptcy cases in the last four years, since February 17, 2010, and her failure to prosecute each of those cases, amounts to egregious behavior and unfair manipulation of the Bankruptcy Code.

The debtor has manifested a clear pattern of abuse and manipulation of the Bankruptcy Code. Prior to filing this case, she has been filing only chapter 13 reorganization cases, which can be dismissed without a hearing. She filed the prior cases and then either defaulted in not filing bankruptcy documents or providing documents to the chapter 13 trustee, or simply requested dismissal before the court could dismiss due to her defaults or lack of prosecution.

Her persistent refiling of chapter 13 cases - even though she was ineligible for chapter 13 relief - is another strong indicator of egregious behavior. For instance, although this court is convinced that the debtor knew or should have known of her ineligibility for chapter 13 relief early in her history of prior filings, the debtor was clearly apprised of her ineligibility for chapter 13 relief in Case No. 13-50266, when the chapter 13 trustee filed an objection to confirmation over two months prior to the hearing on her motion to convert to chapter 11, at which the debtor requested dismissal.

Nevertheless, the debtor filed Case No. 13-53941, another chapter 13 bankruptcy

case.

If the debtor really wanted to be in a chapter 11 proceeding, she should have stayed in Case No. 13-50266 and prosecuted her motion to convert to chapter 11.

However, her true intentions were to improperly delay and hinder her creditors and not reorganize within the bounds of the Bankruptcy Code. That is why the debtor - as if changing her mind at the last minute - asked for dismissal of the case rather than conversion to chapter 11. This last minute request for dismissal is consistent with all her dismissal requests in the other prior cases, where she sought dismissal only after it had become apparent that the debtor had defaulted or was not cooperating with the chapter 13 trustee.

Further, her failures to list prior filings - starting with her second case, Case No. 10-55002, are misrepresentations of fact. The instant case is the first case that all her prior filings have been disclosed. When she disclosed prior filings before, she disclosed only one or two of her several prior filings.

The debtor's compliance with the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure for a short time in this case does not undo or somehow excuse her improper conduct in filing the seven prior reorganization cases. The court is entitled to draw inferences from the debtor's prior conduct in bankruptcy, in determining her true intentions in this case.

From the foregoing, the court infers that the debtor has filed this case in bad faith, with no real intention to reorganize. She has had many chances to reorganize in the past but has over and over again manifested an intent to hinder and delay creditors. The court is not persuaded that this case is any different.

And, bad faith exists even in the absence of improper intent, malice, ill will or affirmative attempt to violate the law. The debtor's filing of seven prior reorganization bankruptcy cases and her failure to prosecute those cases, even without the court's conclusions about her motives, amounts to bad faith.

Bad faith is cause for the granting of relief from stay under section 362(d)(1). Accordingly, the motion will be granted pursuant to section 362(d)(1) 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).

According to the movant, the property has a value of $225,650 and it is

encumbered by claims totaling approximately $503,757. The movant's deed is in first priority position and secures a claim of approximately $408,153. Docket 46.

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

The court will deny in rem relief under section 362(d)(4), given that the movant has already obtained such relief under section 362(d)(4) with respect to the property, in the case of Francisca T. Ingegneri, Case No. 13-54409.

In rem relief will be denied under 11 U.S.C. § 105 as well, as such relief requires an adversary proceeding. Johnson v. TRE Holdings L.L.C. (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).