UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 16, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 13-22000-D-7 RENAE CASE — MOTION FOR RELIEF FROM AUTOMATIC STAY
KER-1
NATIONSTAR MORTGAGE, LLC VS. — 3-6-14 [16]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on May 28, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

2. 14-22103-D-7 CELINA MUNOZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJP-1 — 3-11-14 [9]
CARFINANCE CAPITAL VS.
Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

3. 12-34306-D-7 JACK/BARBARA MCKARSON — MOTION TO DISMISS ADVERSARY PROCEEDING
12-2720 PA-2 — 3-19-14 [42]
DINWIDDIE-HINES CONSTRUCTION, INC. V. MCKARSON, II ET AL

4. 11-42209-D-7 AMERICAN PRIVATE SECURITY INC. — MOTION TO ABANDON
CDH-5 — 3-19-14 [54]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

5. 11-42209-D-7 AMERICAN PRIVATE SECURITY INC. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH INTERNATIONAL SECURITY SOLUTIONS, INC. AND GENALI TSATOURYAN
CDH-6 — 3-19-14 [50]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

6.	14-21717-D-7	ALEKSANDR GUDOV AND NATALYA GUDOVA	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 2-22-14 [5]
7.	14-21719-D-7	STSIAPAN/TATSIANA HURZHYI	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 2-22-14 [5]
8.	13-28020-D-7 EJS-1	ROGER/BONNIE TURNER	MOTION TO AVOID LIEN OF GE MONEY BANK, CAPITAL ONE BANK (USA), N.A., THE GOLDEN ONE CREDIT UNION, ET AL. 3-12-14 [48]

Tentative ruling:

This is the debtors' motion to avoid four different judicial liens. As to two of those liens, the motion was properly served; as to the other two, it was not. Thus, the court will grant the motion in part. The motion was properly served on FDIC-insured institutions GE Money Bank (now GE Capital Retail Bank) and Capital One Bank (USA) N.A. by certified mail to the attention of an officer, and as it pertains to the liens of those two creditors, the motion will be granted.

However, the motion was also served by certified mail to the attention of an officer of the Golden 1 Credit Union, whereas that creditor is not an FDIC-insured institution. Thus, that creditor was required to be served by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to Fed. R. Bankr. P. 7004(b) with Fed. R. Bankr. P. 7004(h). Creditor FIA Card Services, N.A., on the other hand, was served by first-class mail to the attention of an officer, manager or agent for service; however, that creditor is an FDIC-insured institution, and therefore, was required to be served by certified mail to the attention of an officer. As a result of these service defects, the motion will be denied as it pertains to the Golden 1 Credit Union and FIA Card Services, N.A. Alternatively, the court will continue the hearing to allow the debtor to properly serve Golden 1 Creditor Union and FIA Card Services, N.A. For future reference, it is suggested counsel check the FDIC's website to determine whether a particular creditor is or is not an FDIC-insured institution.

The court will hear the matter.

9. 14-20329-D-7 JOHNNIE GAINES — MOTION TO EMPLOY FIRST CAPITOL AUCTION, INC. AS AUCTIONEER(S)
HCS-2 — 3-19-14 [17]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ First Capitol Auction, Inc. is supported by the record. As such the court will grant the motion to employ First Capitol Auction, Inc. Moving party is to submit an appropriate order. No appearance is necessary.

10. 14-20329-D-7 JOHNNIE GAINES — MOTION TO SELL
HCS-3 — 3-19-14 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to sell is supported by the record. As such the court will grant the motion to sell and authorize the sale under Bankruptcy Code § 363(b). Moving party is to submit an appropriate order. No appearance is necessary.

11. 14-21840-D-7 ORLINO/LINDA CATABRAN — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
MDE-1
BANK OF THE WEST VS. — 3-10-14 [12]

Final ruling:

This matter is resolved without oral argument. This is Bank of the West's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

12. 11-36143-D-12 CHARLES YURGELEVIC — CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
JPJ-1 — 1-31-14 [63]

Final ruling:

The hearing on this motion is continued to 1:00 p.m. this afternoon to be heard with the debtor's motion to confirm modified plan. No appearance is necessary for this 10:00 a.m. calendar.

13. 12-39943-D-7 LARRY/CYNTHIA BROBERG — MOTION TO SELL
DMW-3 — 3-6-14 [31]

14. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION FOR COMPENSATION FOR GONZALES & SISTO, LLP, ACCOUNTANT(S) FOR TRUSTEE
CDH-12 — 3-19-14 [457]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

15. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO COMPROMISE AND SETTLE CERTIAN CLASSES OF CONTROVERSIES WITHOUT FURTHER NOTICE OR HEARING AND/OR MOTION FOR PROTECTIVE ORDER
CDH-13 — 3-19-14 [462]

This matter will not be called before 10:30 a.m.

Tentative ruling:

This is the trustee's motion for (1) authority to settle certain classes of controversies without further notice or hearing; and (2) a protective order as to communications made in attempting to settle those controversies. The trustee is the plaintiff in over 130 adversary proceedings against different defendants. The defendants in one group of adversary proceedings have filed a limited opposition, and the defendants in another group have joined in that opposition. (There are some defendants in the adversary proceedings who are not in either group, and who have not opposed the motion.) The trustee has filed a reply. For the following reasons, the motion will be granted in part.

The federal rules provide that "[a]fter a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice." Fed. R. Bankr. P. 9019(b). This rule provides explicit authority for the first form of relief requested by the trustee; the opposing defendants do not dispute this. The trustee proposes four different classes of controversies together with, for each class, a minimum percentage of the trustee's

total claim at which he could settle the adversary proceeding without further hearing or notice. For each of the classes, the trustee provides an analysis of the proposed minimum percentage, or other terms on which he may settle, in light of the factors the court is required to consider pursuant to In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The opposing defendants do not challenge the trustee's proposal except as to the minimum benchmarks the trustee would be required to achieve in order to settle without further hearing or notice. In the defendants' view, their defenses to the trustee's claims are so strong that a much smaller recovery than the trustee proposes would favor settlement. Therefore, for example, whereas the trustee proposes a minimum settlement figure of not less than 70% of the total amount of alleged fraudulent transfers, the defendants propose a 30% minimum. According to the defendants, "[t]he Trustee should be given broader authority to settle the cases for less, and at a value that is reflective of the costs and risks of the litigation, as well as any collectability issues." Limited Opposition, filed April 2, 2014 ("Opp."), at 2:20-22.

First, however, the trustee's proposed percentages are what creditors were noticed of by this motion, not the defendants' lower numbers. Second, this is the trustee's motion; accordingly, it is his prerogative to propose minimum amounts he believes would meet the Woodson standards. The court assumes at this point that the trustee does not believe the lower percentages proposed by the defendants meet those standards, and there is no authority for the proposition that the defendants or the court can force the trustee to settle a case at those lower figures. On the other hand, nothing would prevent the trustee from considering a settlement proposal at a figure lower than the percentages he now proposes, and if he later determines in any particular case, or if he determines as to a class of claims, that settlement at a lower percentage is fair and equitable, he is free to file and notice a further motion, under either Rule 9019(a) or (b).

The opposing defendants also request that the court include the following language in the order on this motion:

> This Order is not intended to propose, recommend, or dictate any particular settlement amount in any particular case. The parties are prohibited from suggesting otherwise during their settlement negotiations. The parties may settle matters above or below the threshold where appropriate based on the law, facts and collectability in each particular case.

Opp. at 3:18-20. The opposing defendants are particularly concerned that the "unsophisticated, pro se defendants" (id. at 3:24-25), whom neither they nor their attorneys represent, not misunderstand the order. The requested language is not necessary or appropriate, and the court has no reason to fear, as the opposing defendants suggest, that the trustee or his counsel will attempt to use the order to intimidate the pro se defendants.

Finally, the trustee requests an order protecting him and all parties from being compelled to produce settlement communications the trustee has had or will have with parties to the adversary proceedings. The opposing defendants contend the request is "not ripe for consideration" (Opp. at 4:5) because there is no outstanding demand that the trustee produce such communications. The trustee, however, has shown, and the opposing defendants have conceded, that the attorney for one of the groups of opposing defendants has in the past, by way of formal

discovery, sought production by the trustee of "all documents reflecting, referring to or evidencing all communications with any and all parties or their counsel relating to settlement of any of the Adversary Proceedings, whether or not a settlement has been reached, including but not limited to documents considered by the Trustee in connection with his evaluation of any such settlement." Request for Production of Documents, Ex. 1 to Supplement to Reply, filed Feb. 11, 2014 ("Supp."), at 13:21-24. That discovery request was mooted by the court's denial of the motion in which it was issued, but not before the opposing defendants made a blistering attack on the trustee, in a reply filed with the court, for his refusal to produce those documents. The assaultive tone of that attack and of the opposing defendants' position on the present request for a protective order strongly suggests the defendants are not finished with the issue.

Under these circumstances, the court is prepared to issue an order that the trustee is protected from disclosing any settlement communications, past or future, subject to further court order. The court rejects the defendants' argument that § 704(a)(7) of the Bankruptcy Code, which requires a bankruptcy trustee to furnish information concerning the administration of the estate, requires a trustee to divulge his settlement communications with a defendant in one adversary proceeding to a defendant in another adversary proceeding, especially where the two proceedings are as similar as those in this case. As the trustee points out, at least one court has explicitly rejected the notion. See In re Lee Way Holding Co., 120 B.R. 881, 907 (Bankr. S.D. Ohio 1990) (especially where two adversary proceedings are closely intertwined, § 704(a)(7) does not require trustee to disclose negotiations with defendant in one to the advantage of party adverse to trustee in the other.).

Second, although Fed. R. Evid. 408 (incorporated by Fed. R. Bankr. P. 9017) does not make settlement communications privileged or confidential, it does make them inadmissible to prove or disprove the validity or amount of a disputed claim. The opposing defendants have suggested no purpose for which they could possibly want to see the trustee's settlement communications with defendants in other adversary proceedings.[1] Thus, it appears the opposing defendants would like to use the trustee's settlement negotiations with one defendant to the advantage of another defendant and against the trustee, to the ultimate detriment of the estate.

Third, with one exception, the court rejects the opposing defendants' proposal for a limited protective order. The defendants would limit the protective order to information sought "for the purpose of trying to gain an advantage in settlement discussions." Opp. at 5:11-12. This language would open discovery to investigations of the parties' "purposes" or internal motivations in seeking the information, and would undoubtedly lead to much argument, and almost certainly, to motions to compel in which one party or the other would ask the court to speculate about the other party's motivations. Based on the history of this case the court readily declines this invitation. There is also no need for the requested language that the order shall not "otherwise excuse the Trustee from complying with his duties under 11 U.S.C. § 704(a)(7) . . . ." Opp. at 6:6-7. The court has no reason to believe the trustee is not complying with those duties, and the requested language is unnecessary.

The court, however, declines the trustee's request that the order protect any other party from producing settlement communications. The court will not, absent more, get involved in the defendants' communications among themselves. If the trustee wishes to provide for the confidentiality of settlement discussions by agreement with particular defendants, he is free to do so.

The court will conclude by noting that the parties have again, as in the past, gratuitously gone into a number of side issues not necessary to resolution of the motion. No matter what the motion, both parties tend to go astray in order to cast aspersions on the other side. This sort of conduct adds nothing productive to the discussion, and only wears on the court.

The court will hear the matter.

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1 The opposing defendants had such a purpose in an earlier motion. In the motion in which they sought discovery of the trustee's settlement communications, in the terms quoted above, the defendants asked the court to infer, from the trustee's refusal to produce them, that he (1) "is using precious estate resources that would otherwise be available for distribution to the Creditors to prosecute claims on which he either cannot prevail or will not ultimately collect anything" and (2) "is pursuing every conceivable claim and incurring costs without regard to merits or collectability of those cases." Supp. at 6:1-5. Although they have not mentioned such a purpose in their opposition to the present motion, the court would not likely consider such a purpose as supporting a fishing expedition that might allow one defendant or group of defendants to benefit, at the estate's expense, from knowledge of the trustee's negotiations with other defendants.

16. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION BY KATHY B. PHELPS TO WITHDRAW AS ATTORNEY
12-2314 KBP-2 — 3-19-14 [67]
BURKART V. LAL

This matter will not be called before 10:30 a.m.

17. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO SUBSTITUTE ATTORNEY
12-2318 KBP-2 — 3-19-14 [69]
BURKART V. SHAIKH

This matter will not be called before 10:30 a.m.

18. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO SUBSTITUTE ATTORNEY
12-2396 KBP-2 — 3-19-14 [64]
BURKART V. PRASAD ET AL

This matter will not be called before 10:30 a.m.

19. 14-21059-D-7 AARON/SARA MCPHERSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-6-14 [16]
WELLS FARGO BANK, N.A. VS.

20. 14-20064-D-7 GLENN GREGO — MOTION FOR DENIAL OF DISCHARGE OF DEBTOR
UST-1 — 3-7-14 [86]

Tentative ruling:

This is the United States Trustee's motion to deny the debtor's discharge pursuant to § 727(a)(8) on the ground that the debtor was granted a chapter 7 discharge in a case commenced on January 27, 2011 in the bankruptcy court for the Central District of California; that is, in a case commenced within eight years before the date of filing of the petition commencing the present case. The debtor does not deny this factual circumstance. Instead, he cites his pending appeal from this court's order converting this case from chapter 11 to chapter 7, arguing that "[n]o Order should be made while that Appeal is pending because irreparable steps will have been taken that cannot be corrected in the event the Order is reversed." Debtor's Opp., filed March 12, 2014, at 1:23-24. He adds that "[t]here is no need for this Motion to be heard at this time and Debtor objects to the timing of this Motion and the determination of the Motion." Id. at 1:24-2:2. The debtor has cited no authority for his opposition.

The debtor does not suggest what the irreparable consequences would be of this court determining the United States Trustee's § 727(a)(8) motion that could not be corrected if the conversion order is reversed, and the court can think of none. The court's ruling on the § 727(a)(8) motion will be a determination that the debtor is not entitled to a chapter 7 discharge in this case. Even if the debtor prevailed in his appeal from the conversion order, that would not change the fact that he is not, as a result of his chapter 7 discharge in the prior case, entitled to another chapter 7 discharge in this case.

The debtor's argument that there is no need for the § 727(a)(8) motion to be determined at this time is also incorrect. Under Fed. R. Bankr. P. 4004(c), in this chapter 7 case, upon expiration of the time for filing objections to discharge, which is 60 days after the date first set for the meeting of creditors (Fed. R. Bankr. P. 4004(a)), the court shall forthwith grant the discharge unless one of several enumerated exceptions exists. The pendency of an appeal from an order converting the case from chapter 11 to chapter 7 is not one of the exceptions. Thus, once the deadline for filing objections to discharge has passed, which in this case is May 19, 2014, if no such objections have been filed, this court would be required to grant the debtor a chapter 7 discharge. Thus, if § 727(a)(8) is to have any meaning in this case, the time to decide the United States Trustee's motion is now.

Finally, although the debtor does not explicitly raise the issue, his opposition suggests the theory that the filing of his notice of appeal divested this court of jurisdiction to consider the § 727(a)(8) motion. Not so.

> **The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction "over those aspects of the case involved in the appeal." The bankruptcy court retains jurisdiction over all other matters that it must undertake "to implement or enforce the judgment or order," although it "may not alter or expand upon the judgment." If a party wants to stay all of the proceedings in bankruptcy court while an appeal is pending, it must file a motion for a stay.**

Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007) (citations omitted). Thus, for example, where an appellant fails to obtain a stay pending its appeal of an order denying its motion to dismiss a chapter 7 case, "the bankruptcy court retain[s] jurisdiction to enter the discharge order; the only matter over which it lack[s] jurisdiction [is] the motion to dismiss – the very order being appealed." Id. Similarly, an appeal from an order dismissing a chapter 11 case does not divest the bankruptcy court of jurisdiction to remand a removed action to state court. Wood v. Goulart (In re Wood), 2012 Bankr. LEXIS 5151, *4 (9th Cir. BAP 2012). An appeal from an order confirming a chapter 11 plan does not divest the bankruptcy court of jurisdiction to implement the plan. In re Yellowstone Mt. Club, LLC, 2010 Bankr. LEXIS 977, *8 (Bankr. D. Idaho 2010). And an appeal from an order confirming a chapter 13 plan does not divest the bankruptcy court of jurisdiction to issue a chapter 13 discharge upon the debtor's completion of his plan payments. In re Ahmed, 420 B.R. 518, 524 (Bankr. C.D. Cal. 2009).

Here, the pendency of the debtor's appeal from the conversion order does not divest this court of jurisdiction to consider other issues relating to the administration of this case as a chapter 7 case, and in particular, does not divest the court of jurisdiction to consider the § 727(a)(8) motion. Thus, as the debtor is clearly not entitled to a chapter 7 discharge in this case, the motion will be granted. The court will hear the matter.

21.	14-21564-D-7	YEVGENIY ZAKHARNEV	APPLICATION TO HAVE THE CHAPTER 7 FILING FEE WAIVED 2-19-14 [5]

22. 14-20066-D-7 ANTHONY/LYNN GARMAN MOTION TO AVOID LIEN OF
BMV-1 ASSOCIATION LIEN SERVICES
3-12-14 [13]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to avoid a lien held by Bridgeport Property Owners Association ("Bridgeport").[1] Bridgeport has not filed opposition. However, that does not by itself entitle the debtors to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Thus, the court will examine the merits of the motion. In the motion itself, the debtors characterize Bridgeport's lien as a nonpossessory, non-purchase money lien, which they seek to avoid pursuant to § 522(f)(1)(B) of the Bankruptcy Code. (The motion does not mention § 522(f)(1)(A).) The motion states that the property that is subject to the lien is "held primarily for the family and household use of the debtors and their dependents" (Motion to Avoid Lien, filed March 12, 2014, at 2:4-5), that the property is in the possession of the debtors, and that the delinquent amount "does not represent any part of a purchase money on the property . . . ." Id. at 2:7. The motion concludes that the lien impairs an exemption the debtors are entitled to under § 522(b) of the Code.

Bridgeport's lien is not a lien that can be avoided under § 522(f)(1)(B) of the Code. That subdivision permits a debtor to avoid a nonpossessory, non-purchase money lien in household goods, clothing, appliances, tools of the trade, and other items of personal property, whereas Bridgeport's lien is a lien against the debtors' real property. In particular, it is a delinquent assessment lien in favor of the homeowner's association for the development the debtors reside in, created by operation of statute upon the filing of a notice pursuant to Cal. Civ. Code § 1367.1 and pursuant to the provisions of the CC&Rs for the development.

Apparently as a fall-back position, the debtors' memorandum of points and authorities raises a different theory. The memorandum cites § 522(f)(1)(A), which permits a debtor to avoid a judicial lien in some circumstances; thus, the memorandum characterizes Bridgeport's lien as a judicial lien. One of the key elements of lien avoidance under § 522(f)(1)(A) is that the lien must be a judicial lien. In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). Bridgeport's lien is not a judicial lien.

The Bankruptcy Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." § 101(36). A "statutory lien" is defined as one that arises "solely by force of a statute on specified circumstances or conditions, . . . but does not include security interest or judicial lien . . . ." § 101(53). Finally, a "security interest" is a "lien created by an agreement." § 101(51). The definitions are mutually exclusive – a

lien is either a judicial lien, a statutory lien, or a security interest. See In re Harpole, 260 B.R. 165, 171 (Bankr. D. Mont. 2001), citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 312 (1977). Statutory liens cannot be avoided under § 522(f)(1)(A) (Harpole, 260 B.R. at 172), nor can security interests. Todd v. Rothschild (In re Todd), 2013 U.S. Dist. LEXIS 37904, *8-9 (D. Nev. 2013).

The key to the determination of the type of lien Bridgeport holds is the manner in which the lien was created. The notice of delinquent assessment was recorded on October 1, 2012 pursuant to Cal. Civ. Code § 1367.1,[2] which provided for the recording by a community association of a notice of delinquent assessment against a homeowner's interest in a development. See Diamond v. Superior Court, 217 Cal. App. 4th 1172, 1184 (2013). "Recording this notice creates a lien and gives the association a security interest in the lot or unit against which the assessment was imposed." Id. (citations omitted). Thus, it is arguable Bridgeport's lien is a statutory lien, as it arose by operation of statute. See, e.g., Young v. 1200 Buena Vista Condos., 477 B.R. 594, 597-603 (W.D. Pa. 2012); Fridella v. Renaissance Homeowner Ass'n (In re Fridella), 2008 Bankr. LEXIS 3770, *2 (Bankr. N.D. Ga. 2008). On the other hand, some courts have found homeowner's association liens to be security interests, on the theory that they arise out of the homeowner's agreement at the time he or she purchases his residence to be bound by the development's CC&Rs. See, e.g., 1200 Buena Vista Condominiums v. Young (In re Young), 467 B.R. 792, 800-05 (Bankr. W.D. Pa. 2012), rev'd, 477 B.R. 594 (W.D. Pa. 2012); In re Krause, 2011 Bankr. LEXIS 4075, *7-9 (Bankr. S.D. Ind. 2011).

The court need not determine whether Bridgeport's lien is a statutory lien or a security interest because in any event, it was not obtained by resort to the judicial system, and thus, is not a judicial lien. Because it is not a judicial lien, it cannot be avoided under § 522(f)(1)(A). As Bridgeport's lien cannot be avoided under either subdivision of § 522(f)(1), the motion will be denied, and the court need not address the service issues raised by the debtors' proof of service, other than to note that service of the motion was not in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b).

The motion will be denied by minute order. No appearance is necessary.

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1 The moving papers name the potential respondent as Association Lien Services on behalf of Bridgeport. Although the relevant notice (see below) was recorded by Association Lien Services on behalf of Bridgeport, it appears clear the lien is held by Bridgeport, not Association Lien Services.

2 Section 1367.1 was part of the Davis-Stirling Common Interest Development Act. It was repealed when the Act was reorganized and revised. See Stats 2012 ch 180 § 1 (AB 805), effective January 1, 2013, operative January 1, 2014.

23.	13-35671-D-11 TMP-4	CARLYLE STATION LLC	CONTINUED MOTION TO VALUE COLLATERAL OF HERITAGE BANK OF COMMERCE 1-31-14 [52]

Final ruling:

The hearing on this motion is continued to April 30, 2014 at 10:00 a.m. No appearance is necessary on April 16, 2014.

24. 14-21378-D-7 CORDELIA ROUNTREE
VVF-1
AMERICAN HONDA FINANCE
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-19-14 [9]

Final ruling:

This matter is resolved without oral argument. This is American Honda Finance Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

25. 14-22492-D-12 CHARLES CORNELL

STATUS CONFERENCE RE: VOLUNTARY
PETITION
3-12-14 [1]

26. 14-21796-D-7 JOSEPH/LACY RIPOLL
SMR-1
BRIDGE-CAMERON RIDGE, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-17-14 [17]

Final ruling:

This matter is resolved without oral argument. This is Bridge-Cameron Ridge, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The motion along with the supporting pleadings demonstrate that the debtor only possesses a leasehold interest in the property and has not made any post-petition payments and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

27. 11-48899-D-7 WILLIAM PATTISON — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
HCS-2 — 3-19-14 [64]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the court has considered the Movant's voluntary reduction of $2,840 in fees and costs. The record establishes, and the court finds, that the fees and costs, as voluntarily reduced, are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit a appropriate order. No appearance is necessary.

28. 11-48899-D-7 WILLIAM PATTISON — MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
KJH-2 — 3-5-14 [56]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

29. 14-21208-D-7 JASMINE GIVENS — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 3-24-14 [16]
WELLS FARGO BANK, N.A. VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates she intend to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

30. 13-30317-D-7 JAMES COREY — CONTINUED MOTION TO AMEND COMPLAINT
13-2308 JRR-1 — 3-5-14 [17]
ROBERTS V. EDWARDS

Final ruling:

This motion has been granted and the trustee/plaintiff filed an amended complaint on April 2, 2014. As a result this hearing is removed from calendar. No appearance is necessary.

31.	13-36019-D-7 CA-1	ROXANA REYES	MOTION TO EXTEND TIME 3-31-14 [21]
32.	12-36631-D-7 HCS-1	CHENITA BRADLEY	MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR COMPENSATION FOR SAN DIEGO REO SPECIALISTS, REALTOR(S) 3-26-14 [38]
33.	14-22647-D-7 MET-1 BANK OF THE WEST VS.	BOBBY/KATHLEEN VANMETER	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 4-2-14 [9]
34.	14-22149-D-7 WSS-1 PHD INVESTORS LP AND VANZETTI PROPERTIES LP VS.	TERRYLYN MCCAIN	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 3-11-14 [9]

Tentative ruling:

This is PHD Investors LP and Vanzetti Properties, LP's (the "Movants") motion for relief from stay (the "Motion"). The Movants assert that they acquired ownership to the real property commonly described as 2549 North Beecher Road and 2561 North Beecher Road, Stockton, California (the "Property") on August 9, 2013, at a properly conducted pre-petition foreclosure sale. Then on January 17, 2014, Movants obtained a State Court judgment against the debtor for unlawful detainer and possession of the Property. While the Movants were in the process of having the debtor removed from the Property, this bankruptcy case was filed. As a result of the foregoing, the Movants assert that the debtor has only a possessory interest in the Property, and as such, cause exists for relief from stay under Bankruptcy Code § 362(d)(1).

The debtor filed a document on April 1, 2014 titled "Answer to Defendant's Motion for Relief from Stay and Request for Summary Judgment and Quiet Title Only - Attestation and Affidavit by Verified Declaration" (docket entry 47). The court construes this document as opposition to the Motion (the "Opposition"). Although the Opposition is disjointed, and large portions unintelligible, it appears the debtor asserts that the pre-petition foreclosure sale was not properly noticed and conducted. As a result, the debtor asserts the foreclosure sale is invalid and the subsequent unlawful detainer action void.

On April 9, 2014, the Movants filed a reply and supplemental declarations with exhibits (the "Reply"). The Reply reasserts the propriety of the pre-petition foreclosure sale and submits additional evidence to support their position that they acquired title to the Property.

Pursuant to Code § 362(g) the moving party has the burden of proof to demonstrate that there is no equity in the property, and the debtor has the burden of proof on all other issues. Stay litigation is limited in scope to issues of adequate protection, equity in the property, and whether the property is necessary for an effective reorganization. The validity of the claim, or contract underlying the claim, is not litigated during a relief from stay hearing. In re Johnson, 759 F.2d 738 (9th Cir. 1985). Stay relief hearings do not involve a full adjudication on the merits of the claims, defenses, or counter-claims, but simply a determination as to whether creditor has a colorable claim. In re Robins, 310 B.R. 626 (9th Cir. BAP 2004).

The Movants' evidence filed with the Motion consists of: 1) the Declaration of John R Vanzetti, a majority owner and partner of Vanzetti Properties, LP; 2) the Declaration of Anthony Ghio, a majority owner and partner of PHD Investors, LP; 3) the Declaration of Scott Sheppard, the attorney that handled the State Court unlawful detainer action; and 4) twenty-four exhibits. The Movants' evidence filed with the Reply consists of: 1) the Supplemental Declaration of W. Scott Sheppard; 2) the Supplemental Declaration of John R. Vanzetti; 3) the Supplemental Declaration of Anthony Ghio; 4) and a Second Supplemental Declaration of W. Scott Sheppard; and 5) multiple exhibits. The Movants have laid a sufficient evidentiary foundation for all of the evidence submitted and all of the evidence submitted has been properly authenticated. Based on the above-referenced declarations and exhibits the court finds the Movants have clearly, and easily, established a colorable claim that they acquired the Property at a pre-petition foreclosure sale and that the Movants are the current owners of the Property. Thus, the debtor's only interest in the Property is possessory. Further, pursuant to In re Johnson, supra, the debtor's assertion that the pre-petition foreclosure sale was not properly conducted is not a meritorious defense to the Motion.

Accordingly, the court finds that for the purpose of the Motion the Movants have established that they own the Property and that the debtor's only interest in the Property is possessory. As a result, the court will grant relief from stay for cause under Code § 362(d)(1) and also waive FRBP 4001(a)(3) by minute order.

The court will hear the matter.

35. 14-21255-D-7 JOHNALLEN ROBINSON
SLC-1

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
3-19-14 [11]

36. 09-29162-D-11 SK FOODS, L.P.

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-7-09 [1]

This matter will not be called before 10:45 a.m.

37. 09-29162-D-11 SK FOODS, L.P.
SH-257

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RHM INDUSTRIAL/SPECIALTY FOODS, INC.
4-1-14 [4778]

This matter will not be called before 10:45 a.m.

38. 13-32863-D-7 SCOTT SICKELS
14-2002
KEARNEY V. SICKELS

MOTION BY DAVID L. BROWN TO WITHDRAW AS ATTORNEY
3-28-14 [18]

39.	13-24366-D-7 13-2200 SUTHERLIN ET AL V. ACS/SUNTRUST BANK ET AL	DENNIS/JACQUELINE SUTHERLIN	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 11-27-13 [14]
40.	12-39878-D-7	DAVID/RENEE SMITH	ORDER TO SHOW CAUSE 3-25-14 [164]
41.	11-40980-D-7 SBL-3	MONTE/DONNA SMITH	MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY 3-21-14 [365]
42.	13-35082-D-7 CSL-3	SANTAREJAI/DASHANNA BROWN	MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 4-1-14 [78]

43.	14-20886-D-7 MOH-1	EDWARD/RITA GERNEY	MOTION TO COMPEL ABANDONMENT 3-25-14 [13]
44.	12-27290-D-7 CJO-1 BANK OF AMERICA, N.A. VS.	LORRAINE POLSTER	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-28-14 [67]
45.	14-23392-D-7 NBC-1	ROBERT/RACHEL MATTINGLY	MOTION TO COMPEL ABANDONMENT O.S.T. 4-10-14 [15]