

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**July 7, 2016 at 2:00 p.m.**

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1. [12-90014](#)-E-7 MINOO KASHIKAR

CONTINUED STATUS CONFERENCE RE:  
MOTION TO KEEP CASE OPEN  
3-2-16 [[23](#)]

Debtor's Atty: Bryan J. Harrison

Notes:

Continued from 5/12/16. The court continued the status conference solely to keep the case open in the event that Debtor's new counsel needs to seek relief from the court on the issue with Bank of America. Counsel may file an ex parte motion to re-close the case.

<p><b>The Motion to Keep the Chapter 7 Case Open is denied.</b></p>
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**JULY 7, 2016 HEARING**

Nothing has been filed and no action has been taken by the Debtor since the May 12, 2016 hearing.

The Motion to Keep the Chapter 7 Case Open is denied.

**MAY 12, 2016 HEARING**

On February 4, 2016, Minoo Kashivkav, the Debtor, filed a motion requesting the court keep the case "open" for another thirty days. Dckt. 22. Debtor previously requested that the court reopen this case, stating, "My Lender needs this form for Credit update." Dckt. 18. In a letter, Debtor advised the court that she and her attorney were working on a reaffirmation with her mortgage lender. Dckt. 23.

The court issued the Order on March 7, 2016, setting this Status Conference when the matter had not been resolved within the thirty days projected by Debtor.

At the Status Conference Debtor explained that she filed a 2012 Chapter 7, and obtained a discharge. Debtor continued to make her payments on her mortgage. Then went to refinance and Bank of America, N.A. is not reporting the payments they have been making.

The court continued the status conference solely to keep the case open in the event that Debtor's new counsel needs to seek relief from the court on

**July 7, 2016 at 2:00 p.m.**

this issue. If counsel determines that the case may be closed before that time, counsel may file an ex parte motion to re-close the case and lodge with the court an appropriate order thereon.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Keep the Chapter 7 Case Open filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.

2. [13-90219](#)-E-7 DOUGLAS KENNEDY  
[13-9041](#)  
KENNEDY V. INTERNAL REVENUE  
SERVICE

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
12-23-13 [[1](#)]

**Final Ruling: No appearance at the July 7, 2016 Status Conference is required.**  
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Plaintiff's Atty: Trevor J. Zink  
Defendant's Atty: Boris Kukso

Adv. Filed: 12/23/13  
Reissued Summons: 2/14/14

Answer: 3/10/14

Nature of Action:  
Dischargeability - priority tax claims

<p><b>The Status Conference is continued to 2:00 p.m. on October 20, 2016.</b></p>
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Notes:

Continued from 1/14/16. Parties to file a Status Report Update at least fourteen days before the continued status conference date.

[US-3] Joint Status Conference Statement Regarding the Stay of the Adversary Proceeding filed 6/21/16 [Dckt 67]

**JULY 7, 2016 STATUS CONFERENCE**

The Parties report that oral argument has been completed in *Smith, et al v. IRS (In re Smith)* and the Ninth Circuit panel has taken the matter under submission. No date for issuance of a ruling is projected. The Parties request that the court continue the hearing a further four to six months.

**JANUARY 14, 2016 STATUS CONFERENCE**

The Parties filed a Joint Status Conference Report on December 28, 2015. Dckt. 63. This court has stayed this Adversary Proceeding pending the Ninth Circuit Court of Appeals addressing related legal issues in *Smith, et al v. IRS (In re Smith)*. The Parties further report that briefing in *Smith* has been completed, but the Circuit has not yet set oral argument for that appeal. The parties request that this court further continue the Status Conference four to six months to allow for the continuing prosecution of and ruling on that appeal.

The court continues the Status Conference, erring on the longer side, to allow the Parties the opportunity to consider and constructively discuss how

the ruling in Smith impacts the prosecution of this Adversary Proceeding.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on October 20, 2016.

3. [15-90358](#)-E-11 LAWRENCE/JUDITH SOUZA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
4-10-15 [[1](#)]

Debtors' Atty: David M. Meegan

**The Status Conference is continued to 2:00 p.m. on ~~xxxxx~~,  
2016.**

Notes:

Continued from 1/14/16

Operating Reports filed: 1/15/16; 1/19/16 [amd. Dec]; 2/17/16; 3/16/16;  
4/15/16; 5/19/16; 6/21/16

[MHK-1] Order granting use of cash collateral filed 1/21/16 [Dckt 248]

[MHK-1] Debtors' Third Supplement to Motion to Use Cash Collateral filed  
4/13/16 [Dckt 282]; Order granting and continuing hearing to 9/8/16 at  
10:30 a.m. filed 5/17/16 [Dckt 326]

[MHK-12] Motion of Debtors in Possession for Approval of Compromise filed  
5/19/16 [Dckt 329]; Order granting filed 6/19/16 [Dckt 347]

Debtors' Fourth Chapter 11 Status Report filed 6/21/16 [Dckt 348]

#### **JULY 7, 2016 STATUS CONFERENCE**

Debtor in Possession ( $\Delta$ IP) filed an updated Status Report on June 21, 2016. Dckt. 348.  $\Delta$ IP reports the settlements approved by this court having been consummated and that several creditors are proceeding with non-judicial foreclosure sales in July 2016, as permitted by the court having modified the automatic stay as to those creditors. Counsel for  $\Delta$ IP is working on drafting a Chapter 11 plan.

4. [14-91565](#)-E-7 RICHARD SINCLAIR  
[15-9008](#)  
CALIFORNIA EQUITY MANAGEMENT  
GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-23-15 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15; 4/8/16

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

The Status conference is continued to 2:00 p.m. on xxxxxx,  
2016.

Notes:

Continued from 1/14/16. Plaintiff appeared and requested a continuance while the Trustee investigated the case. Richard Sinclair did not appear at the Status Conference.

Answer to Complaint to Determine Dischargeability of Debt filed 4/8/16  
[Dckt 40]

Status Report by Plaintiffs filed 6/28/16 [Dckt 41]

**JULY 7, 2016 STATUS CONFERENCE**

Plaintiff filed an updated Status Report on June 28, 2016. Dckt. 41. Plaintiff reports that the prove up hearings have been conducted "May 10, 2016") in the District Court action and the matter is under submission. Defendant-Debtor has filed a motion for reconsideration of the entry of Defendant-Debtor's default in the District Court action, which was set by Defendant-Debtor for hearing on July 25, 2016. Plaintiff has filed proposed findings of fact and conclusions of law, and Defendant-Debtor has filed objections thereto, in the District Court action.

**JANUARY 14, 2016 STATUS CONFERENCE**

The Plaintiff appeared and requested that the Status Conference be continued while the Trustee investigated the case. Richard Sinclair did not appear at the Status Conference.

**SUMMARY OF COMPLAINT**

California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seeks to have the damages relating to the claims asserted in a pending District Court Action, case 03-05439, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6). The default of Richard Sinclair ("Defendant-Debtor") has been entered in the District Court Action, but no judgment has been entered therein.

#### **SUMMARY OF ANSWER**

Richard Sinclair, the Defendant-Debtor, filed an answer which specifically admits and denies the allegations in the Complaint. Defendant-Debtor asserts twenty-three affirmative defenses.

5. [14-91565](#)-E-7 RICHARD SINCLAIR  
[15-9009](#)  
KATAKIS ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-23-15 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15; 11/25/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

<p><b>The Status Conference is continued to 2:00 p.m. on xxxxxx, 2016.</b></p>
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Notes:  
Continued from 2/4/16

Status Report by Plaintiffs filed 6/28/16 [Dckt 50]

#### **JULY 7, 2016 STATUS CONFERENCE**

Though the obligation upon which this Adversary Proceeding is based is from State Court proceedings, Plaintiff asserts that the finding in the District Court Action (the obligation from which is the subject of Adversary Proceeding 15-9008) will also be asserted in this Adversary Proceeding.

Plaintiff filed an updated Status Report in Adversary Proceeding 15-9008 on June 28, 2016. Plaintiff reports that the prove up hearings have

been conducted "May 10, 2016") in the District Court action and the matter is under submission. Defendant-Debtor has filed a motion for reconsideration of the entry of Defendant-Debtor's default in the District Court action, which was set by Defendant-Debtor for hearing on July 25, 2016. Plaintiff has filed proposed findings of fact and conclusions of law, and Defendant-Debtor has filed objections thereto, in the District Court action.

## **FEBRUARY 4, 2015 STATUS CONFERENCE**

### **SUMMARY OF COMPLAINT**

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seek a determination that a judgment against Richard Sinclair, the Defendant-Debtor, in the amount of \$1,337,073.72 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). This judgment is alleged to have been obtained in Stanislaus County Superior Court case no. 332233.

### **SUMMARY OF ANSWER**

Defendant-Debtor, Richard Sinclair, the Defendant-Debtor, has filed two answers to the Complaint. The First Answer was filed on March 30, 2015. (The answer was filed twice, Docket Entries 8 and 9). The Second Answer was filed on November 25, 2015. The Second Answer admits and denies specific allegations in the Complaint, and include more detailed responses as part of the admissions and denials. The Second Answer includes twenty-two affirmative defenses.

### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint, unnumbered paragraph titled "Jurisdiction," p.11:11-13; Dckt. 1. Though extensive in admitting and denying the numbered paragraph allegations and asserting affirmative defenses, the Second Answer neither admits nor denies the allegations of jurisdiction and that this is a core proceeding. There is an affirmative obligation to admit or deny allegations of whether the matter is a core proceedings, and if contended non-core, whether the responding party consents to the bankruptcy judge issuing all orders and the final judgment.

The relief sought in the Complaint is for a determination of whether a debt is non-dischargeable based on fraud, fraud or defalcation while in a fiduciary capacity, or wilful and malicious injury as provided by Congress in 11 U.S.C. § 523(a)(2), (4), and (6). These claims arising under the Bankruptcy Code and are core proceedings for which the bankruptcy judge issues all orders and the final judgment in this Adversary Proceeding, for the Complaint as it exists as of the February 4, 2016 Status Conference.

### **STATUS REPORT FILED BY PLAINTIFFS**

Plaintiffs state that in the related Adversary Proceeding,



15-9008, the court has modified the automatic stay to allow Plaintiffs to prosecute to judgment in the United States District Court the underlying obligation which they assert in Adversary Proceeding 15-9008. This court has continued the status conference in that Adversary Proceeding to July 7, 2016, to allow time for judgment to be entered in that District Court action.

In this Adversary Proceeding (15-9009), Plaintiffs seek to have a state court judgment in the amount of \$1,337,073.72 determined nondischargeable. In the Status Report Plaintiffs assert that the claims upon which the state court judgment are based on the same fraud which is the basis for the District Court claims. Plaintiffs suggest that this court should delay the prosecution of this Adversary Proceeding to allow the default judgment to be entered in the District Court action, since under the default judgment alleged facts can be deemed as admitted and true.

The court does not concur in delaying the prosecution of this Adversary Proceeding pending entry of judgment and final adjudication of the District Court action. Plaintiffs seek to have a determination made as to the nondischargeability of the debt determined in a state court action. That state court action has been litigated, the judgment on those state court claims has been determined, the factual findings made, and the conclusions of law drawn by the state court.

Plaintiffs state that they intend to seek summary judgment in this Adversary Proceeding. The Status Report indicates that Plaintiffs would intend to simultaneously prosecute the two summary judgment motion in the two separate proceedings.

6. [15-90284](#)-E-7 ANTONIO/LUCILA AMARAL  
[15-9057](#)  
MCGRANAHAN V. SALDANA

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-21-15 [[1](#)]

Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty: unknown

Adv. Filed: 10/21/15  
Summons Reissued: 3/9/16  
Answer: none

Nature of Action:  
Recovery of money/property

**The Status Conference is continued to 2:00 p.m. on ~~xxxxxx~~,  
2016.**

Notes:

Continued from 6/2/16 to allow for the hearing on Plaintiff-Trustee's motion for entry of default judgment to be conducted.

[ADJ-1] Motion for Entry of Default Final Judgment Against Rafael Saldana, dba Saldana Bros. Hay filed 5/24/16 [Dckt 24]; heard on 6/16/16 and continued to 7/7/16 at 10:30 a.m.

**JULY 7, 2016 STATUS CONFERENCE**

On July 7, 2016, the court conducted the continued the continued hearing on the Motion for Entry of Default Judgment in this Adversary Proceeding. The court continued the hearing to afford the pro se Defendant, after the prior Status Conference, the opportunity to speak with counsel and to negotiate a settlement with the Plaintiff-Trustee.

At the July 7, 2016 Status Conference, ~~xxxxxxxxxxxx~~.

7. [08-92594](#)-E-7 ROBERT/STEPHANIE  
[15-9054](#) ACHTERBERG  
ACHTERBERG, JR. ET AL V.  
CREDITORS TRADE ASSOCIATION,

PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR DECLARATORY  
RELIEF, TO DETERMINE THE EXTENT  
AND THE VALIDITY OF A JUDGMENT  
LIEN, ETC.  
7-23-15 [[1](#)]

Plaintiff's Atty: Malcolm D. Gross; Steven S. Altman  
Defendant's Atty: Ralph L. Pollard

Adv. Filed: 7/23/15  
Answer: 10/1/15

Nature of Action:  
Validity, priority or extent of lien or other interest in property

<b>The Pre-Trial Conference is <del>XXXXXXXXXXXXXXXXXXXX</del>.</b>
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Notes:

Scheduling Order -  
Initial disclosures by 10/31/15  
Close of discovery 4/30/16  
Dispositive motions heard by 6/17/16

Order granting substitution of attorney for Defendant filed 3/23/16 [Dckt 21]

Plaintiffs' Pre-Trial Conference Statement filed 6/24/16 [Dckt 22]

#### **SUMMARY OF COMPLAINT**

In the Complaint Plaintiff/Debtor seeks declaratory relief that purported default judgments obtained by Defendant are void, having been obtained in violation of the automatic stay during the pendency of Plaintiff/Debtor's bankruptcy case. Further, that actions taken with respect to such void judgment violate the discharge injunction arising under 11 U.S.C. § 524. Plaintiff/Debtor also seeks to recover damages for violation of the automatic stay and discharge injunction.

#### **SUMMARY OF ANSWER**

Creditors Trade Association, Defendant, filed an answer which admits and denies specific allegations in the Complaint. Dckt. 12. The Answer affirmatively alleges that upon being "contacted" by Plaintiffs, Defendant moved the state court for an order vacating the default judgment.

## FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists, and that this is a core proceeding pursuant to 28 U.S.C. § 157(a)(b)(1), (b)(2)(I) and § 157(a)(b)(2)(K). Complaint ¶ 1, Dckt. 1. It appears that the allegation contains a typographical error, with there being no 28 U.S.C. § 157(a)(b) section. Rather, 28 U.S.C. § 157(a) provides for the district court to refer all Title 11 matters, core and non-core, to the bankruptcy judges in the district. Core matters are then defined in 11 U.S.C. § 157(b)(2) is a nonexclusive listing of core matters, which include (I) determination of the dischargeability of debt and (K) determination of the validity, extent, or priority of liens. Congress has provided for the grant of federal court jurisdiction for all core and non-core matters (with some limited exceptions not relevant here) in 28 U.S.C. § 1334.

In its answer, Creditors Trade Association, Inc., Defendant, does not deny the allegations of jurisdiction and core proceeding. See Paragraph 1 of the Answer which denies only the allegations in paragraphs 11, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, and 27. Answer, Dckt. 12. The failure to deny is an admission of the allegations in the paragraph.

The Complaint states claim arising under 11 U.S.C. § 362 (violation of automatic stay) and 11 U.S.C. § 524 (effect of discharge and the discharge injunction). Such alleged violations are enforced under the contempt power of the bankruptcy court, by the bankruptcy judge, as arising under the Bankruptcy Code. See *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002); *Sternberg v. Johnston*, 595 F.3d 937, 946 FN 3 (9th Cir. 2010).

The parties agreed on the record that this Complaint, as drafted, is a core proceeding.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2016**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2016**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2016**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2016**.
- F. The Trial shall be conducted at ----x.m. on -----, **2016**.

The Plaintiff filed a Pretrial Conference Statement on June 24, 2016. Dckt. 22. Defendant Creditors Trade Association, Inc. has not filed a Pretrial Conference Statement. As stated on the record at the Pretrial

Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff Robert and Stephanie Achterberg

Defendant Creditors' Trade Association

<p>Jurisdiction and Venue:</p> <p>1. The complaint states claim arising under 11 U.S.C. § 362 (violation of automatic stay) and 11 U.S.C. § 524 (effect of discharge and the discharge injunction).</p> <p>2. Such alleged violations are enforced under the contempt power of the bankruptcy court, by the bankruptcy judge, as arising under the Bankruptcy code. See <i>Walls v. Wells Fargo Bank, N.A.</i>, 276 F.3d 502 (9th cir. 2002); <i>Sternberg v. Johnston</i>, 595 F.3d 937, 946 FN 3 (9th cir. 2010).</p> <p>3. The parties agreed on the record at the Status Conference that this Complaint, as drafted, is a core proceeding.</p> <p>Pretrial Conference Order and Status Conference Civil Minutes, Dckts. 15 and 14.</p>	<p>Jurisdiction and Venue:</p> <p>1. Same.</p>
<p>Undisputed Facts:</p> <p>1. Defendant CREDITORS TRADE ASSOCIATION, INC., dba GREAT WESTERN COLLECTION BUREAU (hereinafter "CTA") filed a lawsuit against Plaintiffs ROBERT L. ACHTERBERG, STEPHANIE ACHTERBERG, et. al. on October 8, 2008.</p> <p>2. Plaintiffs filed for protection under Chapter 7 of the Bankruptcy Code on December 1, 2008.</p> <p>3. Plaintiffs listed Defendant as a creditor in their bankruptcy schedules and listed the lawsuit in their statement of financial affairs.</p> <p>4. The address Plaintiffs used to serve Defendant was P.O. Box 191910, San Francisco, CA 94119-1910.</p> <p>5. The above address in section d, was a valid mailing address for the Defendant at the commencement of the Plaintiffs case.</p> <p>6. The Defendant obtained a default</p>	<p>Undisputed Facts:</p> <p>1. None Submitted</p>

judgment against Plaintiffs on or about February 9, 2009.

7. Plaintiffs were granted a discharge on or about March 17, 2009, which was mailed by the clerks office to all listed creditors.

8. Plaintiffs opened an Escrow on a house located at 1956 Altressa Lane, Ceres, CA on or about April 18, 2015.

9. On or about March 6, 2015, the Plaintiffs received a copy of their credit report from Ability mortgage, which listed the Defendant's judgment of February 9, 2009.

10. Plaintiffs retained their previous bankruptcy counsel, Malcolm D. Gross, to attempt to remove the judgment.

11. Plaintiffs' counsel sent a letter to the Defendant's listed trial counsel on May 19, 2015, informing him of the bankruptcy and the discharge of his client's debt.

12. Plaintiffs' counsel did not receive a reply from Defendant's trial counsel, so he attempted to contact him through an advertising e-mail in the month of June 2015.

13. Plaintiffs' counsel sent another letter to Defendant's trial counsel on July 2, 2015 and enclosed a copy of a proposed Adversary Complaint and giving a deadline of July 8, 2015 to respond.

14. On July 8, 2015, Plaintiffs' counsel filed an Ex-Parte Motion to reopen the Plaintiffs' bankruptcy case. The Court issued an order reopening the case on July 9, 2015.

15. On July 14, 2015, an attorney representing the Defendant e-mailed a letter to Plaintiff's counsel consenting to file a motion in State Court to vacate the judgment against Plaintiffs.

16. On July 21, 2015 the Defendant's new counsel wrote to Plaintiffs' counsel acknowledging the bankruptcy, again agreeing to vacate the judgment against Plaintiffs, but declining the payment of any sanctions.

17. On July 22, 2015, Plaintiffs' counsel

<p>faxed a letter to Defendant's counsel and advised him of the consequences to Plaintiffs if the judgment wasn't vacated soon.</p> <p>18. On or about July 24, 2015, Plaintiffs' counsel filed an this Adversary Complaint and served said complaint by mail on July 29, 2015.</p> <p>19. Defendant filed an answer to the Adversary Complaint on or about October 1,2015.</p> <p>20. Plaintiffs' counsel received an Order from the State Court vacating the Judgment on 12 August 7, 2015.</p>	
<p>Disputed Facts:</p> <p>1. Whether or not defendant received Notice of the Commencement of Plaintiffs' bankruptcy.</p> <p>2. Whether or not Defendant received Notice of the Plaintiffs' bankruptcy discharge.</p>	<p>Disputed Facts:</p> <p>1. None Submitted.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. Admission of proof of deposit in mail as evidence that Defendant received Notice of Plaintiffs' bankruptcy filing and Notice of their Discharge.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Submitted.</p>
<p>Relief Sought:</p> <p>1. a) Plaintiff seek reimbursement for fees incurred in extending their escrow to allow the vacating of the state court judgment, according to proof.</p> <p>2. Sanctions for violation of the stay and violations of § 524 due to the fact almost six years elapsed from entry of Defendant's judgment which impaired Plaintiffs' credit.</p> <p>3. An award of attorney fees and costs for plaintiffs' need to engage counsel to vacate Defendant's underlying judgment against them in violation of the automatic stay and for the present action to recover out of pocket fees and costs. Also, attorney fees for prosecuting the present action.</p>	<p>Relief Sought:</p> <p>1. None Submitted</p>

<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. II U.S.C. § 362(k) (I) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs, and attorney fees, and, in appropriate circumstances, may recover punitive damages."</li> <li>2. <i>Schwartz-Tallard</i>, 803 F.3d 937, 940 1095, 1100-01 (9th Cir. 2015) (<i>en banc</i>), scope of attorneys' fees award.</li> <li>3. The movants have 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. <i>Harris v. Johnson (in re Harris)</i>, case no. 10-00880-GBN W13300716, at *4 (B.A.P. 9th Cir. 2011).</li> <li>4. A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. <i>Eskanos v. Adler, P.C. v. Leetien</i>, 309 F.3d 1210, 19 1215 (9th Cir. 2002).</li> <li>5. "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs of intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" <i>Knupfer v. Lindblade (In re Dyer)</i>, 322 F.3d 1178, 1191 (9th Cir. 2003).</li> </ol>	<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. None Submitted.</li> </ol>
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None Identified.</li> </ol>	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None Submitted.</li> </ol>
<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Robert L. Achterberg;</li> <li>2. Stephanie Achterberg;</li> <li>3. Malcolm D. Gross; and</li> <li>4. Patsy Silva, ABILITY MORTGAGE</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. None Specified.</li> </ol>



<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. a) Letter of May 19,2015 to Stephen M. Kappos of ROBINSON-KAPPOS.</li> <li>2. Credit report of Old Republic Credit Services, ordered April 11,2015.</li> <li>3. Letter of July 2, 2015 from Malcolm D. Gross to Stephen Kappos.</li> <li>4. Series of e-mails between Malcolm D. Gross and Robert Achterberg and Patsy Silva.</li> <li>5. Letter of July 14,2015, to Malcolm D. Gross from Gary E. Looney.</li> <li>6. Letter of July 17,2015 to Malcolm D. Gross from Gary E. Looney.</li> <li>7. Series of e-mails around July 20,2015 between Malcolm D. Gross, Patsy Silva and Robert Achterberg.</li> <li>8. Series of e-mails around July 21,2015 between Malcolm D. Gross, Patsy Silva and Robert Achterberg.</li> <li>9. Letter of July 21,2015 from Gary E. Looney to Malcolm D. Gross.</li> <li>10. Letter of July 22, 2015 from Malcolm D. Gross to Gary E. Looney.</li> <li>11. Series of e-mails between Robert Achterberg, Malcolm D. Gross and PMZ Realtors.</li> <li>12. Letter of August 3, 2015 from Gary E. Looney to Malcolm D. Gross.</li> <li>13. Letter of August 5, 2015 from Gary E. Looney to Malcolm D. Gross.</li> <li>14. Letter of August 11,2015 from Gary E. Looney to Malcolm D. Gross.</li> <li>15. Copy of Order vacating the February 9,2009 judgement against Plaintiffs.</li> <li>16. Copy of Escrow Closing Papers.</li> <li>17. Plaintiffs' bankruptcy schedules.</li> <li>18. Petition Cover Sheet showing case</li> </ol>	<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. None Specified.</li> </ol>
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<p>filing date.</p> <p>19. Schedule F, showing Debtors' listing of collection creditor.</p> <p>20. Court's Address Matrix.</p> <p>21. Notice of pending Bankruptcy with Proof of Service by Court.</p> <p>22. Court's Discharge Notice.</p> <p>23. List of Plaintiffs' out of pocket expenses.</p> <p>24. Attorney fees incurred to date by Plaintiffs.</p>	
<p>Discovery Documents:</p> <p>1. Plaintiffs' Request for Admissions.</p> <p>2. Defendant's Response ro Request for Admissions.</p> <p>3. Plaintiffs' First Set of Interrogatories.</p> <p>4. Defendant's Response to Plaintiffs Interrogatories.</p>	<p>Discovery Documents:</p> <p>1. None Specified.</p>
<p>Further Discovery or Motions:</p> <p>1. None Anticipated.</p>	<p>Further Discovery or Motions:</p> <p>1. None Specified.</p>
<p>Stipulations:</p> <p>1. None Anticipated.</p>	<p>Stipulations:</p> <p>1. None Specified.</p>
<p>Amendments:</p> <p>1. None Anticipated.</p>	<p>Amendments:</p> <p>1. None Specified.</p>
<p>Dismissals:</p> <p>1. None Anticipated.</p>	<p>Dismissals:</p> <p>1. None Specified.</p>

<p>Agreed Statement of Facts:</p> <p>1. Not as of Pretrial Conference.</p>	<p>Agreed Statement of Facts:</p> <p>1. None Specified.</p>
<p>Attorneys' Fees Basis:</p> <p>1. 11 U.S.C. § 362(k).</p> <p>2. <i>Schwartz-Tallard</i>, 803 F.3d 937.940 1095, 1100-01 (9th Cir. 2015) (<i>en banc</i>).</p>	<p>Attorneys' Fees Basis:</p> <p>1. None Specified.</p>
<p>Additional Items</p> <p>1. None.</p>	<p>Additional Items</p> <p>1. None Specified</p>
<p>Trial Time Estimation: Four Hours.</p>	<p>Trial Time Estimation: None Stated.</p>