UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 25, 2016 at 10:00 a.m.

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

1, 2, 3, 4, 11, 12, 14, 15

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 23, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 9 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 16, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 15-20102-A-7 MUKHTIAR TAKHER — MOTION TO APPROVE COMPROMISE
CDH-5 — 4-4-16 [94]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Robbie Takher, resolving an avoidance action by the estate against the debtor and Mr. Takher. Pre-petition, the debtor transferred vehicles and harvesting equipment to Mr. Takher, with an approximate value of $555,000, after accounting for secured claims against the property.

Under the terms of the compromise, a stipulated judgment for $550,000 will be entered against Mr. Takher, and Mr. Takher will pay the estate $135,000 plus certain costs and interest via a payment schedule that is set to end in December 2017. In the event Mr. Takher defaults under the payment schedule, the trustee will be free to enforce the stipulated judgment.

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 court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that Mr. Takher does not appear to be able to satisfy a $555,000 judgment, given that Mr. Takher must still continue to pay the senior consensual secured claim against the personal property, given Mr. Takher's assertion that he provided adequate consideration for the transfer, given that Mr. Takher's income is directly tied to the harvest seasons during which he provides harvesting services, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its

own sake. Id. Accordingly, the motion will be granted.

2. 15-20102-A-7 MUKHTIAR TAKHER — CONTINUED STATUS CONFERENCE
15-2058 — 3-15-15 [1]
RICHARDS V. TAKHER ET AL

Tentative Ruling: None. If the compromise is approved, the status conference will be concluded.

3. 15-20311-A-7 GARY SOUTH — MOTION TO
DBJ-1 — COMPEL ABANDONMENT
3-29-16 [20]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Paradise, California. The entire equity in the property is exempt.

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

The property has a value of $230,000. It is encumbered by three mortgages totaling $212,244 and the debtor has exempted $17,756 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(5).

Given the value, encumbrances and exemptions of the property, the court concludes that it is of inconsequential value to the estate. The motion will be granted.

4. 15-21617-A-7 TIM/CARISSA ALDRICH — MOTION TO
DNL-5 — ABANDON
4-11-16 [123]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on

the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Fairfield, California. The property is over-encumbered.

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

The property has an approximate value of $529,000, whereas it is subject to a claim in favor of M&T Bank for approximately $558,203. A recent update of M&T's claim indicates that the claim has ballooned to approximately $614,646. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

5. 14-31822-A-7 JOHN DYNOWSKI
COR-2
PENNYMAC HOLDINGS, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-9-16 [35]

Tentative Ruling: This ruling addresses four related motions in two different bankruptcy cases filed by debtor John Dynowski:

- a motion for relief from the automatic stay by PennyMac Holdings, L.L.C., in Case No. 14-31822-A-7,

- a stay violation motion by the debtor in Case No. 14-31822-A-7,

- a motion for relief from the automatic stay by PennyMac Holdings, L.L.C., in Case No. 15-28574-A-13,

- a stay violation motion by the debtor in Case No. 15-28574-A-13.

The debtor defaulted on a loan secured by his residence in Citrus Heights, California sometime in 2013. PennyMac acquired the interest in the debtor's mortgage in June 2014. Due to the debtor's default, PennyMac started foreclosure proceedings. In an effort to stop the foreclosure, the debtor filed a chapter 7 bankruptcy case, Case No. 14-31822-A-7, at 10:54 a.m. on December 4, 2014. PennyMac conducted a foreclosure sale at 11:00 a.m. on December 4, 2014 and purchased the property without knowing of the bankruptcy.

Case No. 14-31822-A-7 was dismissed on December 15, 2014, due to the debtor's failure to timely file petition documents. Case No. 14-31822-A-7, Dockets 3 & 10. On February 11, 2015, the court denied the debtor's request for setting aside of the dismissal. Case No. 14-31822-A-7, Dockets 17 & 19.

In the meantime, on January 12, 2015, PennyMac filed an unlawful detainer action in state court, to obtain possession of the property. The debtor and his partner answered the unlawful detainer complaint.

The debtor also filed another chapter 7 bankruptcy case, **Case No. 15-21755-A-7**, on March 5, 2015. The trustee issued a report of no distribution on June 24, 2015 and the debtor received his discharge on July 20, 2015. The debtor's Case No. 15-21755-A-7 was closed on July 31, 2015.

On September 16, 2015, PennyMac filed a summary judgment motion in the unlawful detainer action. On November 3, 2015, the day before the hearing on the summary judgment motion, the debtor filed another bankruptcy case, a chapter 13 case, **Case No. 15-28574-A-13.** On November 4, the state court granted PennyMac's summary judgment motion. The debtor appealed from that decision, but the appeal was dismissed on February 29, 2016.

On January 3, 2016, the debtor moved for dismissal of **Case No. 15-28574-A-13.** Although the court has not entered an order dismissing the case yet - because the debtor failed to lodge a dismissal order - the court issued a ruling dismissing the case on January 19, 2016. Case No. 15-28574-A-13, Dockets 27 & 30. On March 2, the debtor filed a motion asserting that Pennymac had violated the automatic stay. It was set for hearing on March 21. Case No. 15-28574-A-13, Dockets 38 & 39. This prompted PennyMac to file a motion for relief from the automatic stay which it set for hearing on April 25. Case No. 15-28574-A-13, Dockets 47, 48, 60. The hearing on the debtor's stay relief motion was eventually continued from March 21 to April 25, so the two motions could be heard together. Case No. 15-28574-A-13, Docket 59.

On March 8, 2016, the court reopened **Case No. 14-31822-A-7** in order for PennyMac to prosecute a motion for relief from the automatic stay in that case and for the debtor to prosecute a stay violation motion. Case No. 14-31822-A-7, Dockets 25 & 33. The debtor filed his motion on March 7, set for hearing on March 21, and PennyMac filed its motion on March 9, set for hearing on April 25. Case No. 14-31822-A-7, Dockets 28 & 35. The hearing on the debtor's motion was continued from March 21 to April 25, so the two motions would be heard together. Case No. 14-31822-A-7, Docket 44.

Preliminarily, as the debtor has filed no evidence in support of his motion for sanctions for Pennymac's alleged violations of the automatic stay in Case No. 14-31822-A-7, the court will exercise its discretion and consider - to the extent necessary - the debtor's evidence in support of his nearly identical motion in Case No. 15-28574-A-13.

Although the debtor's stay violation motions in both Case No. 14-31822-A-7 and Case No. 15-28574-A-13 are nearly identical, asking for relief due to violation of the automatic stay, the court will address the alleged violations in each case respectively and separately.

The motion for violation of the stay in Case No. 14-31822-A-7 will be denied as that claim is barred by judicial estoppel.

Judicial estoppel bars the prosecution of a claim by a debtor who previously failed to disclose the claim in his bankruptcy schedules. Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 784-85 (9th Cir. 2001). "In the bankruptcy context, a party is judicially estopped from asserting a cause of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements." Hamilton at 783.

"In the bankruptcy context, the federal courts have developed a basic default rule: If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars the action. See, e.g., Payless Wholesale Distribs., Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570, 571 (1st Cir.1993) ('Conceal your claims; get rid of your creditors on the cheap, and start over with a bundle of rights. This is a palpable fraud that the court will not tolerate, even passively.'); Hay v. First Interstate Bank of Kalispell, N.A., 978 F.2d 555,

557 (9th Cir. 1992) (holding that '[f]ailure to give the required notice [to the bankruptcy court] estops [the plaintiff-debtor] and justifies the grant of summary judgment to the defendants'). The reason is that the plaintiff-debtor represented in the bankruptcy case that no claim existed, so he or she is estopped from representing in the lawsuit that a claim does exist. That basic rule comports fully with the Supreme Court's decision in New Hampshire [v. Maine, 532 U.S. 742 (2001)]: (1) the positions are clearly inconsistent ('a claim does not exist' vs. 'a claim does exist'); (2) the plaintiff-debtor succeeded in getting the first court (the bankruptcy court) to accept the first position; and (3) the plaintiff-debtor obtained an unfair advantage (discharge or plan confirmation without allowing the creditors to learn of the pending lawsuit). The general rule also comports fully with the policy reasons underlying the doctrine of judicial estoppel: to prevent litigants from playing 'fast and loose' with the courts and to protect the integrity of the judicial system. New Hampshire, 532 U.S. at 749-50, 121 S.Ct. 1808."

Ah Quin v. County of Kauai Dept. of Transp., 733 F.3d 267, 271 (9th Cir. 2013).

The debtor must know enough facts to know that a claim exists during the pendency of the bankruptcy case. Hamilton at 784-85.

"The application of judicial estoppel is not limited to bar the assertion of inconsistent positions in the same litigation, but is also appropriate to bar litigants from making incompatible statements in two different cases." Hamilton at 783.

Accordingly, the court considers three factors in determining whether to apply judicial estoppel: (1) whether a party's later position is "clearly inconsistent" with its earlier position, (2) whether the first court accepted the party's earlier position, and (3) whether the party seeking to assert an inconsistent position would receive an unfair advantage if not estopped. Becker v. Wells Fargo Bank, CIV. No. 2:12-1742 WBS EFB, 2012 WL 5187792, at *3 (E.D. Cal. Oct. 18, 2012) (citing New Hampshire v. Maine, 532 U.S. 742, 750–51, 121 S.Ct. 1808, 149 L. Ed. 2d 968 (2001)).

By the time the debtor filed his second bankruptcy case on March 5, 2015, Case No. 15-21755-A-7, he had already accrued a claim for violation of the automatic stay in his prior bankruptcy case, Case No. 14-31822-A-7, which had been dismissed on December 15, 2014. The debtor was clearly aware of his claim by the time he filed Case No. 15-21755-A-7, as he argued there had been a violation of the automatic his February 5, 2015 answer to PennyMac's unlawful detainer complaint. Docket 47 at 92 (Docket 47, Ex. 9 to Ex. E).

Notwithstanding this, the debtor did not disclose his stay violation claim in Case No. 15-21755-A-7. Schedule B does not list the stay violation claim in Case No. 14-31822-A-7. Case No. 15-21755-A-7, Docket 1. Question 21 in Schedule B asks whether the debtor has "[o]ther contingent and unliquuidated claims of *every nature* . . . ." Id. The debtor answered "[n]one." Id.

In reliance on the debtor's disclosures and truthfulness of his disclosures, the trustee issued a report of no distribution on June 24, 2015 and the court entered the debtor's chapter 7 discharge on July 20, 2015. Case No. 15-21755-A-7, Docket 18.

In this stay violation motion, however, the debtor is asserting that PennyMac and MTC Financial, Inc. (the foreclosure company) violated the automatic stay in Case No. 14-31822-A-7, when they foreclosed after the filing of that case.

Hence, whether or not the debtor is correct about the viability of his claim for violation of the automatic stay in Case No. 14-31822-A-7, the debtor's later position that violation occurred is clearly inconsistent with the debtor's earlier position in Case No. 15-21755-A-7 that he had no claim for violation of the automatic stay. The court in Case No. 15-21755-A-7 also accepted the debtor's earlier position when it deciding he was entitled to a discharge. And, if the debtor is allowed to assert his inconsistent position on stay violation, he would receive an unfair advantage if not estopped because he would benefit from a claim that should have been rightfully liquidated for the benefit of his creditors in Case No. 15-21755-A-7.

Judicial estoppel then precludes the debtor from asserting a claim for violation of the stay in Case No. 14-31822-A-7. Accordingly, the debtor's stay violation motion - as to violation of the stay in Case No. 14-31822-A-7 - will be denied.

Next, the foregoing does not dispose of the debtor's **motion for sanctions for a violation of the automatic stay in Case No. 15-28574-A-13**, filed on November 3, 2015. The stay in that case, and any corresponding violations of it, were not in existence at the time the debtor filed Case No. 15-21755-A-7 on March 5, 2015.

11 U.S.C. § 362(a) provides that:

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

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

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

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

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

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

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

attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

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

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

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

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

A movant can recover attorney's fees and costs as actual damages under section 362(k) for enforcing the automatic stay, for remedying the stay violation, and for prosecuting a request for damages. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1100-01 (9th Cir. 2015) (en banc) (expressly overruling Sternberg v. Johnston, 595 F.3d 937, 940 (9th Cir. 2010)); see also Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

The filing of Case No. 15-28574-A-13 on November 3 triggered an automatic stay that precluded PennyMac from continuing to enforce its claims against the debtor. This included PennyMac's unlawful detainer claim and its continued prosecution of that claim against the debtor. PennyMac's continued prosecution of the summary judgment motion after the debtor's November 3, 2015 filing of Case No. 15-28574-A-13 was in violation of the stay in that case.

While this was the debtor's third bankruptcy filing in less than one year, 11 U.S.C. § 362(c)(4) does not apply.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but

were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

Although the debtor had two prior bankruptcy cases pending within the previous year, only one of those cases was actually dismissed. Only Case No. 14-31822-A-7 was dismissed, on December 15, 2014. Case No. 15-21755-A-7 was not dismissed. The debtor received a discharge in that case.

It is then 11 U.S.C. § 362(c)(3)(A) that applies. It provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

In other words, given the presence of only one prior dismissed bankruptcy case within the prior year, the automatic stay was in effect on November 4, 2015 when PennyMac obtained its summary judgment.

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

Further, the debtor has produced evidence that he appeared at the November 4, 2015 hearing on PennyMac's summary judgment motion in state court, advising PennyMac and the court that he had filed another bankruptcy case on November 3, the day prior. Case No. 15-28574-A-13, Docket 41 at 5. The minutes for the November 4 hearing also clearly state that the debtor appeared at that hearing. Case No. 15-28574-A-13, Docket 67, Ex. A at 5.

PennyMac does not refute this evidence and does not deny that it was told at the November 4 hearing of the November 3 bankruptcy filing. PennyMac was informed and knew at the November 4 hearing of the debtor's November 3 bankruptcy filing. In its own papers, PennyMac admits that the state court noted the November 3 filing, but in spite of it the court went forward with granting the summary judgment motion. Case No. 15-28574-A-13, Docket 65 at 7; see also Case No. 15-28574-A-13, Docket 67, Ex. A at 5 (noting the November 3 in the minutes for the November 4 hearing).

From the foregoing, the court concludes that PennyMac had actual knowledge of the debtor's November 3 bankruptcy case. Despite this, PennyMac did not abate the prosecution of its summary judgment motion. PennyMac intentionally obtained summary judgment on its unlawful detainer claim at the November 4 hearing in state court. Case No. 15-28574-A-13, Docket 40, Exs. 10 & 11.

It is disingenuous for PennyMac to blame the state court for the violation of the stay in the granting of PennyMac's summary judgment motion and entering judgment against the debtor. Case No. 15-28574-A-13, Docket 65 at 7. The court would not have entered summary judgment against the debtor unless PennyMac persisted in the prosecution of its motion. Once knowing of the

November 3 bankruptcy filing and corresponding stay, PennyMac could have asked for dismissal of its summary judgment motion.

PennyMac did not do so. The record shows that PennyMac submitted an order on its granted summary judgment motion and the state court signed the order on November 11, seven days after the November 4 hearing. Case No. 15-28574-A-13, Docket 40, Ex. 11.

On the other hand, if PennyMac had been uncertain or confused about whether the November 3 filing stay prohibited the continued prosecution of its summary judgment motion at the November 4 hearing, PennyMac could have asked for continuance of the hearing. PennyMac did not do this either.

PennyMac's good faith belief about the applicability of the stay is relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

Even if the state court entered summary judgment in favor of PennyMac without PennyMac's agreement, PennyMac did nothing to undo the granting of the summary judgment motion and entry of the judgment against the debtor.

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

For instance, PennyMac could have filed a motion to set aside the granting of the summary judgment motion and the entry of the judgment against the debtor. It did not do so.

Much worse, after the state court's entry of the unlawful detainer judgment against the debtor, PennyMac pursued a lockout of the debtor from the subject real property. Case No. 15-28574-A-13, Docket 41 at 6-7.

Most troubling, PennyMac does not deny or explain this. Yet, during all this time, PennyMac had actual knowledge of the November 3, 2015 bankruptcy filing by the debtor. PennyMac admits that the November 3 filing is mentioned *in writing* in the minutes for the November 4 hearing. PennyMac's own exhibits show this. Case No. 15-28574-A-13, Docket 67, Ex. A at 5.

Even if PennyMac did not believe the debtor at the November 4 summary judgment motion hearing about the November 3 bankruptcy filing, PennyMac could have easily confirmed the November 3 filing, after the November 4 hearing. PennyMac did not do so. Instead, it pursued enforcement of the unlawful detainer judgment.

Accordingly, PennyMac's violations of the automatic stay in and stemming from the November 4 its unlawful detainer summary judgment were willful.

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

The court has little evidence of damages due to violations of the automatic stay in Case No. 15-28574-A-13. The only evidence is found in the debtor's supporting declaration. Case No. 15-28574-A-13, Docket 41. Most of the damages outlined in that declaration, however, arise from what transpired in Case No. 14-31822-A-7, the foreclosure sale itself. The debtor is estopped to assert that claim.

The only concrete damages arising directly as result of the November 3 filing of Case No. 15-28574-A-13, expressly identified in the debtor's declaration, are $240 for storage fees the debtor paid after the Sheriff visited him in January 2016 to warn him of the impending lockout. Case No. 15-28574-A-13, Docket 41 at 6.

The debtor also states that he paid a $3,000 retainer to Mr. Wolff to represent him in connection with the motions being addressed by this ruling. Case No. 15-28574-A-13, Docket 41 at 7. But, there is no declaration from Mr. Wolff about how much he actually incurred in attorney's fees to prepare the stay violation motion in Case No. 15-28574-A-13. The debtor has the burden of persuasion on every element of the stay violation claim, including the damages he has sustained. Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

In his declaration, the debtor also complains of emotional harm he suffered in connection with the enforcement of the unlawful detainer judgment. However, the court has no expert evidence of such harm. Whether, to what extent, and how the debtor suffered emotional harm requires specialized knowledge. See Fed. R. Evid. 701 & 702. The debtor has not been qualified as an expert on such questions. Fed. R. Evid. 701.

The court will award the storage fees and reasonable attorneys' fees to be determined by separate application.

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

Case No. 15-28574-A-13 was pending for 77 days, from November 3, 2015 through January 19, 2016. Case No. 15-28574-A-13, Dockets 1 & 30. During this time, PennyMac violated the stay by prosecuting a summary judgment motion against the debtor, by obtaining an unlawful detainer judgment against the debtor, and by pursuing a lockout of the debtor. PennyMac did this all the while it had actual knowledge, as of November 4, of the November 3 bankruptcy filing, and while it was represented by counsel. This is egregious behavior warranting punitive damages. The court will award $5,000 in punitive damages against PennyMac for the stay violations in Case No. 15-28574-A-13.

The punitive damages are warranted given the egregiousness of PennyMac's conduct, given that PennyMac regularly appears in bankruptcy courts, and given PennyMac's apparent wealth as a national mortgage lender.

In light of PennyMac's conduct in Case No. 15-28574-A-13, as described above, PennyMac is not entitled to retroactive relief from stay in Case No. 15-28574-A-13. See Case No. 15-28574-A-13, Docket 49. Its request for this relief in Case No. 15-28574-A-13 will be denied.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are:

- whether the creditor knew of the bankruptcy filing,
- whether the debtor was involved in unreasonable or inequitable conduct,
- whether prejudice would result to the creditor, and
- whether the court could have granted relief from the automatic stay had the creditor applied in time.

Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

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

PennyMac's knowledge of the November 3 bankruptcy case given at the November 4 unlawful detainer hearing, PennyMac's failure to confirm whether the November 3 filing indeed prohibited further enforcement of its pre-petition claim, PennyMac's failure to reverse its violations of the automatic stay and its failure to explain why and to what extent it continued enforcement of the unlawful detainer judgment, convince the court that PennyMac did not act in good faith when it continued the process of recovering possession of the property from the debtor in the face of the November 3 bankruptcy filing. PennyMac did not take the November 3, 2015 bankruptcy filing seriously until the debtor's present attorney contacted PennyMac in February 2016. Case No. 15-28574-A-13, Docket 41 at 7.

The court will not reward PennyMac with annulment of the very stay it has been ignoring in Case No. 15-28574-A-13, even if that case was filed in bad faith. There is no bad faith exception to the automatic stay. See 11 U.S.C. § 362(b). The Bankruptcy Code provides PennyMac with other remedies for bad faith filings as pertaining to the automatic stay, including 11 U.S.C. §§ 362(c)(3)(A) and 362(c)(4)(A), which the court has addressed in this ruling already. The debtor's misconduct in filing the November 3 bankruptcy case, if any, does not excuse or justify PennyMac's own misconduct of ignoring the bankruptcy stay.

The court will grant PennyMac's motion for relief from the automatic stay in Case No. 14-31822-A-7. Although the debtor is estopped from asserting a claim for the violation of the stay created by the filing of Case No. 14-31822-A-7, this does not mean there was no stay when PennyMac conducted its foreclosure sale on December 4, 2014.

PennyMac could not have been aware of Case No. 14-31822-A-7 in time to avert the foreclosure sale. The debtor filed Case No. 14-31822-A-7 at 10:54 a.m. on December 4, 2014, whereas the foreclosure sale was conducted six minutes later at 11:00 a.m. on the same date.

The notice of electronic filing of Case No. 14-31822-A-7 reflects a "12/4/2014

at 10:54 AM" filing date and time for the case. Case No. 15-28574-A-13, Docket 40, Ex. 13; Local Bankruptcy Rule 5005-1(g)(2) (providing that "Documents submitted in electronic form shall be deemed filed as of the date and time stated on the Notice of Electronic Filing issued by the Clerk").

More, the debtor engaged in unreasonable or inequitable conduct in filing Case No. 14-31822-A-7. The debtor filed the case on December 4, 2014 and the case was dismissed 11 days later on December 15, due to the debtor's failure to file petition documents. The court issued a notice of incomplete filing on December 4, telling the debtor that he had not filed his statement of social security number, the verification and master address list, the attorney's disclosure statement, the statement of monthly income, schedules A through J, the statement of financial affairs, the statistical summary and the summary of schedules. The statement of social security number and the verification and master address list were due no later than December 11, whereas the remaining documents were due no later than December 18. Case No. 14-31822-A-7, Dockets 3 & 10.

As the debtor did not file the above documents timely, the court dismissed the case on December 15.

From the timing of the December 4 filing relative to the foreclosure sale and from the debtor's failure to file the missing petition documents, the court infers that the debtor filed Case No. 14-31822-A-7 in bad faith, in order to hinder and delay PennyMac's enforcement of its claim against the property.

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 totality of the circumstances surrounding the December 4 filing indicate bad faith.

The court rejects the debtor's shift of blame for the deficiencies in his December 4 filing to his then attorney, Leslie Richards. There is no "my attorney did it" exception to the repercussions for bad faith misconduct. It was the debtor's choice to retain Ms. Richards and any problems he may have had in dealing with her are between him and her. If she has indeed wronged him, the debtor may have a claim against her.

However, this does not take away from the repercussions of the deficiencies in the December 4 bankruptcy filing. The debtor's bad faith misconduct in failing to properly prosecute Case No. 14-31822-A-7 resulted in dismissal of that case on December 15, 2014 and in the filing of a subsequent bankruptcy case. This prejudiced PennyMac in the enforcement of its claim against its collateral, as it has had to endure the hindrances of multiple bankruptcy filings.

Additionally, if PennyMac had applied for relief from stay at the time it conducted the foreclosure sale, the court would have likely granted such relief

given the debtor's default on the loan payments since August 2013 and given that property values were still quite low in December 2014 due to the preceding collapse of the real property market.

Therefore, the court will annul the stay with respect to December 4, 2014 foreclosure sale.

Lastly, the court awards no relief as to any of the other parties implicated by the debtor's motions. The court has no evidence that MTC or any of PennyMac's attorneys were personally responsible for conduct warranting relief. During all times, MTC and PennyMac's attorneys were acting on behalf of PennyMac, as its agents.

6. 14-31822-A-7 JOHN DYNOWSKI — CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
WW-1 — 3-7-16 [28]

Tentative Ruling: This motion will be disposed in accordance with the court's ruling in Case No. 14-31822 published in connection with PennyMac's stay relief motion (DCN COR-2).

7. 15-28574-A-13 JOHN DYNOWSKI — MOTION FOR RELIEF FROM AUTOMATIC STAY
COR-1
PENNYMAC HOLDINGS, L.L.C. VS. — 3-15-16 [47]

Tentative Ruling: This motion will be disposed in accordance with the court's ruling in Case No. 14-31822 published in connection with PennyMac's stay relief motion (DCN COR-2).

8. 15-28574-A-13 JOHN DYNOWSKI — CONTINUED MOTION FOR ORDERS, TO DETERMINE ACTIONS TAKEN AND FOR SANCTIONS
WW-1 — 3-2-16 [38]

Tentative Ruling: This motion will be disposed in accordance with the court's ruling in Case No. 14-31822 published in connection with PennyMac's stay relief motion (DCN COR-2).

9. 15-27228-A-7 GARY PATRICK — OBJECTION TO CLAIM
JSO-3
VS. EDWARD & DONNA BOMENGEN — 3-22-16 [45]

Tentative Ruling: The objection will be overruled.

The debtor objects to the December 4, 2015 proof of claim of Edward and Donna Bomengen, POC 1, arguing that the claimants' objection to the debtor's homestead exemption was "denied."

Initially, the objection will be overruled because the debtor has not alleged his standing to object to claims.

His mere status as a debtor is not sufficient. Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in his individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th

Cir. 2004). For instance, is this a surplus estate such that if this claim is disallowed, the debtor would receive a dividend? Are there nondischargeable claims such that disallowance of this claim will increase the dividend to the nondischargeable claims and thereby reduce the debtor's remaining nondischargeable liability?

The objection says nothing about the debtor's standing.

Further, the basis for the proof of claim is that the debtor defrauded the claimants in connection with his duties as a trustee in the administration of a family trust. The claimants have attached to the proof of claim their objection to the debtor's homestead exemption - outlining the underlying facts to their claim, which objection the court overruled on January 4, 2016. Docket 33.

The court is perplexed how its overruling of the exemption objection is basis for disallowing the claimants' claim. The subject objection gives no reasoning for its argument. The substance of the objection consists of only three sentences:

"Creditor alleges as a basis of the claim 'inheritance trust' and attaches a copy of DCN-DNB-1 Objection to Homestead Exemption of Gary Alan Patrick in support thereof. DCN-DNB-1 was heard by the court on January 4, 2016. The court overruled this objection."

Docket 45 at 1.

In overruling the exemption objection, the court did not say anything about the propriety of the claimants' claim against the estate.

On the contrary, the court stated:

"*The exemption does not negate any fraud perpetrated by the debtor in his capacity as trustee of the trust. Fraud perpetrated by the debtor upon the creditors may give rise to an award of damages in favor of the creditors. Yet, it is not a basis for disallowing an exemption in property the creditors contend belongs to them, in whole or in part.*

"*An exemption exists and it is enforceable only to the extent the exemption claimant actually owns an interest in the property. The exemption does not bar anyone from asserting causes of action against the debtor or disputing the claimant's interest in the property.*"

Docket 33 (Emphasis added).

Accordingly, this objection will be overruled.

10. 15-24932-A-7 DONNA DENTON — MOTION TO REDEEM
KMT-1 — 1-25-16 [31]

Tentative Ruling: None. This motion is being resolved pursuant to a settlement agreement. The hearing on this motion was continued from February 29, 2016, in order for the parties to finalize the settlement. Docket 46.

11. 15-27439-A-7 TERRANCE FLOURNOY — MOTION TO AVOID JUDICIAL LIEN
DLM-2
VS. PATELCO CREDIT UNION — 2-24-16 [22]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from March 28 in order for the debtor to correct and supplement the record. The debtor has filed additional pleadings in support of the motion. He has also correctly reserved the creditor respondent. An amended ruling for the motion follows below.

A judgment was entered against the debtor in favor of Patelco Credit Union for the sum of $14,383.63 on July 31, 2014. The abstract of judgment was recorded with Sacramento County on August 20, 2014. That lien attached to the debtor's residential real property in North Highlands, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $185,000 as of the petition date. Dockets 26 & 33. The unavoidable liens totaled $132,032 on that same date, consisting of a single mortgage in favor of M&T Bank. Dockets 24 & 26. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 24 & 26.

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

12. 16-20749-A-7 SUSAN HINTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCT-1
PLANET HOME LENDING, L.L.C. VS. — 4-5-16 [27]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Planet Home Lending, L.L.C., seeks relief from the automatic stay as to a real property in Meadow Vista, California. The movant has produced some evidence that the property has a value of $420,000 ($350,000 per Schedule A) and it is encumbered by claims totaling approximately $450,537. The movant's deed is the only mortgage against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can

administer it for the benefit of creditors.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

13. 15-29268-A-7 JOANNE GODREAU — MOTION TO SELL AND TO APPROVE COMPENSATION OF REAL ESTATE BROKER
DNL-3
4-4-16 [38]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $210,000 the estate's interest in a real property in Fairfield, California to Kyle Branham. The property has a scheduled value of $183,237. The property had been listed for sale at $190,000. The property is subject to an HOA lien in the amount of approximately $2,932 and mortgages totaling $118,355, including an $88,914 mortgage in favor of Bank of America and a $29,441 mortgage in favor of Travis Credit Union.

The trustee also asks for approval of the payment of the real estate commission.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate, estimated at approximately $70,000 by the trustee.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will authorize payment of the real estate commission, consistent with the approved terms of employment for Lyon Real Estate.

14. 15-29880-A-7 ALICE VASQUEZ — MOTION TO AVOID JUDICIAL LIEN
DLM-1
VS. DISCOVER BANK
2-8-16 [10]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from March 28 in order for the debtor to correct and supplement the record. The debtor has filed additional pleadings in support of the motion. She has also correctly reserved the creditor respondent. An amended ruling for the motion follows below.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $16,413.49 on May 23, 2011. The abstract of judgment was recorded with Sacramento County on January 17, 2012. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $146,000 as of the petition date. Dockets 14 & 27. The unavoidable liens totaled $80,123.23 on that same date, consisting of a single mortgage in favor of HSBC Mortgage Services. Dockets 12 & 14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 12 & 14.

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

15. 15-29880-A-7 ALICE VASQUEZ — MOTION TO AVOID JUDICIAL LIEN
DLM-2
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 2-8-16 [16]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from March 28 in order for the debtor to correct and supplement the record. The debtor has filed additional pleadings in support of the motion. An amended ruling for the motion follows below.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, LLC for the sum of $3,432.97 on October 11, 2013. The abstract of judgment was recorded with Sacramento County on March 10, 2014. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $146,000 as of the petition date. Dockets 20 & 30. The unavoidable liens totaled $80,123.23 on that same date, consisting of a single mortgage in favor of HSBC Mortgage Services. Dockets 18 & 20. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 18 & 20.

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

16. 15-26281-A-7 STEPHEN TRUMAN OBJECTION TO EXEMPTIONS 3-9-16 [52]

Tentative Ruling: The objection will be sustained in part.

Creditor MGM Grand Hotel, L.L.C., objects to the debtor's Cal. Civ. Proc. Code § 703.140(b)(10)(E) exemption in a $186,000 self-directed IRA that holds sports gambling tickets in the possession of MGM at present. MGM also objects to the debtor's wild card exemptions under Cal. Civ. Proc. Code § 703.140(b)(5) as they exceed the allowed statutory maximum amount.

The debtor amended Schedule C after this objection was filed and after the debtor filed its opposition to the objection. Docket 82. This Amended Schedule C continues to use Cal. Civ. Proc. Code § 703.140(b)(10)(E) as basis for the exemption of the self-directed IRA, but it also adds 11 U.S.C. § 522(b)(3)(C) as a basis for the exemption.

Amended Schedule C also caps the exemptions under Cal. Civ. Proc. Code § 703.140(b)(5) to the statutory maximum of $26,925, when considered in conjunction with the allowed exemptions under Cal. Civ. Proc. Code § 703.140(b)(1).

As Amended Schedule C caps the exemptions under Cal. Civ. Proc. Code § 703.140(b)(5) to the statutory maximum, this part of the objection will be dismissed as moot.

Turning to the merits of Cal. Civ. Proc. Code § 703.140(b)(10)(E), it provides for the exemption of:

"*The debtor's right to receive . . . (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:*

"*(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.*

"*(ii) The payment is on account of age or length of service.*

"*(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.*"

The requirements of Cal. Civ. Proc. Code § 703.140(b)(10)(E) mirror the language of the exemption in 11 U.S.C. § 522(d)(10)(E).

MGM asserts that the exception of subsections (i) through (iii) of Cal. Civ. Proc. Code § 703.140(b)(10)(E) applies.

The debtor readily satisfies subsections 703.140(b)(10)(E)(i) and (ii), in that he established the IRA himself and his right to receive payments under the IRA is directly tied to his age.

The crux of the dispute is centered over subsection (iii) of Cal. Civ. Proc. Code § 703.140(b)(10)(E), *i.e.*, whether the IRA qualifies under Section 401(a),

403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

On this point, the issue is an evidentiary one. The court disagrees with the debtor that the objecting party has the burden of persuasion that the exemption has been properly claimed. The Ninth Circuit case cited by the debtor, Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999), is a case decided prior to the Supreme Court's Raleigh decision.

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Proc. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

Further, the court cannot force MGM to prove a false negative. It cannot prove that the debtor's IRA does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The debtor here has presented no evidence on whether it is entitled to the Cal. Civ. Proc. Code § 703.140(b)(10)(E) exemption. There is no evidence that the debtor's self-directed IRA qualifies under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986. As such, the court will sustain the objection as to the exemption claimed under Cal. Civ. Proc. Code § 703.140(b)(10)(E).

This ruling has no impact on the newly-claimed 11 U.S.C. § 522(b)(3)(C) exemption. The objection will be sustained in part.

17. 15-26281-A-7 STEPHEN TRUMAN — MOTION TO CONVERT CASE 4-1-16 [74]
MRL-2

Tentative Ruling: The motion will be granted.

The debtor requests conversion from chapter 7 to chapter 13.

Creditor Partners Federal Credit Union has filed a response, seeking a briefing schedule because PFCU cannot tell from the motion whether the conversion is in

good faith and whether the conversion is in the best of PFCU. Specifically, PFCU questions the proposed chapter 13 plan, the debtor's mandatory retirement plan contributions, and the debtor's disclosures on Schedule J.

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 is seeking conversion because he has obtained new employment that will allow him to make significant monthly plan payments in a chapter 13 proceeding. Estimated monthly plan payments are at least $5,799. Docket 77.

In addition to his $250,016 annual salary, the debtor has received a $50,000 signing bonus, with another $40,000 bonus forthcoming later in 2016. Docket 76, Ex. A. The debtor's employment income is regular. Even though this is a new job for him, it is in line with his significant professional experience.

The debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $708,144) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $304,863). Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama.

The court does not have to assess the feasibility of the debtor's chapter 13 plan, including whether the plan pays all disposable income. PFCU will have the opportunity to challenge the debtor's chapter 13 plan once a hearing on plan confirmation has been set in the chapter 13 proceeding.

In other words, the debtor's new employment is sufficient basis to establish good faith for purposes of conversion. This does not pre-determine the debtor's good faith in proposing a chapter 13 plan, however. Such a question is reserved for the chapter 13 proceeding.

18. 15-29298-A-7 KENNETH/NICOLE FERRIDO — MOTION FOR CONTEMPT
SJS-1 — 3-14-16 [14]

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

The debtors are seeking to hold Lobel Financial Corp. in contempt for violation of the automatic stay.

Additionally, while Lobel has titled its opposition as a "supplemental opposition," the court has received no other responses from Lobel. And, even though the court may agree that the motion has some service deficiencies, Lobel has waived them by filing its opposition. The opposition does not state that Lobel is not waiving service defects.

Turning to the merits of the motion, this case was filed on November 30, 2015. Lobel was listed as an unsecured creditor in Schedule F. Docket 1. Lobel was served with the notice of case on December 3, 2015. Docket 7. Lobel, however, continued biweekly garnishment of the debtor Kenneth Ferrido's wages, including post-petition wages from December 11, 2015 through January 22, 2016, totaling $640.

On December 16, the debtor's counsel sent a letter to the Los Angeles County Sheriff, informing it of the bankruptcy case. A similar letter was sent on January 8, 2016 as well.

Lobel filed a proof of claim in the bankruptcy case on December 30. POC 1. Lobel obtained a modified earnings withholding order on January 16, 2016, ceasing garnishment as of January 13. The debtor's employer did not know of the ceased garnishment until few days later.

This motion was filed on March 14, 2016. As of the filing of this motion, Lobel had not returned all garnished post-petition wages to the debtor. Lobel promises to return $1,440 to the debtor. Docket 22 at 2. According to the debtor, as of February 23, Lobel had returned $480 to the debtor's employer.

11 U.S.C. § 362(a) provides that:

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

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

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

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

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

A creditor who has violated the automatic stay is required to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition

date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

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

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

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

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

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

A movant can recover attorney's fees and costs as actual damages under section 362(k) for enforcing the automatic stay, for remedying the stay violation, and for prosecuting a request for damages. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1100-01 (9th Cir. 2015) (en banc) (expressly overruling Sternberg v. Johnston, 595 F.3d 937, 940 (9th Cir. 2010)); see also Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

The court notes that Lobe's opposition is devoid of evidence to support its factual assertions and to authenticate the exhibits attached to the opposition. The opposition is not supported by a declaration. See Docket 22.

The post-petition garnishment of the debtor's wages was a stay violation. Lobel continued the enforcement of and collection its judgment against the debtor. Lobel does not deny this.

The violation was willful, as Lobel knew of the stay and it intentionally continued garnishment. Lobel was served with the notice of commencement of case on December 3, in time to stop the garnishment. Lobel does not deny receiving such notice. It is obvious that Lobel knew of the bankruptcy filing prior to it ceasing the garnishment on or about January 13, 2016, given Lobe's proof of claim in the case filed on December 30, 2015.

As an individual, then, the debtor is entitled to damages under section 362(k).

The court will order Lobel to return all post-petition garnished funds to the debtor. According to the debtor, the sum totals $640. The court is satisfied that this figure is correct. "My employer was withholding approximately $160.00 every two weeks from my wages . . . beginning December 11, 2015 and continuing through January 22, 2016 totaling approximately $640.00." Docket 17 at 2.

While Lobel has calculated the amount to be returned to the debtor as $1,440, such figure includes funds garnished pre-petition. Docket 22 at 2. The figure includes also a garnishment on December 2, 2015, but no such garnishment is asserted by the debtor. Id.

The motion will be denied to the extent it is seeking the return of funds garnished pre-petition. The automatic stay was not in effect prior to the petition filing. See 11 U.S.C. § 362(a).

To the extent the debtor is seeking to avoid the pre-petition transfers, such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(1).

More, avoidance claims are property of the estate and not the debtor. See 11 U.S.C. § 547(b) (making it clear that it is the trustee who may avoid the transfers). The debtor then has no standing to assert such claims.

The court will deny the debtor's request for attorney's fees as the motion is devoid of evidence to support such fees. As mentioned above, it is the movant - in this case the debtor - who has the burden of proof as to every element of section 362(k), including his injury.

Finally, the court will order Lobel to pay $1,280 to the debtor as punitive damages. Lobel has offered no explanation for its stay violations. It has not explained why it continued to garnish the debtor's wages post-petition, even though it knew of the bankruptcy filing.

And, despite Lobel having ceased garnishment sometime in January 2016, Lobel still has not fully remedied its stay violations. Lobel has not yet returned all post-petition garnished funds to the debtor.

In total, the punitive damages represent twice the amount of post-petition garnished funds. The motion will be granted in part.

FINAL RULINGS BEGIN HERE

19. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-22
VS. SOUND SEAL — 3-11-16 [893]

Final Ruling: The objection will be dismissed without prejudice because service of the objection did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the objection on Sound Seal without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

20. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
ERH-1
WEBCOR CONSTRUCTION, L.P. VS. — 3-25-16 [934]

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, Webcor Construction, L.P., seeks relief from the automatic stay to proceed in state court with its construction defect 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 collect on or 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.

21. 12-28413-A-7 F. RODGERS CORPORATION
ERH-2
MAYFIELD HOUSING CORPORATION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-28-16 [944]

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, Mayfield Housing Corporation, seeks relief from the automatic stay to proceed in state court with its construction defect 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 collect on or 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.

22. 12-28413-A-7 F. RODGERS CORPORATION
KPC-1
BRIDGEVIEW DEVELOPMENT, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-15-16 [900]

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, Bridgeview Development, L.L.C., seeks relief from the automatic stay to proceed in state court with its construction defect 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 collect on or 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.

23. 16-21024-A-7 KASSIE SLATER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
FIRST INVESTORS FINANCIAL SERVICES VS. — 3-11-16 [11]

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, First Investors Financial Services, seeks relief from the automatic stay with respect to a 2014 Jeep Cherokee. The vehicle has a value of $26,000 and its secured claim is approximately $32,685.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on March 23, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

24. 15-27228-A-7 GARY PATRICK
JSO-2
VS. MARK LAGARRA

MOTION TO
AVOID JUDICIAL LIEN
3-22-16 [40]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Mark Legarra for the sum of $273,000 on June 12, 2009. The abstract of judgment was recorded with Shasta County on June 26, 2009. That lien attached to the debtor's residential real property in Redding, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $160,000 as of the petition date. Dockets 42, 43, 1. The unavoidable liens totaled $49,000 on that same date, consisting of a single mortgage in favor of Tri Counties Bank. Dockets 42, 43, 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 42, 43, 1.

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

25. 12-36729-A-7 MICHAEL/NAOMI ALFORD
JMH-1

MOTION TO
APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
3-28-16 [174]

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 chapter 7 trustee, J. Michael Hopper, has filed first and final motion for approval of compensation. The requested compensation consists of $20,535.02 in fees and $0.00 in expenses. The services for the sought compensation were

provided from September 15, 2012 through January 21, 2016. The sought compensation represents 75.4 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $345,700.35 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $20,535.02 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $14,785.02 (5% of the next $950,000 (or $295,700.35)). Hence, the requested trustee fees of $20,535.02 do not exceed the cap of section 326(a).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) evaluating the debtor's interest in many real properties and numerous personal property assets, (4) employing professionals to assist the estate in the administration of estate assets, (5) communicating with the estate's professionals about various issues, (6) reviewing claims, including claims secured by estate assets, (7) inspecting estate property at various sites, (8) negotiating agreements with creditors, (9) investigating the debtors' dissipated $10 million inheritance and reviewing discovery about the same, (10) investigating dissipated rents, (11) communicating with tenants, (12) reviewing various pleadings and documents prepared by the estate's professionals, (13) addressing tax issues, (14) preparing final report, and (15) preparing compensation motion.

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

26. 12-21930-A-7 KELLY/SHERRY BUTLER — MOTION TO EMPLOY SPECIAL COUNSEL 3-28-16 [47]
SCB-3

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 Graham Scott of Zumwalt Law Firm as special counsel for the estate to prosecute pre-petition personal injury claims on behalf of the estate. Zumwalt has been litigating the claims since late 2012. The estate seeks to employ Mr. Scott on a contingency fee basis, based on gross recovery on the claims against the defendant, a doctor who performed Mrs. Butler's gallbladder-removing surgery. The contingency fee arrangement percentages are: 40% of the first $50,000 recovered, 33.3% of the next $50,000 recovered, 25% of the next $500,000 recovered, and 15% of anything above $600,000 recovered. Zumwalt has agreed to advance all costs, which will be reimbursed if there is a 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 theterms of employment and compensation are reasonable. Mr. Scott 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.

27. 16-22133-A-7 WILLIAM/DEBRA BRADFORD — ORDER TO SHOW CAUSE 4-7-16 [14]

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 did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, on April 7, 2016, the court entered an order permitting the debtor to pay the fee in installments. Docket 16. No prejudice has resulted from the delay.

28. 16-21338-A-7 MANIKHANH SOURIVONG — MOTION FOR RELIEF FROM AUTOMATIC STAY 3-21-16 [9]
VVF-1
HONDA LEASE TRUST 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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2013 Acura TL. The movant has produced evidence that the vehicle has a value of $17,225 and the outstanding debt under the lease agreement totals approximately $24,302. The debtor also has not made one pre-petition payment under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The court concludes that the above is cause for the granting of relief from stay.

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

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) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

29. 16-21556-A-7 ALEJANDRO DAVALOS — ORDER TO SHOW CAUSE 3-28-16 [12]

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 did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on April 15, 2016. No prejudice has resulted from the delay.

30. 14-25675-A-7 MARJORIE LOPEZ
BHS-3 — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 3-21-16 [44]

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

The motion will be granted.

The Law Office of Barry H. Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,785 and $88.74 in expenses, for a total of $7,873.74. This motion covers the period from May 4, 2015 through the present.

The court approved the movant's employment as the trustee's attorney on May 7, 2015. In performing its services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing assets of the estate, (2) investigating and analyzing an avoidance claim, (3) preparing and prosecuting an adversary proceeding on the avoidance claim, (4) conducting discovery, (5) negotiating settlement of the action, (6) preparing and prosecuting a motion for approval of the settlement, and (7) 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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

31. 15-26985-A-7 SCOTT HOMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 11-20-15 [26]
U.S. BANK, N.A. VS.

Final Ruling: The hearing on this motion has been continued to June 20, 2016 at 10:00 a.m. Docket 45.