UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 10, 2017 at 10:00 a.m.

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

3, 9

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the 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 MAY 10, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 26, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 3, 2016. 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. 16-28112-A-7 IMRE/LAURIE VOROS — MOTION TO AVOID JUDICIAL LIEN
LBG-3 — 3-9-17 [34]
VS. ABSOLUTE RESOLUTIONS IX, L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Imre Voros in favor of Absolute Resolutions IX, L.L.C. for the sum of $5,604.78 on September 14, 2015. The abstract of judgment was recorded with Nevada County on December 7, 2015. That lien attached to the debtor's residential real property in Grass Valley, California.

The subject real property had an approximate value of $126,000 as of the petition date. Dockets 36 & 37. The unavoidable liens totaled $146,137 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 31, 36, 37. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $27,110 in Amended Schedule C. Dockets 32 & 36.

The motion will be denied because the debtor amended Schedule C on March 9, 2017, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors or the trustee, informing them of the added exemption. Docket 32. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied without prejudice.

2. 16-28112-A-7 IMRE/LAURIE VOROS — MOTION TO AVOID JUDICIAL LIEN
LBG-4 — 3-9-17 [39]
VS. AMERICAN EXPRESS BANK, F.S.B.

Tentative Ruling: The motion will be dismissed without prejudice.

The motion was not served on the respondent creditor, American Express Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Managing Agent, or Agent Authorized to Accept Service." Docket 43. This does not satisfy Rule 7004(h).

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

The debtor should also note that in the event the motion is reset for a hearing, it would be denied. The debtor amended Schedule C on March 9, 2017, to add an exemption in the subject property, but did not serve the Amended

Schedule C on any of the creditors or the trustee, informing them of the added exemption. Docket 32. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The debtor has not afforded parties in interest such an opportunity.

3. 16-26714-A-7 PAULA HUTCHINSON — MOTION TO CONVERT CASE
PGM-1 — 1-20-17 [26]

Tentative Ruling: The motion will be granted.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The court has reviewed the record and concludes that the debtor is not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtor has $250 in regular monthly net income. The income appears to be regular as it is generated by the debtor's employment with the State of California.

And, the debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $198,000) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $100,305). Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

4. 16-28229-A-7 MARIA DE ALMEIDA — MOTION TO AVOID JUDICIAL LIEN
SLE-1 — 2-9-17 [13]
VS. AMERICAN EXPRESS BANK, F.S.B.

Tentative Ruling: The motion will be denied without prejudice.

The court continued the hearing on this motion from March 13 on the promise from the debtor that she would be filing additional evidence in support of the motion by March 27. No such evidence has been filed by the March 27 deadline.

A judgment was entered against the debtor in favor of American Express Bank for the sum of $2,009.74 on May 16, 2012. The abstract of judgment was recorded with Sacramento County on March 28, 2013. That lien attached to the debtor's

residential real property in Sacramento, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1)(A).

The subject real property had an approximate value of $129,503 as of the petition date. Dockets 15 & 1. The unavoidable liens totaled $26,668.29 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 15 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of 102,834.71 in Schedule C. Docket 1.

Cal. Civ. Proc. Code § 704.730 provides that:

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

"*(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).*

"*(2) One hundred thousand dollars ($100,000) 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 a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.*

"*(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:*

"*(A) A person 65 years of age or older.*

"*(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.*

"*(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.*"

As the exemption claim exceeds $100,000, it being asserted under subsection 704.730(a)(3).

The motion will be denied because the debtor has not established entitlement to her $102,834.71 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 15.

5. 16-25935-A-7 DOUGLAS/KIM JACOBS
SS-5

MOTION TO
RECONVERT CASE
3-20-17 [100]

Tentative Ruling: The motion will be denied.

The debtors request reconversion to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The debtors have noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $387,800) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $133,484).

Nevertheless, the motion will be denied. The motion says that the debtors have positive net income to fund a chapter 13 plan because of Kim Jacobs' recent employment with Capitol Casino.

However, according to the most recent amendments of Schedules I and J, even with Kim Jacobs' income from the casino, the debtors' monthly net income is still a negative $406. Docket 68, Schedule J. Given this, the court is unconvinced that the debtors have income to fund a chapter 13 plan. Accordingly, the motion will be denied.

6. 16-27435-A-7 GARY/TRACY EASLEY
NF-2
VS. TRI COUNTIES BANK

MOTION TO
AVOID JUDICIAL LIEN
3-6-17 [34]

Tentative Ruling: The motion will be dismissed without prejudice.

The motion will be dismissed because the court cannot tell whether service of the motion complies with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The debtor served the motion on Tri Counties Bank, addressing notice to an individual named Leo Graham. Mr. Graham is not identified as an officer of the bank.

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003)

(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

Thus, the remaining service on Tri Counties Bank, addressed to "Officer, Manager, General Agent or Other Agent Authorized to receive Service of Process," does not comply with Rule 7004(h) either. Docket 38.

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

Further, in the absence of the service deficiencies, the motion would be denied.

A judgment was entered against debtor Gary Easley in favor of Tri Counties Bank for the sum of $24,278.16 on July 13, 2016. The abstract of judgment was recorded with Butte County on August 4, 2016. That lien attached to the debtor's residential real property in Magalia, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1)(A).

But, the debtors amended their Schedule C on March 6, 2017, to alter an exemption in the subject property, without serving the Amended Schedule C on any of the creditors, informing them of the added exemption. Docket 33. The Amended Schedule C was served only on the trustee and U.S. Trustee. Docket 33. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtors have not afforded all parties in interest such an opportunity, the motion will be denied.

Also, with the newly reduced exemption claim of $5,721.84, there is still $24,278.16 of equity in the property for satisfaction of the judicial lien. After subtracting the $210,000 voluntary lien on the property from the $240,000 value of the property, there is $30,000 of equity to pay the exemption claim of $5,721.84 and $24,278.16 of the judicial lien.

7. 16-22654-A-7 MARC LIM — MOTION TO APPROVE COMPROMISE 2-27-17 [105]
HSM-5

Tentative Ruling: The motion will be denied.

The trustee requests approval of a settlement agreement between the estate on one hand and creditors Chick's Produce, Inc., Del-Fresh Produce, Inc., and Sequoia Sales, Inc., on the other, resolving the amounts and treatment of the creditors' Perishable Agricultural Commodities Act claims against the estate and resolving pending litigation pursuant to those claims against the debtor and the debtor's pre-petition business, Lim's Produce. Pre-petition, Lim's Produce was dissolved under California law and its assets and liabilities were transferred to the debtor.

Under the terms of the settlement:

- The settlement binds any other creditor with a claim based on PACA. Creditors with *potential* PACA claims include Fine Line Foods, Inc., Salad Cosmo U.S.A. Corporation, and G.S. Fresh, Inc. Only Salad Cosmo expressly mentions PACA in its proof of claim.

- The creditor-parties to this agreement will secure consent to the agreement only from Salad Cosmo. Unless they successfully oppose this motion, other creditors with potential PACA claims will be bound by the settlement;

- The creditor-parties to this settlement acknowledge that they have had a full and fair opportunity to review the books and records in the trustee's possession of Lim's Produce (including electronic records and computer system), and do not oppose abandonment of such books and records;

- The PACA creditors will receive pro-rata distributions along with general unsecured creditor, but this does not make their claims general unsecured claims;

- The PACA creditors' claims will be reduced by whatever these creditors recover from previously abandoned assets of the estate;

- The trustee has agreed to reduce estate administrative claims by $5,000, to be applied at his discretion;

- The PACA creditors agree that the assets the trustee is administering are property of the estate and can be administered by him;

- The trustee agrees not to object to the PACA creditors' proofs of claim. The creditor-parties to this agreement have filed proofs of claim 8, 9 and 11; and

- The creditor-parties to this agreement will dismiss the removed and still pending adversary proceeding action against the debtor and Lim's Produce.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The settlement has many positive attributes, given:

- the creditor-friendly structure of the PACA statute,
- the significant evidentiary burden on the estate in the litigation, to establish that particular assets were not purchased with funds generated from the sale of perishable produce,
- the global resolution of the claims of the creditor-parties to the agreement,
- that general unsecured creditors may receive nothing if the creditor-parties to the agreement prevail in asserting their PACA claims,
- the expected tremendous litigation costs (including costly discovery and forensic accounting) if the litigation were to reach trial, and
- the inherent other costs, other risks, delay and inconvenience of further litigation.

However, the court cannot approve the settlement because it purports to be binding on any other estate creditor with a claim based on PACA.

The court cannot and is not willing to adjudicate in connection with this

motion which other creditors may have a claim based on PACA. Nor can the court force such non-party PACA creditors to be bound by the settlement solely by approving it and due to their failure to oppose this motion. While this motion was served on all creditors, only three of those creditors are actual parties to the settlement. Serving the motion on the other creditors cannot make them parties to the settlement.

More, forcing the modification of other non-party creditors' PACA claims — to be treated as general unsecured creditors — requires a determination of the nature of such claims. Perfection and priority issues are also involved with PACA claims. But, determining the validity, priority or extent of a claim requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). This motion is not an adversary proceeding.

And, if the PACA claims of other creditors are not treated as general unsecured claims, such PACA claims are likely to have priority over the PACA claims of the named creditor-parties to this settlement and the general unsecured claims. A partial settlement of the PACA claims against the estate would not be in the best interest of the creditors and the estate.

8. 16-22654-A-7 MARC LIM — STATUS CONFERENCE
16-2087 — 5-3-16 [1]
SEQUOIA SALES, INC. V. LIM'S PRODUCE ET AL

Tentative Ruling: None.

9. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR
MAT-2 — RELIEF FROM AUTOMATIC STAY
CHAD IRVIN VS. — 3-1-17 [386]

Tentative Ruling: The motion will be granted.

The movant, Chad Irvin, seeks relief from the automatic stay to proceed in state court with its negligence claims against the debtor. Recovery will be limited to available insurance coverage, if any.

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

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

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

Final Rulings Begin Here

10. 16-28106-A-7 RENEE GEORGE — ORDER TO SHOW CAUSE 3-20-17 [30]

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

This order to show cause was issued because the debtor filed an amended master address list on March 6, 2017, but did not pay the $31 filing fee. However, the court granted the debtor waiver of the filing fees in this case on March 28, 2017. Docket 34.

11. 16-23709-A-7 DINA NORTHCUTT — MOTION TO EMPLOY 3-13-17 [44]
DNL-6

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

The motion will be granted.

The trustee seeks approval to employ Cable Gallagher as special counsel for the estate to prosecute the debtor's state court claims against Bayer Corporation. The estate seeks to employ Mr. Gallagher on a one-third contingency fee basis, based on any recovery.

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."

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

12. 16-28109-A-7 GREGORY/CYNTHIA FOX — MOTION FOR RELIEF FROM AUTOMATIC STAY 3-10-17 [26]
AP-1
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.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $210,000 and it is encumbered by claims totaling approximately $242,037. The movant's deed is in first priority position and secures a claim of approximately $175,813.

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 February 2, 2017.

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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the

movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.

13. 17-20716-A-7 LILLIE SHABAZZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
TRM-1 — 2-10-17 [17]
ASPEN PARK HOLDINGS, L.L.C. VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on February 21, 2017, automatically dissolving the stay in the case. See 11 U.S.C. § 362(c)(2)(B). And, the movant is not seeking retroactive or in rem relief from stay.

14. 16-28517-A-7 NAPOLEAN DIAZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 3-2-17 [17]
CITIMORTGAGE, INC. VS.

Final Ruling: The hearing on this motion has been continued to May 10, 2017 at 10:00 a.m. Docket 27.

15. 17-21541-A-7 ESTEBAN CIGARROA — ORDER TO SHOW CAUSE
3-23-17 [17]

Final Ruling: The order to show cause will be discharged as moot.

This order to show cause was issued due to the debtor's failure to pay the filing fee for the case or apply to pay the fee in installments. However, the case was dismissed on March 27, 2017, making the order to show cause moot.

16. 17-21541-A-7 ESTEBAN CIGARROA — MOTION FOR RELIEF FROM AUTOMATIC STAY
KDS-5 — 3-27-17 [19]
WLP SYCAMORES APARTMENTS, L.L.C. VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on March 27, 2017, automatically dissolving the stay in the case. See 11 U.S.C. § 362(c)(2)(B). And, the movant is not seeking retroactive or in rem relief from stay.

17. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
CHE-1 — 2-28-17 [380]
CALIFORNIA DEPT. OF TRANSPORTATION VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the trustee, J. Russell Cunningham. Docket 384.

18. 09-21374-A-7 LEROY/VICTORIA CROWE MOTION FOR CONTEMPT
GRF-6 2-21-17 [25]

Final Ruling: The motion will be continued to May 22, 2017 at 10:00 a.m.

The debtors are seeking sanctions against Folsom Ready Mix, Inc. for discharge injunction violations arising from FRM's continued prosecution of a pre-petition claim against the debtors.

FRM filed a state court action against the debtors on December 10, 2008. The debtors filed this chapter 7 bankruptcy case on January 28, 2009. FRM was listed as a creditor in Schedule F, with a claim of $19,546.56. Docket 1, Schedule F; Docket 12, Schedule F. On January 31, 2009, FRM was served at 3401 Fitzgerald Road Rancho Cordova, CA 95742-6815 with a notice of the bankruptcy case. Dockets 5 & 6. The chapter 7 trustee issued a report of no distribution on April 8, 2009. The debtors' chapter 7 discharge was entered on May 21, 2009.

After the entry of discharge, FRM continued the prosecution of the state court action against the debtors, obtaining a default judgment against them on May 25, 2010.

In June 2016, the debtors notified FRM that the default judgment violated the discharge injunction. FRM filed a motion set aside the judgement in state court. The judgment was set aside on July 27, 2016.

The debtors complained to FRM that one of the credit reporting agencies was still reporting the judgment. FRM in turn wrote to that agency on August 26, 2016, requesting deletion of the judgment from its reports. Since then, FRM has not heard from the debtors.

This motion was filed on February 21, 2017. The debtors are seeking damages for:

(1) seeking "to close on the purchase of a new home and lost the real property due to the judgment;"

(2) losing "the 'increase' in value they would have gained had the sale of the real property to them been completed;"

(3) "the interest rates on real property loans has [*sic*] increased since June 2016 resulting in a 30 year higher interest rate;"

(4) an increase of their rent payments due to them giving "notice to their landlord and were forced to then move to a comparable rental at greater cost;"

(5) "emotional stress, high blood pressure, loss of sleep general feelings of depression, oppression, stomach problems, anxiety and fear;" and

(6) attorney's fees and costs.

Docket 25 at 2, 3.

The debtors are asking the court to "defer the issue of damages, other than attorney's fees, costs and sanctions for this contempt proceeding, to be best determined by the State Court action." Docket 25 at 3.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

11 U.S.C. § 105(a) provides 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 moving party must prove by clear and convincing evidence that the offending party violated the order. Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The violation must have been willful. The party seeking the sanctions must prove that the creditor:

(a) knew the discharge injunction was applicable, and
(b) intended the actions which violated the injunction.

See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

"*To be subject to sanctions for violating the discharge injunction, a party's violation must be 'willful.' The Ninth Circuit applies a two-part test to determine whether the willfulness standard has been met: (1) did the alleged offending party know that the discharge injunction applied; (2) and did such party intend the actions that violated the discharge injunction? In re Nash, 464 B.R. at 880 (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n. 7 (9th Cir. 2008), aff'd, --- U.S. ----, 130 S.Ct. 1367, 176 L. Ed. 2d 158 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir.2006).*

"*For the second prong, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue. Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002). 'A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt.' Jarvar v. Title Cash of Mont., Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009)(citing Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009-10 (Bankr. D. Minn. 1994)); see also In re Sanburg Fin. Corp., 446 B.R. 793, 804 (S.D. Tex. 2011)(that the offending party may have not understood its actions to violate the discharge injunction does not negate the willfulness finding, even if true).*"

Rosales v. Wallace (In re Wallace), No. NV-11-1681-KiPaD, 2012 WL 2401871 at *5

(B.A.P. 9th Cir., June 26, 2012).

The court does not have the authority to award punitive damages for violations of the discharge injunction because civil contempt sanctions are only remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

Preliminarily, the court does not understand the debtors' request to "defer the issue of damages, other than attorney's fees, costs and sanctions for this contempt proceeding, to be best determined by the State Court action."

The state court cannot award damages for violation of the discharge injunction because that court did not enter the discharge injunction. Sanctions for violations of a court order are generally issued only by the court that entered the order.

The debtors' reply acknowledges that this court must determine any damages. Hence, the present record does not permit the court to resolve this motion because there is no proof of injury or the amount of damages.

Turning to the merits of the motion other than the issue of damages, FRM knew of the debtors' bankruptcy filing and discharge, as it received notice of the bankruptcy case, notice of the trustee's report of no distribution and notice of the debtors' entry of discharge. Dockets 6, 14, 18.

The Notice of Chapter 7 Bankruptcy was served on FRM on January 31, 2009, the Notice of Filing of Report of No Distribution was served on FRM on April 11, 2009, and the Discharge of Debtor was served on FRM on May 23, 2009. Dockets 6, 14, 18.

FRM received these notices. It does not dispute receiving the notices. See Docket 40, Declaration of Scott Silva, FRM Owner. Also, the docket does not show that any notices returned from FRM to the court as undeliverable. Any negligence in the way FRM handled the notices — such as not forwarding them to its counsel — is not a defense.

FRM's failure to comprehend the legal significance of the bankruptcy notices is also not a defense. If it were, no one would be ever held in contempt of court for violating the discharge injunction. Almost anyone can claim ignorance of the law, as very few lawyers and virtually no lay persons understand the bankruptcy process.

The same is true with respect to FRM knowing where to serve the debtors with the state court action and the request for default in that action. When FRM discovered this bankruptcy case, in February 2009, it had plenty of information concerning the whereabouts of the debtors and where they could be served. The debtors' address is on the face of this bankruptcy case. And, the one-page Notice of Chapter 7 Bankruptcy with which FRM was served on January 31, 2009 and the one-page Discharge of Debtor with which FRM was served on May 23, 2009, both conspicuously contain the debtors' address. Dockets 6 & 18.

Three notices in this bankruptcy case having been served on FRM — including notice of the discharge injunction — is clear and convincing evidence that FRM knew of the bankruptcy case and the discharge injunction. FRM's subjective

beliefs about the bankruptcy case and negligence in handling those notices are not a defense.

Further, it is clear from the record that FRM intended the actions that violated the injunction. Once again, FRM's subjective belief about the relevance of the bankruptcy case is irrelevant. FRM clearly intended to continue the prosecution of the state court action, intended to file a request for entry of default and then default judgment and intended to obtain that judgment against the debtors. These actions were well-planned and not unintended.

Notwithstanding the foregoing, the motion cannot be granted at this time because the motion is bereft of evidence of damages resulting from FRM's discharge violation.

The court will not award sanctions to coerce compliance because when the debtors confronted FRM about the state court judgment violating the discharge, FRM promptly obtained an order setting aside the judgment. When prompted by the debtors, FRM even wrote to one of the credit reporting agencies, telling it to stop reporting the judgment.

At this point, the court has no evidence of injuries warranting compensatory damages.

First, the motion does not say anything about how the debtors "lost" a purchase of a home due to FRM's state court judgment. For instance, the motion does not say:

- when the debtors entered into a contract for purchase of the home,
- when escrow on the purchase was due to be closed,
- when exactly in that process they discovered FRM's judgment,
- what they did in attempting to salvage the contract, if anything,
- why they did not ask FRM to execute a satisfaction and/or release of the judgment.

The court cannot tell whether FRM's judgment even interfered in any way with a purchase of a home by the debtors.

Second, there is nothing in the record detailing what the debtors did to mitigate their damages. For example:

- did they contact FRM in time to work out any escrow closure issues;
- did they attempt to continue the close of escrow date;
- did they attempt to salvage their existing lease by negotiation with the landlord.

The motion also does not identify the real property they were purchasing, does not say when the purchase was to be finalized, does not identify the "increase in value" of the property, and quantify their rental payments at the time of the purchase versus at present.

Third, the debtors have not explained why they waited seven months, from August 2016 through February 2017, to file this motion. The order setting aside the state court judgment was entered on July 27, 2016. If the debtors had not waited so long to file this motion, they would not have had an "increase in value" and "increase in interest rate" damages. Their purported emotional distress damages would have been less as well.

Fourth, to the extent the debtors are contending that their emotional distress resulted from losing the purchase of the property, the court has no evidence of a causal connection between the discharge violation and loss of the purchase.

And, in the absence of proof of injury, awarding attorney's fees and costs would not be appropriate. The court has no evidence of attorney's fees and costs incurred by the debtors. There is no declaration from the debtors' counsel in support of this motion. The debtors also did nothing to confer with FRM prior to filing this motion in an attempt to mitigate their fees and costs.

Because the motion was filed on the premise that the debtors could establish a violation of the discharge injunction and then seek damages in state court, it seems that they omitted proof of any damages. The hearing will be continued so that such proof may be filed. Evidence of damages shall be filed and served no later than May 8 and the respondent's opposing evidence shall be filed and served no later than May 14.

19. 17-21082-A-7 MARJORIE STEWART — MOTION FOR RELIEF FROM AUTOMATIC STAY
JBZ-1 — 3-13-17 [9]
CALIFORNIA DEPT. OF VETERANS AFFAIRS 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, California Department of Veterans Affairs, seeks relief from the automatic stay as to real property in Redding, California.

The movant is the legal owner of the property under a California loan program for veterans, where the movant purchases real property and then enters into an installment contract with the purchaser veteran. Only when the installment contract is fully performed by the veteran, the veteran acquires interest in the property. Upon default by the veteran, however, the movant cancels the contract. The occupants of the property are then treated as tenants at will and the movant employs the unlawful detainer process to obtain possession of the property.

Here, the debtor defaulted under the installment contract in May 2016. The movant cancelled the contract on October 12, 2016. On October 18, the movant served the debtor with a 30-day notice to terminate tenancy. The notice period expired on November 17, 2016. On February 3, 2017, the movant filed an unlawful detainer action against the debtor. The debtor filed this bankruptcy case on February 22, 2017.

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, even though the debtor had an equitble interest in the property via the installment contract with the movant, the debtor defaulted under the contract by failing to pay the

installment due from May 2016 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the 30-day notice served on her pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

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 to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent 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.