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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
8

9 In re) Case No. 09-35065-E-13
10)
11 BUN AUYEUNG and)
12 SOO HAN TSE,)
13)
14 Debtor(s).)
15)
16)
17 BUN AUYEUNG and) Adv. Pro. No. 10-2497
18 SOO HAN TSE,)
19)
20 Plaintiff(s),)
21 v.)
22)
23 BARTON CHRISTENSEN and)
24 PAULA CHRISTENSEN,)
25)
26 Defendant(s).)
27)
28)

19 **This memorandum decision is not approved for publication and may**
20 **not be cited except when relevant under the doctrine of law of the**
21 **case or the rules of claim preclusion or issue preclusion.**

21 **MEMORANDUM OPINION AND DECISION**

22 This Adversary Proceeding for declaratory relief, conversion
23 damages, and sanctions filed by Bun Auyeung and Soo Han Tse
24 ("Plaintiff-Debtors"), the Chapter 13 Debtors, arises out of
25 conduct of Barton (Bart) Christensen and Paula Christensen
26 (collectively "Christensens") in the post-petition enforcement of
27 a pre-petition state court judgement. The Plaintiff-Debtors
28 commenced their Chapter 13 bankruptcy case on July 21, 2009 (the

1 "Bankruptcy Case"). The Plaintiff-Debtors contend that:

2 (1) the Christensens violated the automatic stay by having the
3 Sacramento County Sheriff ("Sheriff") conduct a judgment execution
4 sale of personal property of the Plaintiff-Debtors (the "Sheriff's
5 Sale Property") pursuant to the pre-petition state court judgment
6 after commencement of the Bankruptcy Case,

7 (2) the Christensens knowingly and intentionally committed a
8 continuing violation of the automatic stay by retaining possession
9 of the Sheriff's Sale Property after they learned of the Bankruptcy
10 Case on July 27, 2009,

11 (3) the Christensens converted the Sheriff's Sale Property by
12 disposing of a portion of it and retaining possession of it in
13 knowing violation of the automatic stay, and

14 (4) the Christensens further violated the automatic stay, by
15 failing to recover that portion of the Sheriff's Sale Property when
16 they learned of the Bankruptcy Case four days after disposing of
17 that property to satisfy an obligation of the Christensens.

18 This proceeding is one arising under 11 U.S.C. § 362 of the
19 Bankruptcy Code, the inherent contempt power of this court to
20 address violations of the automatic stay, and California law
21 concerning conversion of personal property. The cause of action
22 for conversion is based on the same events relating to the
23 Sheriff's Sale Property and overlaps the relief sought and damages
24 properly awarded for violation of the automatic stay. Relief has
25 been requested only pursuant to 11 U.S.C. § 362(k) and for
26 conversion of the personal property.

27 The Complaint alleges that jurisdiction for this Adversary
28 Proceeding arises under 28 U.S.C. §§ 1334(a) and 157(a), and the

1 reference from the District Court¹ of all bankruptcy cases and
2 related proceedings to this bankruptcy court.² It is further
3 alleged in the Complaint that this is a core proceeding as provided
4 in 28 U.S.C. § 157(b)(2)(O).³ In the Answer filed by the
5 Christensens, they expressly state that they “do not deny,” and
6 therefore admit, that this bankruptcy court has jurisdiction and
7 that this Adversary Proceeding is a core proceeding. The
8 bankruptcy judge enters the final judgment on all core
9 proceedings.⁴

10 **FACTS RELATING TO THE VIOLATION OF THE AUTOMATIC STAY**

11 Christensens obtained a monetary judgment against the
12 Plaintiff-Debtors prior to the commencement of the Bankruptcy Case.
13 The law firm of Dudugjian & Maxey (“The Attorneys”) represented the
14 Christensens in obtaining and enforcing the state court judgment.
15 In assisting the Christensens in enforcing the monetary judgment,
16 The Attorneys obtained a writ of sale for the Sheriff to conduct a
17 sale of personal property of the Plaintiff-Debtors. The Plaintiff-
18 Debtors commenced the Bankruptcy Case on July 21, 2009, but did not
19 immediately notify the Christensens or The Attorneys of the
20 Bankruptcy Case having been filed.

21 On July 23, 2009, the Christensens had the Sheriff conduct an
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23 ¹ E.D. Cal. Gen. Order 223.

24 ² Complaint ¶ 5, Dckt. 1.

25 ³ Complaint ¶ 6, The enforcement of the automatic stay as it
26 relates to property of the bankruptcy estate is a matter concerning
27 the administration of the estate, 28 U.S.C. § 157(b)(2)(A), and that
the federal court has exclusive jurisdiction over all property of the
debtor and property of the estate, 28 U.S.C. § 1334(e)(1).

28 ⁴ 28 U.S.C. § 157(b)(1).

1 execution sale pursuant to a state court judgment obtained against
2 the Plaintiff-Debtors. The evidence presented indicates that
3 neither the Sheriff, The Attorneys, nor the Christensens were aware
4 of the Bankruptcy Case at the time of the Sheriff's Sale. The
5 Christensens were the successful purchasers of the Plaintiff-
6 Debtors' personal property at the foreclosure sale. The purchase
7 price paid by the Christensens for the Sheriff's Sale Property was
8 \$8,000.00 (in the form of a credit bid with a portion of their
9 judgment), which is the same amount as listed for the personal
10 property by the Plaintiff-Debtors on Schedule B.⁵

11 The Christensens learned of the Plaintiff-Debtors' bankruptcy
12 filing in a telephone conversation with their attorney, Robert
13 Dudugjian, a partner of The Attorneys, on July 27, 2009. Robert
14 Dudugjian received a call on July 27, 2009, from the Sheriff's
15 Office advising him of the July 21, 2009 bankruptcy filing by the
16 Plaintiff-Debtors. The court finds that the Christensens, Robert
17 Dudugjian, and The Attorneys were aware of the bankruptcy filing no
18 later than July 27, 2009.

19 In addition to the telephone call on July 27, 2009, by written
20 correspondence dated July 28, 2009, the Sheriff notified Robert
21 Dudugjian and The Attorneys of the Bankruptcy Case.⁶ On July 28,
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23 ⁵ Bankr. E.D. Cal. No. 09-35065-E-13C, Dckt. 1.

24 ⁶ The evidence is clear that during all relevant time periods
25 from the July 23, 2009 sale through this trial, the Christensens have
26 been represented by knowledgeable, experienced counsel from the
27 Dudugjian & Maxey law firm. This included Robert P. Dudugjian and
28 John Maxey, the name partners of that firm. In addition to the court
knowing that the attorneys in this law firm have knowledge of
bankruptcy law (including the automatic stay) from their appearances
in other cases, John Maxey and Edward Smith testified to such

(continued...)

1 2009, Mr. Dudugjian obtained the assistance of one of The
2 Attorneys' bankruptcy partners, John Maxey, in the representation
3 of the Christensens. In the July 28, 2009 correspondence, the
4 Sheriff notified Robert Dudugjian and The Attorneys that the sale
5 was void and that the Sheriff's Sale Property delivered to the
6 Christensens had to be returned to the Sheriff. The Christensens
7 did not return the Sheriff's Sale Property to the Sheriff.

8 On July 28, 2009, John Maxey filed a request for special
9 notice in the Bankruptcy Case and that The Attorneys be added to
10 the list of addresses for notice in this case on behalf of the
11 Christensens.⁷ Thereafter, on November 25, 2009, the Christensens
12 filed their Proof of Claim in Plaintiff-Debtors' bankruptcy case.
13 The Proof of Claim was executed by John D. Maxey as "attorney for
14 judgment creditors."⁸

15 Notwithstanding learning of the bankruptcy filing on July 27,
16 2009, the Christensens continued in possession of the Sheriff's
17 Sale Property until they returned only a portion of it to the
18 Plaintiff-Debtors on March 23, 2011, almost two years later. Not
19 returned to the Plaintiff-Debtors was personal property including
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21 ⁶(...continued)
22 knowledge and experience in this Adversary Proceeding. In both his
23 declaration in opposition to the Plaintiff-Debtors' motion for summary
24 judgment and in his Alternative Direct Testimony Statement in this
25 Adversary Proceeding, John Maxey has testified under penalty of
26 perjury that, "A substantial portion of my practice of law is in the
field of bankruptcy and hence, Mr. Dudugjian sought my assistance in
the bankruptcy area on behalf of our clients, the Christensens."
Declaration of John Maxey ¶ 4, Dckt.24; Alternative Direct Testimony
Statement of John Maxey ¶ 4.

27 ⁷ Bankr. E.D. Cal. Case No. 09-35065, Dckt. 8.

28 ⁸ Exhibit 10.

1 jewelry and family heirlooms, which Soo Han Tse testified were
2 passed down from one generation to the next. This unreturned
3 jewelry and family heirlooms were disposed of by the Christensens
4 on July 23, 2009, to pay a \$1,000.00 obligation the Christensens
5 owed to Ria Tran ("Tran") for repair work done on the Christensens'
6 investment property. Though learning within four days of using the
7 jewelry and heirlooms to pay their obligation to Tran that the
8 bankruptcy case had been filed and the Sheriff's Sale was void, the
9 Christensens made no attempt to recover that portion of the
10 Sheriff's Sale Property from Tran and pay their obligation with
11 monies or property of the Christensens.

12 In addition to the jewelry and heirlooms which the
13 Christensens disposed of to Tran, one Canadian Maple 1 oz gold coin
14 has not been returned to the Plaintiff-Debtors. At trial, Bart
15 Christensen admitted that the Canadian Maple 1 oz gold coin had
16 been lost while in possession of the Christensens.

17 Based on the evidence, the court finds that the Christensens'
18 possession of the Sheriff's Sale Property was part of a strategy
19 they developed with The Attorneys to enhance their ability to
20 negotiate a settlement of other matters with the Plaintiff-Debtors.
21 As discussed further in this decision, no good-faith basis has been
22 shown for the Christensens retaining possession and control of the
23 Sheriff's Sale Property after July 27, 2009, and until March 23,
24 2011, depriving the Plaintiff-Debtors of that property.

25 On February 4, 2011, Bart Christensen physically delivered the
26 remaining Sheriff's Sale Property to The Attorneys. Though they
27 had knowledge of the Bankruptcy Case for 20 months, The Attorneys
28 retained possession of the Sheriff's Sale Property for almost two

1 more months, not delivering what remained of the Sheriff's Sale
2 Property to the Plaintiff-Debtors until March 23, 2011.

3 The Attorneys provided testimony as to the knowledge of its
4 lawyers in the area of bankruptcy law and their active practice in
5 this area for a number of years. As experienced bankruptcy
6 practitioners, The Attorneys are familiar with the automatic stay
7 imposed by 11 U.S.C. § 362(a). Notwithstanding the existence of
8 the automatic stay and the Sheriff's Sale having been conducted in
9 violation of the stay (thereby rendering the sale void),⁹ the
10 Christensens were instructed to and assisted by The Attorneys in
11 retaining possession of the Sheriff's Sale Property in violation of
12 the automatic stay.

13 The Plaintiff-Debtors' daughter, Manlin Auyeung, testified to
14 the emotional distress of her parents, stating that her mother (Soo
15 Han Tse) is depressed, cannot sleep, cries often and is mentally
16 and emotionally stressed from the loss of the jewelry and family
17 heirlooms. Further, she testified that the relationship between
18 the Soo Han Tse and her daughter-in-law has become strained due to
19 the loss of the jewelry.

20 Soo Han Tse, one of the Plaintiff-Debtors, testifies that she
21 is very upset having lost these items of personal property, which
22 had been passed down from her parents and grandparents so that they
23 could be handed down to future generations. Further, that some of
24 the personal property used by the Christensens to pay Tran belonged
25 to the Plaintiff-Debtors' daughter-in-law (which she had obtained
26 from her parents). These items were being held by the Plaintiff-

27 ⁹ *Schwartz v. United States (In re Schwartz)*, 954 F.2 569, 571
28 (9th Cir. 1991); *In re Shamblin*, 890 F.2d 123 (9th Cir. 1989).

1 Debtors for safekeeping and their loss has strained the
2 relationship between Soo Han Tse and her daughter-in-law.

3 Bart Christensen testified that he is a "retired annuitant"
4 currently working 80 hours per month as an engineer for the State
5 of California.¹⁰ Testimony was provided that Paula Christensen is
6 a registered nurse. The Plaintiff-Debtors describe the real estate
7 transaction with the Christensens that underlies their debt as one
8 in which the Christensens sought to conduct a tax-deferred 1031
9 exchange for other investment property owned by the Christensens.
10 Bart Christensen testified that at the time of the Sheriff's Sale
11 he and his wife lived in South Dakota and flew in for the sale and
12 then flew back after the sale. He further testified that the
13 obligation that the Christensens owed to Tran related to work done
14 by Tran on rental properties owned by the Christensens in
15 California.

16
17 **PLAINTIFF-DEBTORS HAVE STANDING TO ENFORCE THE
AUTOMATIC STAY AND RECOVER DAMAGES FOR VIOLATIONS OF STAY**

18 Christensens first assert that the Plaintiffs are not the
19 proper parties to pursue an adversary complaint because the
20 Sheriff's Sale Property is not the asset of the Plaintiff-Debtors,
21 but only of the bankruptcy estate. In *Houston v. Eiler (In re*
22 *Cohen)*, a leading Chapter 13 standing authority, the Bankruptcy
23 Appellate Panel of the Ninth Circuit made clear that the allocation
24 of duties between plaintiff-debtors and trustees in Chapter 13

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27 ¹⁰ A retired annuitant is a retired state employee who is allowed
28 to receive his retirement benefits and work up to 80 hours a month,
receiving payment for the 80 hours of service in addition to his or
her retirement benefits. Cal. Govt. Code § 21221.

1 bankruptcies is to be construed broadly.¹¹ Section 1306(b)
2 expressly provides that it is the Chapter 13 debtor who shall
3 remain in possession of all property of the bankruptcy estate,
4 unless otherwise ordered by the court or provided in the Chapter 13
5 plan.¹² No such order was issued by the court, nor is there a plan
6 provision otherwise dispossessing the Plaintiff-Debtors from their
7 statutory mandate to retain, and have the right to possession of,
8 all property of the bankruptcy estate. In structuring the proper
9 function of the Chapter 13 case, courts have confirmed that it is
10 the Chapter 13 debtor who has the right to pursue and control
11 causes of action belonging to the estate.¹³ As such, not only do
12 the Plaintiff-Debtors have standing to assert causes of action
13 pursuant to 11 U.S.C. § 362(a) and (k), they also have standing to
14 assert nonbankruptcy causes of action owned by the estate.¹⁴

15 Defendants cite *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d
16 1447, 1451 (9th Cir. 1994), to support their assertion that the
17 Plaintiff-Debtors do not have standing in the present case -
18 however, *Moneymaker* involves a Chapter 7 trustee. In a Chapter 7
19 bankruptcy case, the trustee is the representative of the debtor's
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22 ¹¹ *Houston v. Eiler (In re Cohen)*, 305 B.R. 886, 894 (B.A.P. 9th
23 Cir. 2004); see also 3 COLLIER ON BANKRUPTCY ¶ 323.04 (Alan N. Resnick &
24 Henry J. Sommer eds. 16th ed.) (Chapter 13 Plaintiff-Debtors have
standing to bring claims in their own name on behalf of the bankruptcy
estate).

25 ¹² 8 COLLIER ON BANKRUPTCY ¶ 1306.03.

26 ¹³ See *Donato v. Metro. Life Ins. Co.*, 230 B.R. 418, 425 (N.D.
27 Cal. 1999); *Kelsey v. Waste Management of Alameda County*, 76 Cal. App.
4th 590, 595-596 (1999).

28 ¹⁴ *Houston*, 305 B.R. at 900.

1 estate and thus has the capacity to sue and be sued.¹⁵ The cited
2 case is not relevant in the Bankruptcy Case which is now before the
3 court as the trustee and the debtor play a different role in a
4 Chapter 13 case. The Chapter 13 debtor retains control of the
5 bankruptcy estate and thus may pursue and control causes of actions
6 belonging to the estate. Defendants do not cite any other case law
7 to support their position. The Plaintiff-Debtors in The Bankruptcy
8 Case are proper parties to pursue an adversary proceeding
9 concerning property of the estate.

10 **THE CHRISTENSENS, WITH THE ASSISTANCE AND ADVICE OF**
11 **THE ATTORNEYS, INTENTIONALLY VIOLATED THE AUTOMATIC STAY**

12 A stay violation is willful if a creditor has knowledge of the
13 bankruptcy filing and deliberately acts in such a way that violates
14 the stay.¹⁶ Once the creditor learns or has notice of a bankruptcy
15 case having been filed, any actions that it intentionally
16 undertakes are deemed wilful.¹⁷ As the Ninth Circuit Court of
17 Appeals explained:¹⁸

18 A "willful violation" does not require a specific intent to
19 violate the automatic stay. Rather, the statute provides for
20 damages upon a finding that the defendant knew of the
automatic stay and that the defendant's actions which violated

21 ¹⁵ 11 U.S.C. §§ 704(a)(1), 725.

22 ¹⁶ *In re Preston*, 333 B.R. 346, 348-9 (Bankr. M.D.N.C. 2005).

23 ¹⁷ *In re Risner*, 317 B.R. 830, 835 (Bank. D. Idaho 2004); see
24 also *Eskanos and Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir.
2002); *Thompson v. GMAC, LLC*, 566 F.3d 699, 702-3 (7th Cir. 2009);
25 *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147,
26 1151 (9th Cir. 1996) (holding that the knowing retention of estate
property violates the automatic stay).

27 ¹⁸ *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 227 (9th Cir.
1989) (citing *INSLAW, Inc. v. United States (In re INSLAW, Inc.)*, 83
28 B.R. 89, 165 (Bankr. D.D.C. 1988)).

1 the stay were intentional. Whether the party believes in good
2 faith that it had a right to the property is not relevant to
3 whether the act was "willful" or whether compensation must be
4 awarded.

5 Defendants argue that the violation of the automatic stay was
6 not intentional because they did not know of the bankruptcy at the
7 time of the Sheriff's Sale. Defendants admittedly had notice of
8 the bankruptcy on July 27, 2009, The Attorneys filed a request for
9 special notice on July 28, 2009, and filed a proof of claim in the
10 bankruptcy case on November 25, 2009. Defendants knew of the
11 bankruptcy proceeding, and thus the automatic stay, on July 27,
12 2009, when they conferred with their attorneys. Even though they
13 knew of the bankruptcy case, knew the Sheriff's Sale was void, and
14 knew that the Sheriff's Sale Property belonged to the bankruptcy
15 estate and the Plaintiff-Debtors (to the extent of any exemptions)
16 as early as July 27, 2009, the Christensens intentionally chose not
17 to return the Sheriff's Sale Property to the Plaintiff-Debtors
18 until March 23, 2011.

19 During the period from July 27, 2009, through March 23, 2011,
20 the Christensens were represented by experienced bankruptcy counsel
21 who were well aware of the automatic stay, the impact of the
22 automatic stay, and that the Christensens' retention of Sheriff's
23 Sale Property obtained in violation of the stay was a continuing
24 violation of the automatic stay. Bart Christensen testifies that
25 even after the Christensens and The Attorneys were aware of the
26 Bankruptcy Case, The Attorneys instructed the Christensens to
27 retain possession of the Sheriff's Sale Property obtained in
28 violation of the automatic stay while The Attorneys attempted to
settle other matters with the Plaintiff-Debtors. Knowingly holding

1 property from a debtor in bankruptcy is a violation of the
2 automatic stay.¹⁹ The court finds that the retention of this
3 personal property was an intentional, knowing act by the
4 Christensens and their attorneys not only to retain possession of
5 the Sheriff's Sale Property, but to do so in violation of the
6 automatic stay as part of the Christensens' strategy relating to
7 their bankruptcy claim and other disputes with the Plaintiff-
8 Debtors.

9 John Maxey provided troubling testimony at trial in an effort
10 to exculpate the Christensens. On cross examination Mr. Maxey
11 testified that neither Robert Dudugjian nor Bart Christensen advised
12 him that the Christensens were retaining possession of the
13 Sheriff's Sale Property. Mr. Maxey testified that he communicated
14 for over a year and engaged in settlement negotiations with
15 Plaintiff-Debtors' counsel purportedly unaware that the
16 Christensens were continuing in possession of the Sheriff's Sale
17 Property with knowledge of the Bankruptcy Case. Taken as true,
18 then the Christensens and Robert Dudugjian intentionally hid from
19 Mr. Maxey this key piece of information for his dealings with
20 Plaintiff-Debtors' counsel. While affording Mr. Maxey with
21 "plausible deniability" as to any statements he made asserting that
22 the Christensens were not in possession of the Sheriff's Sale
23 Property, such conduct resulted in Mr. Maxey making false
24 statements to the Plaintiff-Debtors and Plaintiff-Debtors' counsel.

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28 ¹⁹ *Taxel*, 98 F.3d at 1151.

1 This demonstrates a lack of good faith in the conduct of the
2 Christensens in the bankruptcy case.²⁰

3
4 **Failure to Correct a Violation of the
Automatic Stay is a Violation of the Automatic Stay**

5 The Christensens, notwithstanding being represented by
6 knowledgeable bankruptcy counsel, argue that since they did not
7 know that they were violating the automatic stay when the Sheriff's
8 Sale occurred, then their continued possession of the personal
9 property obtained in violation of the automatic stay for almost two
10 years is not a violation of the stay. Alternatively, Christensens
11 contend that if continued possession of the personal property is a
12 violation of the automatic stay, it was not an "intentional
13 violation of the stay" because they only retained the personal
14 property for two years for "safekeeping" as instructed by their
15 attorneys. These arguments are without merit. The testimony of
16 Bart Christensen establishes that he and Robert Dudugjian knew of
17 the bankruptcy filing as of July 27, 2009, that he and Robert
18 Dudugjian made the conscious decision to retain the personal
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21 ²⁰ In addition to hiding the existence of this property of the
22 estate from the Plaintiff-Debtors, it appears that the Christensens
23 and their counsel engaged in a pattern of conduct to hide the
24 existence of this property of the estate from the court. Though
25 knowing that the Sheriff's sale was conducted in violation of the
26 automatic stay and void, the Christensens failed to disclose the
27 existence of the personal property in their possession in the proof of
28 claim filed on November 25, 2009 – four months after the Christensens
and their attorney learned of the bankruptcy case having been filed.
Reference is only made to a judgment lien on real property. To the
extent that the Christensens believed that they had the right to
retain possession of the personal property to secure the claim by
virtue of any execution lien (given they and their experienced
bankruptcy counsel had to reasonably know that they did not own the
personal property because the Sheriff's sale was void), it was
required to be disclosed.

1 property obtained in violation of the automatic stay, and that The
2 Attorneys instructed the Christensens to retain possession of the
3 Sheriff's Sale Property obtained in violation of the automatic
4 stay. Retaining possession of the Sheriff's Sale Property resulted
5 in the Christensens depriving the Plaintiff-Debtors and estate of
6 that property.

7 "The automatic stay requires a creditor to maintain the status
8 *quo ante* and to remediate acts taken in ignorance of the stay."²¹
9 The automatic stay imposes an affirmative duty to discontinue
10 actions in violation of the stay.²² A creditor cannot use the state
11 court enforcement action as leverage in negotiations once the
12 bankruptcy case has been commenced.²³

13 When property of the estate is held in violation of the
14 automatic stay the onus is on the creditor to turn over the
15 property, not for the debtor, debtor-in-possession, Chapter 7
16 trustee, or Chapter 11 trustee to chase the creditor and force
17 correction of the continuing violation.²⁴ "The responsibility is
18 placed on the creditor to address the continuing violation of the
19 automatic stay because to place the burden on the debtor to undo
20 the violation 'would subject the debtor to the financial pressures
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22

23 ²¹ *Franchise Tax Bd. v. Roberts (In re Roberts)*, 175 B.R. 339,
24 343 (B.A.P. 9th Cir. 1994).

25 ²² *Sternberg v. Johnson*, 595 F.3d 937, 944 (9th Cir. 2010);
26 *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)
(addressing the obligation to discontinue post-petition collection
proceedings).

27 ²³ *Eskanos & Alder*, 309 F.3d at 1215.

28 ²⁴ *Taxel*, 98 F.3d at 1151.

1 the automatic stay was designed to temporally abate.'"²⁵

2 The Christensens retaining possession of the Sheriff's Sale
3 Property with knowledge of the Bankruptcy Case during the period
4 from July 27, 2009, until March 23, 2011, was a continuing,
5 knowing, and intentional violation of the automatic stay.
6 Compounding this violation is that the Christensens did so with the
7 assistance, advice, and instructions of their knowledgeable,
8 experienced counsel as part of their larger strategy to settle
9 other issues involving the Plaintiff-Debtors.

10
11 **THE CHRISTENSENS ARE LIABLE FOR
DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY**

12 The granting of compensatory damages for violation of the
13 automatic stay is to restore the *status quo* and grant the injured
14 party the value of its loss.²⁶ The court properly awards a debtor
15 the value of her property which was sold in contravention of the
16 automatic stay and her reasonable attorney's fees and expenses
17 caused by the violation.²⁷ The fact that a creditor may have
18 originally acted in good faith and reasonably believed that its
19 conduct did not violate the automatic stay does not insulate the
20 creditor from the court finding the conduct willful or allow the
21 creditor to avoid damages.²⁸

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24 ²⁵ *Johnson v. Parker (In re Johnson)*, 321 B.R. 262, 283 (D. Ariz.
2005) (citation omitted).

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26 ²⁶ *Walters v. Hatcher (In re Walters)*, 41 B.R. 511, 516 (Bankr.
W.D. Mo. 1984).

27 ²⁷ *In re Brooks*, 12 B.R. 283, 285-286 (Bankr. W.D. Mo. 1981).

28 ²⁸ *In re Cordle*, 187 B.R. 1, 4 (N.D. Cal. 1995).

1 The automatic stay is one of the fundamental debtor
2 protections provided by the bankruptcy laws. It gives the
3 debtor a breathing spell from his creditors. It stops all
4 collection efforts, all harassment, and all foreclosure
actions. It permits the debtor to attempt a repayment or
reorganization plan, or simply to be relieved of the
financial pressures that drove him into bankruptcy.

5 The automatic stay also provides creditor protection.
6 Without it, certain creditors would be able to pursue
7 their own remedies against the debtor's property. Those
8 who acted first would obtain payment of the claims in
9 preference to and to the detriment of other creditors.
Bankruptcy is designed to provide an orderly liquidation
procedure under which all creditors are treated equally.
A race of diligence by creditors for the debtor's assets
prevents that.

10 H. Rpt. No. 95-595, at 340 (1977), *reprinted in* Vol. C COLLIER ON
11 BANKRUPTCY App. Pt. 4(d)(i), at App. Pt. 4-1472 (Alan N. Resnick &
12 Henry J. Sommer eds. 16th ed.). The stay also works to protect
13 creditors, allowing for the proper treatment of claims under the
14 Bankruptcy Code.²⁹

15 The effect and scope of the automatic stay does not depend on
16 either a legal or equitable interest of the debtor or estate.³⁰
17 Bankruptcy Code § 362(a)(3) states that the automatic stay applies
18 to, "any act to obtain *possession of property of the estate* or of
19 *property from the estate* or to exercise control over property of
20 the estate." (Emphasis added). "The operation of the automatic
21 stay applies to property merely in the debtor's possession at the
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23 ²⁹ *Boucher v. Shaw*, 572 F.3d 1087, 1093 (9th Cir. 2009); see also
24 *Hillis Motors v. Haw. Auto. Dealers' Ass'n (In re Hillis Motors)*, 997
25 F.2d 581, 586 (9th Cir. 1993) ("The [automatic] stay ensures that all
26 claims against the debtor will be brought in a single forum, the
27 bankruptcy court. The stay protects the debtor by allowing it
breathing space and also protects creditors as a class from the
possibility that one creditor will obtain payment on its claims to the
detriment of others." (citations omitted)).

28 ³⁰ *In re Zartun*, 30 B.R. 543, 545, (B.A.P. 9th Cir. 1983).

1 time of filing, and remains in effect until and unless the debtor
2 abandons such property or relief from the stay is sought.”³¹

3 The Christensens contend that not all the property sold at the
4 Sheriff’s Sale were assets of the Plaintiff-Debtors but rather some
5 were the Plaintiff-Debtors’ daughter’s property. The Statements
6 filed by the Debtors do not indicate that they were holding
7 property for anyone else.³² However, at trial, Soo Han Tse
8 testified that some of the Sheriff’s Sale Property belonged to her
9 daughter-in-law, but was in the Plaintiff-Debtors’ possession. To
10 the extent that the Plaintiff-Debtors were in possession of
11 property of the daughter-in-law (for which the court has not been
12 provided sufficient evidence to determine that any of the Sheriff’s
13 Sale Property was not property of the Plaintiff-Debtors and
14 property of the estate), obtaining possession of and depriving
15 possession of that property from the Plaintiff-Debtors and estate
16 is a violation of the automatic stay.

17 Additionally, the court will not presume, as the Christensens
18 now contend, that the Sheriff, the Christensens, Robert Dudugjian,
19 and The Attorneys attempted to sell personal property belonging to
20 another in enforcing the judgment that the Christensens had against
21 the Plaintiff-Debtors. The California Code of Civil Procedure
22 specifies a process by which a third party who believes that the
23 property levied upon by the Sheriff belongs to them and not the
24

25
26 ³¹ *Turbowind, Inc. v. Post Street Management, Inc.* 42 B.R. 579,
27 585 (S.D. Cal. 1984).

28 ³² Statement of Financial Affairs, Question 14; Bankr. E.D. Cal.
No. 09-35065, Dckt. 1 at 40.

1 judgment debtor asserts their rights.³³ The evidence presented by
2 the Christensens is that no third parties availed themselves of
3 such rights and asserted ownership of any of the personal property
4 pursuant to these provisions of California Law.

5 **The Retention of the Sheriff's Sale Property From**
6 **July 27, 2009, through March 23, 2011, Was a Continuing**
7 **Violation of the Automatic Stay by the Christensens**

8 The Christensens argue that their continuing possession of the
9 Sheriff's Sale Property could not violate the automatic stay
10 because they did not have knowledge of the Bankruptcy Case when
11 they purchased the property at the Sheriff's Sale. Apparently the
12 Christensens believe that they had no obligation to immediately
13 comply with the automatic stay when they learned of the Bankruptcy
14 Case. It is undisputed that the Christensens learned of the
15 bankruptcy four days later on July 27, 2009, in the phone
16 conversation with Robert Dudugjian. At that time the Christensens
17 and The Attorneys knew that the Sheriff's Sale and the
18 Christensens' possession of the Sheriff's Sale Property were in
19 violation of the automatic stay. Further, they knew that the
20 Christensens retaining the Sheriff's Sale Property was a continuing
21 violation of the automatic stay. The Christensens and The
22 Attorneys (who took possession of the Sheriff's Sale Property for
23 two months) continued to violate the automatic stay by retaining
24 possession of the Sheriff's Sale Property with full knowledge of
25 the Bankruptcy Case until March 23, 2011.

26 Additionally, with full knowledge that the Sheriff's Sale was
27 invalid and they had no right to use a portion of the personal

28 ³³ See Cal. Civ. Proc. Code §§ 720.010 et. seq.

1 property to pay a debt the Christensens owed to Tran, the
2 Christensens made no effort to recover that personal property
3 (which was valued at \$1,000.00) from Tran. No explanation was
4 provided as to why the Christensens did not, upon learning of the
5 bankruptcy case filing only four days after delivering the personal
6 property to Tran, immediately contact Tran, explain that the
7 Christensens and Tran were in violation of the automatic stay,
8 recover the jewelry and family heirlooms, and pay Tran from money
9 belonging to the Christensens.

10 As this court has stated on a number of occasions, the depth
11 and breadth of a person's conduct are not measured only by an
12 improper act, but what they do to correct that improper act once it
13 is brought to their attention. Bankruptcy by its very nature is a
14 redemptive process, which can equally be applied to creditors and
15 debtors. Those acting in good faith will act promptly to correct
16 the error and avoid a continuing violation of the law.

17 In this case, the Christensens and The Attorneys have
18 demonstrated that rather than seeking to act in good faith and
19 correct what may well have been an inadvertent violation of the
20 automatic stay, they engaged in an intentional strategy to continue
21 to violate the stay. Counsel may have hoped, and the Christensens
22 gambled, that the Plaintiff-Debtors would fail to prosecute the
23 Bankruptcy Case, that failure resulting in the Bankruptcy Case
24 being dismissed, and the continuing violation of the automatic stay
25 by the Christensens not being brought to the attention of the
26 court, Chapter 13 Trustee, U.S. Trustee, and other parties in
27 interest. Alternatively, the Christensens and The Attorneys may
28 have hoped that nobody would really care what happened, because the

1 violation "only" involved bankruptcy debtors who owed the debt.
2 Whatever the reason, the Christensens and counsel chose poorly in
3 selecting this strategy.

4 The Christensens knowingly and intentionally violated the
5 automatic stay. Not only did they retain possession of and use a
6 portion of the personal property improperly obtained at the void
7 Sheriff's Sale to the detriment of the Plaintiff-Debtors, but have
8 also violated the stay as to their fellow creditors. Damages are
9 properly awarded pursuant to 11 U.S.C. § 362(k) against the
10 Christensens.

11 **THE CONVERSION CLAIM DAMAGES ARE DUPLICATIVE OF**
12 **THE CLAIM FOR VIOLATION OF THE AUTOMATIC STAY**

13 In this Adversary Proceeding, the conversion damages overlap
14 and are subsumed by the damages for violation of the automatic
15 stay. Under California law a conversion claim arises from the
16 wrongful exercise of dominion over personal property of another.
17 A person may seek damages for conversion or the specific recovery
18 of the property and damages for its wrongful detention.³⁴ Because
19 the damages are the same as those which are to be awarded pursuant
20 to 11 U.S.C. § 362(k) for the violation of the stay, damages on the
21 state law claim would be duplicative of the damages for violation
22 of the automatic stay.

23 Further, violation of the automatic stay is an issue of
24 federal law to be exclusively determined by the federal court.
25 This is similar to claims for a party violation the discharge
26

27
28 ³⁴ See generally, 5 E.B. WITKIN, SUMMARY OF CALIFORNIA LAW § 699 *et.*
seq. (10th ed. 2005).

1 injunction under 11 U.S.C. § 524.³⁵ The mere violation of the
2 discharge injunction or automatic stay is not, in and of itself,
3 the basis for asserting a claim under a nonbankruptcy legal theory.
4 The Plaintiff-Debtors have not asserted any other conduct as the
5 basis for the conversion, reason why the retention of the Sheriff's
6 Sale Property was improper, or any further damages beyond the scope
7 of damages also awarded pursuant to 11 U.S.C. § 362(k).

8 **COMPUTATION OF DAMAGES**

9 Under the Bankruptcy Code, "an individual injured by any
10 willful violation of a stay provided by this section shall recover
11 actual damages, including costs and attorneys' fees, and in
12 appropriate circumstances, may recover punitive damages."³⁶ The
13 basic measure of damages is the amount of economic loss the debtor
14 has suffered as the proximate result of the defendant's violation,
15 taking into account the fair market value of the property that was
16 disposed of in violation of the automatic stay.³⁷

17 Owners are competent to render an opinion on the value of
18 their property.³⁸ "All that is required to testify concerning the
19 value of property is some acquaintance with it sufficient to form
20 an estimate value; it is then up to the Court to determine how much
21 weight to attach to the estimate."³⁹ Once a party has proven that
22

23 ³⁵ *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002).

24 ³⁶ 11 U.S.C. § 362(k) (1).

25 ³⁷ *In re Kaufman*, 315 B.R. 858, 866 (N.D. Cal. 2004).

26 ³⁸ *In Re Geyer*, 203 B.R. 726, 728 (S.D. Cal. 1996).

27 ³⁹ *Wells Fargo Bank & Union Trust Co. v. United States*, 115 F.
28 Supp. 655, 661 (N.D. Cal. 1953).

1 he has been damaged from an automatic stay violation, he or she
2 needs to show the amount of damages with reasonable certainty.⁴⁰

3 One method of valuing the personal property is what it sold
4 for at the Sheriff's Sale – the \$8,000.00 paid by the Christensens.
5 While not a perfect marketplace sale – in which a willing buyer and
6 willing seller, neither operating under a compunction to buy or
7 sell, would determine the sales price – it is a form of a market.⁴¹
8 This corresponds to the \$8,000.00 value for the personal property
9 stated by the Plaintiff-Debtors in Schedule B filed in their
10 Chapter 13 case. The court finds that the Sheriff's Sale Property
11 had a value of \$8,000.00 as of July 23, 2009.

12 The personal property paid by the Christensens to Tran was
13 valued between the Christensens and Tran to be \$1,000.00. No
14 effort was made by the Christensens to recover the property given
15 to Tran when the Christensens learned on July 27, 2009, that the
16 Plaintiff-Debtors had filed the Chapter 13 case prior to the
17 Sheriff's Sale. The court has not been presented with sufficient
18 evidence to the contrary and finds that the personal property given
19 by the Christensens to Tran from the Sheriff's Sale Property had a
20 value of \$1,000.00 at the time of the July 23, 2009 transfer.

21 For the other unreturned property, the lost Canadian Maple
22 1 oz gold coin, under California law when property that is
23 improperly taken (a conversion) cannot be returned, the aggrieved
24

25 ⁴⁰ *In re Heghmann*, 316 B.R. 395, 405 (B.A.P. 1st Cir. 1994)
26 (citing *Doe v. United States*, 976 F.2d 1071, 1085 (7th Cir. 1992)).

27 ⁴¹ The classic definition of "fair market value" is "the price
28 that a willing buyer would pay a willing seller, neither being under a
compulsion to sell or buy." *Jefferson Ins. Co. V. Superior Court of
Alameda County*, 3 Cal. 3d 398, 402 (1970).

1 party is entitled to the value of the property at the time of the
2 conversion or an amount which is sufficient to compensate for the
3 loss which is the natural, reasonable and proximate result of the
4 wrongful act.⁴² In setting the value of the property, it is the
5 date of the conversion which the court uses to determine the
6 damages, notwithstanding that the price may fluctuate.⁴³ This
7 computation of damages is consistent with and included in the award
8 of actual damages pursuant to 11 U.S.C. § 362(k)(1).

9 Bart Christensen on direct testimony admitted that one of the
10 gold coins that he acquired at the Sheriff's Sale was not included
11 in the property which his attorneys returned to the Plaintiff-
12 Debtors. The appropriate value of the missing gold coin which has
13 been converted is determined as of the date of conversion - which
14 the court determines to be July 23, 2009 (the date of the Sheriff's
15 Sale). Pursuant to Federal Rule of Evidence 201, the Court takes
16 judicial notice that the value of gold on July 23, 2009 was \$947.32
17 per ounce.⁴⁴ This is consistent with the \$905.00 value of the gold
18 coin as of July 21, 2009, asserted by the Christensens. Given the
19 volatility of gold prices, which have generally been upward during
20 the period relevant to this Adversary Proceeding, the increase
21 several days later is not unexpected. The court determines that
22

23 ⁴² Cal. Civ. Code § 3336.

24 ⁴³ *Wong v. Paine, Webber, Jackson & Curtis*, 208 Cal. App. 2d 17,
25 19-20 (1939) (addressing 1931 amendment to California Civil Code
26 § 3336 deleting the right of the plaintiff to have the value
27 determined at the time of conversion or any time thereafter up to
trial).

28 ⁴⁴ Devon Maylie, *Precious Metals: Spot Gold Up But At Mercy of
Dollar Moves*, Dow Jones Newswires (July 24, 2009, 9:46 AM).

1 the Canadian Maple 1 oz gold coin which was not returned to the
2 Plaintiff-Debtors by the Christensens had a value of \$947.32 as of
3 July 21, 2009.

4 Actual damages for the unreturned items of personal property
5 (those used by the Christensens to pay their personal obligation to
6 Tran and the lost gold coin) total \$1,947.32. The court grants
7 judgment in the amount of \$1,947.32 for the Plaintiff-Debtors
8 against the Christensens, and each of them.

9 **Emotional Distress Damages are Property Awarded to Soo Han Tse**

10 The Plaintiff-Debtors have also been deprived the use of these
11 items of personal property for the period of almost two years.
12 Testimony has been provided that this loss of use has caused
13 anxiety to Soo Han Tse because the personal property used by the
14 Christensens to pay their personal obligation included jewelry
15 belonging to the Plaintiff-Debtors' daughter-in-law. Soo Han Tse
16 also provided her testimony as to the loss of the family heirlooms
17 which had been handed down from generation to generation, the
18 emotional distress caused by the Christensens denying that they
19 were in possession of the personal property for two years, and the
20 Christensens having used the family heirlooms to pay their personal
21 obligation.

22 Actual damages for violation of the automatic stay include
23 emotional distress damages.⁴⁵ For a debtor to state a claim for
24 emotional distress damages, the individual must (1) suffer
25 significant harm, (2) clearly establish the significant harm, and
26 (3) demonstrate a causal connection between the significant harm

27 ⁴⁵ *Dawson v. Wash. Mut. Bank (In re Dawson)*, 390 F.2d 1139, 1148
28 (9th Cir. 2004).

1 and the violation of the automatic stay.⁴⁶ Medical evidence of
2 emotional distress is not required; the testimony of family
3 members, friends, and co-workers is sufficient to establish an
4 emotional distress claim.⁴⁷ In some cases no corroborating evidence
5 is required. An example cited in *Dawson* is where the egregious
6 conduct was the creditor pretending to hold a gun to the debtor's
7 head.⁴⁸ Additionally, the court in *Dawson* stated that even when the
8 conduct was not egregious, the court could award emotional distress
9 damages where the circumstances make it obvious that a reasonable
10 person would suffer emotional harm, such as the emotional distress
11 of having to cancel a child's birthday party because the debtor's
12 checking account was frozen.⁴⁹

13 Manlin Auyeung and Soo Han Tse each provided testimony in
14 support of the emotional distress claim. This testimony as to the
15 emotional distress focuses on the Christensens having taken and
16 disposed of family heirlooms passed down from generation to
17 generation. Manlin Auyeung testified to the emotional distress of
18 her parents, stating that her mother is depressed, cannot sleep,
19

20 ⁴⁶ *Id.* at 1149.

21 ⁴⁷ *Id.*, citing *Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815,
22 821-22 (B.A.P. 1st Cir. 2002) (holding that testimony of debtor's wife
23 was sufficient to support an award of medical damages without medical
testimony).

24 ⁴⁸ *Dawson*, 390 F.2d at 1149 (citing *Wagner v. Ivory (In re*
25 *Wagner)*, 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)).

26 ⁴⁹ *Dawson*, 390 F.2d at 1149 (citing *United States v. Flynn (In re*
27 *Flynn)*, 185 B.R. 89, 93 (S.D. Ga. 1995) (\$5,000.00 award of emotional
28 distress damages because 'it is clear that the appellee suffered
emotional damages' when she was forced to cancel her son's birthday
party because her checking account was frozen)); see also *Sternberg*,
595 F.3d at 943.

1 cries often, and is mentally and emotionally stressed over the loss
2 of these items of personal property. Even if not substantial in
3 gross dollar value, the loss of such family "treasures" is
4 something which will clearly cause emotional distress. This
5 distress is separate and apart from the Plaintiff-Debtors having
6 filed bankruptcy or the Christensens having a judgment against
7 them. The intentional disregard of the stay and the rights of the
8 Plaintiff-Debtors and estate over a substantial period of time
9 would emotionally affect a reasonable person. A reasonable person
10 would be emotionally injured by the selling of a portion and the
11 continued detention of the remaining Sheriff's Sale Property and
12 holding of such items.

13 This reasonable distress suffered by Soo Han Tse has been
14 compounded by the Christensens and The Attorneys misrepresenting
15 for more than one and one-half years that the Christensens were not
16 in possession of any of the Sheriff's Sale Property.⁵⁰ Based on the
17 testimony presented by the Christensens, the withholding of the
18 personal property was done as part of a broader strategy to obtain
19 settlement of other issues with the Plaintiff-Debtors. The court
20 has been presented with sufficient testimony, as well as the court
21 being able to independently conclude, that the improper retention
22 and use of the personal property to pay the personal obligation of
23 the Christensens (and no attempt to recover those items when the

24 ⁵⁰ The Christensens complain that this Adversary Proceeding could
25 not be settled because the Plaintiff-Debtors have continued to demand
26 that the Christensens return personal property which has now been
27 stated to either be lost (the gold coin) or used by the Christensens
28 to pay Tran and not recoverable. This inability to settle the matter
may well arise from the Plaintiff-Debtors not believing the latest
version of what property was in the Christensens possession given the
history of misrepresentation on that point.

1 Christensens learned of the bankruptcy four days later) are actions
2 of the Christensens which would make a reasonable person suffer
3 emotional distress.

4 Based on the evidence presented, the court awards Soo Han Tse
5 \$1,550.00 in emotional distress damages against the Christensens,
6 and each of them.

7
8 **Plaintiff-Debtors are Entitled to Compensation for
the Time Value of Being Deprived of the Sheriff's Sale Property**

9 For a conversion, "California Civil Code section 3336 provides
10 that a plaintiff is entitled in a conversion action to the
11 prejudgment interest at the legal rate from the time of conversion
12 to the date judgment is entered The legal rate of interest
13 in California is 7 percent per annum."⁵¹ Prejudgment interest is
14 awarded in federal court to compensate a party for the lost
15 opportunity to use his or her money between the time a claim
16 accrues and the time of judgment.⁵²

17 There is no statutory rate for prejudgment interest in
18 federal court, leaving it to the court to determine based upon the
19 particular circumstances of the case.⁵³ The trial court is to set
20 a prejudgment rate which compensates the plaintiff for the loss
21 suffered from the time the claim arose, but the amount is not
22
23

24 ⁵¹ *Stan Lee Trading, Inc. v. Holtz*, 649 F. Supp. 577, 582 (C.D.
25 Cal. 1986) (claims not based on breach of contract); see also Cal Civ.
26 Code § 3289 (providing for prejudgment interest at contract rate or
10% if no interest provided in the contract.)

27 ⁵² *West Virginia v. United States*, 479 U.S. 305 (1987).

28 ⁵³ *Cement Div., National Gypsum Company v. City of Milwaukee*, 144
F.3d 1111, 1113 (7th Cir. 1998).

1 intended to punish the defendant.⁵⁴

2 Almost half of the monetary obligation is for the Canadian
3 Maple 1 oz. gold coin, for which the price of gold was \$947.32 per
4 ounce on July 23, 2009. However, the price of gold has
5 dramatically increased, and the failure of the Christensens to
6 return the gold coin or pay amount owing for it as of July 2009 has
7 caused a significant loss to the Plaintiff-Debtors. By 2011 the
8 price of gold had increased to \$1,571.53 an ounce, a 66% increase.
9 However during this same period the cost of borrowing money has
10 been at a historic low, with home mortgage rates dropping in the 3%
11 to 5% range and the Federal one-year note rates dropping below 1%.

12 Under the circumstances of this Adversary Proceeding and the
13 claims asserted herein, the court adopts a 7% prejudgment interest
14 rate that applies in state court. This amount is reasonably
15 expected by all the parties, and the Plaintiff-Debtors have not
16 shown the basis for a higher rate. Using a lower interest rate
17 does not provide the Plaintiff-Debtors with fair compensation for
18 being deprived of this property prior to judgment. This is true
19 especially for an item such as the gold coin, which during this
20 period has risen rapidly in value. If provided with the value of
21 the coin in 2009, the Plaintiff-Debtors could have acquired a
22 replacement asset and realized a much greater value during this
23 period. Though this rate may allow the Christensens to have
24 significantly benefitted from their violation of the automatic stay
25 with whatever has or will happen with the currently lost coin, the

26
27 ⁵⁴ *Dishman v. UNUM Life Insurance Company of America*, 269 F.3d
28 974, 989 (9th Cir. 2001) (rejecting an interest rate which was twice
the return on the investment portfolio from which the payment in
dispute was owing).

1 court's computation is for the loss to the Plaintiff-Debtors, not
2 punishing the Christensens. The 7% interest rate fairly
3 compensates the loss to the Plaintiff-Debtors for the failure of
4 the Christensens to return the gold coin and other items they did
5 not recover from Tran.

6 Nine hundred seventy-one days have passed since July 23, 2009,
7 the date of conversion, and March 18, 2012, when the court prepared
8 this decision. The interest is computed, at 7% per annum on
9 \$1,947.32 (\$1,000.00 for items sold and \$947.32 for the missing
10 gold coin) is \$362.63. The court has determined not to award
11 prejudgment interest on the emotional distress damages or the
12 attorneys' fees damages.

13 **Plaintiff-Debtors are Entitled to Reasonable Attorneys' Fees**
14 **as Part of the Actual Damages in Correcting the Violation**
of the Automatic Stay

15 Bankruptcy Code § 362(k)(1), allows an injured party to be
16 awarded damages of the entire amount of actual damages reasonably
17 incurred as a result of a violation of the automatic stay, which
18 includes attorneys' fees.⁵⁵ In deciding what constitutes
19 "reasonable," the courts in this Circuit have adopted the
20 principles found in Bankruptcy Code § 330 as a guide for awarding
21 attorney fees.⁵⁶ An award of attorneys' fees relating to a
22 violation of the automatic stay will be "reasonable" provided it is
23 supported by evidence and not "grossly excessive, monstrous, or
24
25

26 ⁵⁵ *Stainton v. Lee (In re Stainton)*, 139 B.R. 232, 235 (B.A.P.
27 9th Cir. 2007).

28 ⁵⁶ *In re Roman*, 283 B.R. 1, 11 (B.A.P. 9th Cir. 2002).

1 shocking to the conscience."⁵⁷

2 Allowable attorneys' fees relating to violation of the
3 automatic stay are those relating to correcting the violation of
4 the automatic stay (such as recovering property), but do not
5 include attorneys' fees in pressing an adversary proceeding for
6 damages arising from violation of the automatic stay.⁵⁸ Once the
7 violation of the stay has ended, i.e. the violating creditor (or
8 the court) has unwound the violation to the extent possible, no
9 further right to attorneys' fees exists.

10 In this Adversary Proceeding, the Christensens returned all of
11 the remaining personal property to the Plaintiff-Debtors on
12 March 23, 2011. While very belatedly, this property was returned
13 to the Plaintiff-Debtors and the continuing violation of the
14 automatic stay terminated. Though the Plaintiff-Debtors may not
15 believe the Christensens' statements that the gold coin is lost or
16 that the jewelry and family heirlooms given to Tran are out of the
17 Christensens' control, the court has no basis for concluding that
18 the Christensens are continuing in violation of the automatic stay.
19 From March 24, 2011, onward, the Plaintiff-Debtors were pursuing
20 only their monetary claim for the personal property improperly
21 obtained in violation of the automatic stay which could not be
22 returned (and for which the Christensens made no effort to recover
23 when they learned of the bankruptcy case four days after giving the
24 personal property to Tran to pay their personal obligation).

26 ⁵⁷ *In re Computer Communications, Inc.*, 824 F.2d 725, 731 (9th
27 Cir. 1987).

28 ⁵⁸ *Sternberg*, 595 F.3d at 947-48.

1 Peter Macaluso, counsel for the Plaintiff-Debtors, has
2 provided his Declaration asserting that the Plaintiff-Debtors have
3 incurred \$7,500.00 in legal fees for 25 hours of work at \$300.00 an
4 hour. Mr. Macaluso provides the following breakdown for his fees
5 relating to the violation of the automatic stay.

6 5.0 Hours: Letters to Opposing Counsel Demanding Property
be Returned

7 1.0 Hour: Phone Conversations

8 5.0 Hours: Research and Preparing the Complaint

9 4.0 Hours: Preparing and Appearing at Status Conference

10 10.0 Hours: Preparing for Trial

11 Total: 25 Hours x \$300.00 an hour = \$7,500.00
12

13 Mr. Macaluso has not provided the court with any
14 contemporaneous billing records for the time expended. In
15 reviewing the court docket for this Adversary Proceeding, as of
16 March 23, 2011, the court had heard and ruled on a summary judgment
17 motion filed by the Plaintiff-Debtors. No fees are requested for
18 and no fees are allowed by the court relating to the summary
19 judgment motion. Though announcing that the ruling was against the
20 Plaintiff-Debtors at the March 17, 2011 hearing on the summary
21 judgment, within a week thereafter the Christensens delivered
22 possession of the personal property they had retained to the
23 Plaintiff-Debtors.⁵⁹

25 ⁵⁹ The Christensens argue that since January 2011 they were
26 attempting to return the personal property, but insisted that they
27 would only do so to the Chapter 13 Trustee. It is asserted that only
after the court disagreed with Christensens' counsel's view that the
property should be turned over to the Chapter 13 Trustee that the
Christensens turned over possession out of respect for the court.

(continued...)

1 The 10 hours of time spent in preparing for trial and
2 additional time for trial are not recoverable attorneys' fees
3 pursuant to 11 U.S.C. § 362(k). They occurred well after the
4 March 23, 2011 return of the personal property which remained in
5 the possession of the Christensens. The Pretrial Conference
6 (referenced as the Status Conference in the Macaluso declaration)
7 occurred on April 5, 2011. The detailed Pretrial Conference
8 Statement was due from the Plaintiff-Debtors not later than seven
9 days prior to the Pretrial Conference (March 29, 2011). Return of
10 the personal property on March 23, 2011, was not sufficiently in
11 advance for the Plaintiff-Debtors to avoid all of the costs of
12 preparing for the Pretrial Conference relating to the recovery of
13 the personal property. It was sufficiently in advance that the
14 actual Pretrial Conference related only to the damages claim, for
15 which no right to recovery of attorneys' fees exists under
16 11 U.S.C. § 362(k). The court deducts the one hour of time for
17 attendance at the Pretrial Conference and one hour of preparation
18 to account for the March 23, 2011 return of the personal property.

19
20 ⁵⁹(...continued)
21 Alt. Dir. Test. Statement of Edward Smith, 4:23-27. Given that the
22 Chapter 13 Trustee does not take possession of property of the estate,
23 and that throughout the bankruptcy case and adversary proceeding the
24 Christensens were represented by experienced, knowledgeable bankruptcy
25 counsel, the court rejects this contention. The court also does not
26 find it credible that the Christensens continued to retain possession
27 of the personal property in a belief that it should be given to the
28 Chapter 13 trustee. Not only does experienced, knowledge bankruptcy
counsel know that not to be the case, to the extent that there was any
question, knowledgeable, experienced bankruptcy counsel would have
filed a motion with the court for an order allowing the Christensens
to correct their continuing violation of the stay by obtaining an
order as to whom the personal property should be delivered. The
Christensens did not do so, instead continuing to retain possession
which they had their attorney attempt to settle other matters with the
Plaintiff-Debtors.

1 The court determines that attorneys' fees of \$3,900.00 is
2 reasonable as they relate to the recovery of the personal property
3 and stopping the continuing violation of the automatic stay by the
4 Christensens. While the other attorneys' fees may be reasonable,
5 they are not recoverable as they relate to prosecution of the
6 damages claim after what remained of the personal property.

7 In considering the specific tasks identified by counsel, the
8 time billed for those tasks, and the total charges for the tasks,
9 the court determines that the tasks were necessary and the
10 aggregate charges for the tasks are reasonable (both hours spent
11 and hourly rate charged). For this adversary proceeding, the
12 services provided, and the issues addressed, the hourly rate of
13 \$300.00 requested by counsel is appropriate for the issues and
14 proceedings before the court.⁶⁰ The court has the benefit of having
15 the respective counsel for the battling parties appear before it in
16 this Adversary Proceeding, observed the interaction between the
17 parties and counsel, and considered the pleadings filed in this
18 case. All of this has been taken into account in making the
19 determination of allowed attorneys' fees.

20 The court awards the Plaintiff-Debtors \$3,900.00 in attorneys'
21 fees for the services provided by counsel during the period of the
22 continuing violation of the automatic stay against the
23 Christensens, and each of them. No attorneys' fees are awarded for

24
25 ⁶⁰ The common method used to determine an award of attorneys'
26 fees commonly is made using the lodestar rate method by which the
27 court determines the reasonable hourly rate for counsel, considering
28 the services provided, and reasonable time which would be expended in
prosecuting the case. See *Ferland v. Conrad Credit Corp.*, 244 F.3d
1145, 1149 n.4 (9th Cir. 2001). The court's computation of attorneys'
fees in this case based on the reasonable time and reasonable hourly
billing rate for the legal services.

1 the services provided after the Christensens returned the Sheriff's
2 Sale Property to the Plaintiff-Debtors.

3
4 **THE CONDUCT OF THE CHRISTENSENS SUPPORTS
AN AWARD OF PUNITIVE DAMAGES**

5 An individual injured by any willful violation of a stay
6 provided by this section may, in addition to compensatory damages,
7 also be awarded punitive damages.⁶¹ Although 362(k) permits the
8 recovery of such damages "in appropriate circumstances," the Ninth
9 Circuit has cautioned that punitive damages are only appropriate if
10 there has been some showing of reckless or callous disregard for
11 the law or rights of others.⁶² The bankruptcy court has
12 considerable discretion in granting or denying punitive damages
13 under 362(k).⁶³ Punitive damages are properly awarded to punish
14 unlawful conduct and deter its repetition.⁶⁴

15 A debtor entitled to actual damages does not automatically
16 qualify under § 362(k)(1) to recover punitive damages. The court
17 must decide whether the circumstances of each case warrant punitive
18 damages.⁶⁵ When considering an award for damages, the court should
19 consider the gravity of the offense and set the amount to assure
20

21
22 ⁶¹ 11 U.S.C. § 362(k)(1); see also *Drnavich v. Cavalry Portfolio*
23 *Service, LLC*, No. 05-10222005, U.S. Dist. LEXIS 38686, 2005 WL 2406030
(D. Minn. Sept. 29, 2005).

24 ⁶² *Bloom*, 875 F.2d at 228

25 ⁶³ *Id.*

26 ⁶⁴ See *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996); *Cooper*
27 *Indus. v. Leatherman Tool Group*, 532 U.S. 424, 432 (2001).

28 ⁶⁵ *Henry v. Assocs. Home Equity Servs. (In re Henry)*, 266 B.R.
457, 481-83 (Bankr. C.D. Cal. 2001).

1 that it will both punish and deter.⁶⁶ A creditor's good faith or
2 lack thereof is relevant to sanctions under § 362(k)(1).⁶⁷ The rule
3 in both the Ninth Circuit and California is that punitive damages
4 must be proportional; they must be reasonably related to
5 compensatory damages.⁶⁸ However, there is no fixed ratio or formula
6 for determining the proper proportion between the two.⁶⁹ In
7 determining the appropriate amount of punitive damages, the court
8 usually considers the following factors: (1) the nature of the
9 defendants' acts; (2) the amount of compensatory damages awarded;
10 and (3) the wealth of the defendants.⁷⁰

11 In determining that the award of punitive damages is proper,
12 the court first considers the purpose of the automatic stay. This,
13 as stated by Congress, is a fundamental protection given the debtor
14 and creditors. Experienced counsel know that violating the stay is
15 not something to be trifled with or taken lightly. Even when a
16 violation occurs, the creditor can purge the violation and avoid
17 serious damages by correcting the violation.

18 **Nature of Christensens' Actions**

19 In considering the first factor, despite having actual
20 knowledge of the Bankruptcy Case on July 27, 2009, the Christensens
21

22 ⁶⁶ *Id.*

23 ⁶⁷ See *Walls v. Wells Fargo Bank (In re Wells)*, 262 B.R. 519, 529
24 (Bankr. E.D. Cal. 2001).

25 ⁶⁸ *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162-63
(9th Cir. 1987).

26 ⁶⁹ *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001,
27 1024-25 (9th Cir. 1985).

28 ⁷⁰ *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)* No. EC-09-
1281, 2010 Bankr. LEXIS 5096, (B.A.P. 9th Cir. Apr. 8, 2010).

1 wilfully violated the automatic stay and disregarded their
2 obligations by continuing to retain possession of the Sheriff's
3 Sale Property for almost two years. As discussed previously, the
4 Christensens acted wilfully when they decided on, implemented, and
5 sustained the strategy to hold onto the Sheriff's Sale Property as
6 a bargaining tool in negotiating other matters in the Bankruptcy
7 Case. This strategy was developed by the Christensens with the
8 assistance of The Attorneys. Though eventually returned, the
9 Christensens and The Attorneys (who Bart Christensen testifies were
10 in possession of the Sheriff's Sale Property for almost two months
11 from February 2, 2011, through March 23, 2011) did not return the
12 property to the Plaintiff-Debtors until after the hearing on the
13 summary judgment motion in which the court issued very pointed
14 comments concerning the continuing conduct of the Christensens and
15 their counsel in retaining possession of the Sheriff's Sale
16 Property. This conduct by the Christensens in retaining possession
17 of the Sheriff's Sale Property was not in good faith, and
18 demonstrates a callous disregard of the rights of the Plaintiff-
19 Debtors, bankruptcy estate, and black-letter law.

20 The court considers what efforts the Christensens made to
21 ensure that they complied with the automatic stay, finding that the
22 evidence establishes that the Christensens intentionally violated
23 the automatic stay and ignored their obligations under 11 U.S.C.
24 § 362. Bart Christensen testifies that the Christensens obtained
25 and developed the strategy to improperly retain possession of the
26 personal property with the assistance of their experienced,
27 knowledgeable bankruptcy counsel. It was with this assistance and
28 advice that the Christensens withheld the Sheriff's Sale Property

1 from the Plaintiff-Debtors from July 27, 2009, through March 23,
2 2011.

3 The court cannot and will not ignore that the continuing
4 violation of the automatic stay was the result of a deliberate
5 strategy developed by the Christensens with The Attorneys. The
6 contentions that the Christensens foist upon the court is that the
7 continued violation of the automatic stay occurred because the
8 Christensens were not aware of the automatic stay when the
9 Sheriff's Sale occurred, not aware of their obligation not to
10 continue in the violation of the automatic stay, and not aware of
11 their obligation to correct the violation of the automatic stay.
12 To accept this contention, the court would have to reach the
13 following conclusions:

14 First, that The Attorneys who are knowledgeable,
15 experienced bankruptcy counsel did not tell the
16 Christensens about the automatic stay or did not know
that the Christensens were in violation of the automatic
stay;

17 Second, that by retaining possession of the
18 Sheriff's Sale Property until March 23, 2011, the
19 Christensens and The Attorneys did not know that the
Christensens were engaging in a continuing violation of
the automatic stay;

20 Third, that The Attorneys did not know or did not
21 tell the Christensens that they had the obligation to
immediately correct the violation of the automatic stay;

22 Fourth, that the retention of the Sheriff's Sale
23 Property while misrepresenting to the Plaintiff-Debtors
24 that the Christensens were not in possession of the
Sheriff's Sale Property and withholding that information
from John Maxey was unintentional; and

25 Fifth, that the Christensens and Robert Dudugjian
26 innocently withheld the information that the Christensens
27 were in possession of the Sheriff's Sale Property not
only from the Plaintiff-Debtors, but also from John
Maxey, a partner of The Attorneys expressly tasked with

1 addressing the bankruptcy issues relating to the
2 Sheriff's Sale, the Sheriff's Sale Property, and
negotiating other issues in the Bankruptcy Case.

3 The court does not find credible an argument that these
4 knowledgeable, experienced bankruptcy attorneys did not know that
5 the Sheriff's Sale violated the automatic stay and that the
6 Christensens were engaged in a continuing violation of the
7 automatic stay from July 27, 2009, through March 23, 2011.
8 Further, the court does not find it credible that The Attorneys
9 would not and did not advise the Christensens that they were in
10 violation of the automatic stay, the responsibilities of the
11 Christensens to correct the violation of the automatic stay, and
12 the consequences of intentionally violating the automatic stay. To
13 the extent that The Attorneys would now testify that they withheld
14 such information from the Christensens to leave them ignorant of
15 their obligations, counsel cannot construct an exemption from the
16 automatic stay by withholding such basic information from their
17 clients. Ignorance of the law, even when arising from a strategy
18 of counsel to try and insulate a client from responsibility, is not
19 a defense.⁷¹

20 The court finds that the Christensens knowingly and
21 intentionally retained possession of the personal property with
22 full knowledge of the Bankruptcy Case, and that intentional
23 possession was in violation of the automatic stay. The court finds
24 the self-serving statements by the Christensens that they deeply
25 regret what happened as unpersuasive and not credible. The

26 ⁷¹ *Botell v. United States*, No. 2:11-cv-01545-GEB-GGH, 2012 U.S.
27 Dist. LEXIS 41172 (E.D. Cal. March 26, 2012); *Joe Hand Promotions,*
28 *Inc. v. Estradda*, No. 1:10-cv-02165-OWW-SKO, 2011 U.S. Dist. LEXIS
61010 (E.D. Cal. June 8, 2011).

1 Christensens, with the assistance of The Attorneys, could have
2 promptly acted to correct this violation of the automatic stay on
3 July 27, 2009, when they and their counsel discussed the July 21,
4 2009 filing of the bankruptcy case. The Christensens did nothing
5 to correct their continuing violation of the automatic stay, and
6 they did nothing to recover the Sheriff's Sale Property they had
7 given to Tran even though they learned of the bankruptcy filing
8 within four days of giving that property to Tran.

9 The court further finds that the Christensens and Robert
10 Dudugjian intentionally did not disclose to John Maxey that the
11 Christensens were retaining possession of personal property
12 improperly obtained in violation of the automatic stay. The
13 Christensens and Robert Dudugjian intentionally sent John Maxey to
14 address issues concerning the void Sheriff's Sale ignorant of the
15 Christensens being in continuing possession of the Sheriff's Sale
16 Property in violation of the automatic stay. This omission of the
17 highly relevant (and adverse to the Christensens) information was
18 done to hide the existence of the continuing violation of the
19 automatic stay not only from Mr. Maxey, but from the Plaintiff-
20 Debtors and their counsel. Then, even though on February 2, 2011,
21 the Christensens delivered possession of the Sheriff's Sale
22 Property to The Attorneys, this property was further withheld from
23 the Plaintiff-Debtors by The Attorneys on behalf of the
24 Christensens for almost two months while the Christensens and The
25 Attorneys continued to try and negotiate a settlement with the
26 Plaintiff-Debtors.

27 The court finds not credible testimony presented and rejects
28 arguments of the Christensens that confusion existed for their

1 experienced, knowledgeable bankruptcy counsel concerning Chapter 13
2 Plaintiff-Debtors being in possession and control of property of
3 the estate and the limited role of a Chapter 13 trustee. No effort
4 was made by The Attorneys to obtain an order from the court
5 directing that possession be delivered to a specific party (whether
6 the Plaintiff-Debtors or Chapter 13 Trustee). Rather, the
7 Christensens continued to retain possession and use that possession
8 as leverage in ongoing negotiations with the Plaintiff-Debtors
9 concerning other matters.

10 To the extent that any "confusion" existed for such
11 knowledgeable, experienced bankruptcy counsel, The Attorneys knew
12 how to seek either relief from the automatic stay so that the
13 violation does not continue or obtain an order confirming to whom
14 the Sheriff's Sale Property should be promptly delivered - but
15 chose not to take such action. The Christensens and The Attorneys
16 took no action, hiding the existence of the Christensens'
17 continuing possession of the Sheriff's Sale Property. The court
18 finds that this was intentionally and knowingly done in violation
19 of the automatic stay, and that no confusion existed as to (1) the
20 Christensens being in violation of the automatic stay, and (2) the
21 Christensens continuing to violate the automatic stay. This
22 conduct was in callous disregard for the law, the rights of the
23 estate, and the rights of the Plaintiff-Debtors. The Christensens
24 were not acting in good faith.

25 The court finds that the Christensens willfully and
26 intentionally violated the automatic stay, and with the assistance
27 of counsel continued to violate the stay for almost two years by
28 retaining possession of the personal property, and based on such

1 conduct punitive damages are properly awarded to the Plaintiff-
2 Debtors. This conduct in violation of the automatic stay cannot
3 and will not be ignored, excused, or condoned.

4 **Appropriate Amount of Punitive Damages**

5 The second factor considers the proportionality of the
6 punitive damages to the compensatory damages awarded to the
7 Plaintiff-Debtors. In this Adversary Proceeding, the court has
8 awarded damages totaling \$7,197.32 (consisting of \$947.32 for the
9 lost coin, \$1,000.00 for the unrecoverable property paid to Tran,
10 \$1,550.00 for emotional distress damages, \$3,900.00 for attorneys
11 fees in addressing the continuing violation of the stay, and
12 \$362.63 in prejudgment interest). In a 2004 decision, *State Farm*
13 *Mutual Auto Insurance Company v. Campbell*, 538 U.S. 408 (2004), the
14 Supreme Court discussed the Constitutional reasonableness
15 requirement in determining the amount of punitive damages. While
16 not setting a maximum ratio between punitive damages and
17 compensatory damages, the court notes that punitive damage awards
18 which are single digit multiple of the compensatory damages are
19 more likely to withstand constitutional scrutiny.⁷² The Court in
20 *State Farm* cited to its earlier holding in *BMW of North America v.*
21 *Gore*⁷³ that a punitive damage award (which in *Gore* was 500 times the
22 compensatory damages) in excess of four times the compensatory
23 damages might be close to the line of constitutional impropriety.

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27 ⁷² *Cooper Industries v. Leatherman Tool Group*, 532 U.S. at 425.

28 ⁷³ 517 U.S. at 582.

Financial Condition of Christensens

The last factor considers the wealth of the Defendant. From the testimony presented at trial, Defendant is a retired annuitant with the State of California, who is choosing to work 80 hours per month as an engineer for the State, in addition to receiving his State retirement benefits. Paula Christensen has worked as a registered nurse, though her current employment, lack of employment, or retirement benefit status is not disclosed. The Christensens own rental property, have significant-enough real property holdings to seek a tax-beneficial 1031 exchange in which like-kind property must be exchanged,⁷⁴ operate and invest in properties in towns other than which they live, and hire other persons to do repair work on their investment property. The underlying judgment for \$300,000.00 (for which the Christensens are awarded \$144,000.00 of the judgment amount) arises out of a disputed real estate transaction with the Plaintiff-Debtors.

Though the court has not been presented with detailed income and asset information for the Christensens, it is clear that they own investment property, live and operate investment property in different states, are highly educated, have sufficient investments and income to seek a 1031 tax-deferred exchange, Bart Christensen receives both a pension and additional income from the State of California, and can afford to be represented by knowledgeable, experienced counsel.

The court determines that punitive damages in the amount of

⁷⁴ 26 U.S.C. § 1031 provides a tax device to defer the tax recognition of a gain or loss from an exchange of like kind property. The property being exchanged and received by the tax payer must be held for productive use in a trade or business, or for investment.

1 \$7,500.00 is appropriate in this Adversary Proceeding. In this
2 case the punitive damages are equal to the actual damages. This
3 one-to-one ratio of punitive damages to actual damages is well
4 within the Constitutional parameters enunciated by the Supreme
5 Court. This amount is significant enough to deter this type of
6 willful, intentional violation of the automatic stay in the future.
7 This amount is not unreasonable as to the Christensens in light of
8 their having engaged in a transaction with the Plaintiff-Debtors to
9 generate a \$300,000.00 judgment, both the Christensens being
10 professionals, the Christensens owning investment rental
11 properties, and those investment properties and their incomes being
12 great enough to warrant structuring a 1031 tax-deferred exchange.

13 If the Christensens believe that further trial on the amount
14 of punitive damages is warranted based upon their financial
15 condition, the court will consider a request for new trial on that
16 issue pursuant to Federal Rule of Civil Procedure 59 as made
17 applicable to this adversary proceeding by Federal Rule of
18 Bankruptcy Procedure 9023. Any such motion for new trial on this
19 issue must be filed not later than 14 days after entry of the
20 judgment in this Adversary Proceeding. If the court determines
21 upon a post-judgment motion of the Christensens that further trial
22 is proper, the court will set a discovery schedule to allow the
23 Plaintiff-Debtors to reasonably determine and verify the financial
24 condition of the Christensens. For such further trial the court
25 will vacate the portion of this Decision setting the amount of
26 punitive damages, and such amount will be determined at the further
27 trial on that issue without regard to the amount set forth herein.

28 ///

1 **CONCLUSION**

2 Judgment in the amount of \$15,259.95 for the Plaintiff-Debtors
3 against the Christensens is awarded. This judgment is comprised of
4 \$1,947.32 of damages for personal property taken and not returned
5 to the Plaintiff-Debtors, \$1,550.00 of emotional distress damages
6 for Soo Nan Tse, \$362.63 of damages for prejudgment interest,
7 \$3,900.00 of attorneys' fees damages for legal services in
8 correcting the continuing violation of the automatic stay by the
9 Christensens, and \$7,500.00 of punitive damages. The Plaintiff-
10 Debtors are also properly entitled to recover their costs and
11 expenses in connection with this Adversary Proceeding. Fed. R.
12 Bank. P. 7054(b). This Memorandum Opinion and Decision constitutes
13 the court's findings of fact and conclusions of law pursuant to
14 Federal Rule of Civil Procedure 52 and Federal Rule of Bankruptcy
15 Procedure 7052.

16 The court shall enter a separate judgment consistent with this
17 Memorandum Opinion and Decision.

18 Dated: April 11, 2012

19
20 /s/ Ronald H. Sargis
21 RONALD H. SARGIS, Judge
22 United States Bankruptcy Court
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