UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 3, 2013 at 10:00 a.m.

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

1, 4, 6, 8, 11, 13

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 16, 2013

AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 2, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 9, 2013. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 13-26504-A-7 IGNATIUS FRANCO — MOTION TO ABANDON
DNL-2 — 11-11-13 [34]

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

The motion will be granted.

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

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

The property has an approximate value of $660,000, whereas its encumbrances total approximately $663,000, consisting of a single mortgage in favor of Comerica Bank. Given this and given that the trustee has been unable to sell the property in a short sale, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

2. 12-30911-A-7 VILLAGE CONCEPTS, INC. — MOTION TO SELL
DNL-8 — 10-30-13 [215]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $30,000 to Mark Weiner the estate's interest in the following equipment: three Bobcats, Cat Backhoe, Skiploader, Apache Utility Trailer, Genie Lift, Roller, Equipment Trailer, D8 Cat, Euclid Scraper, Euclid Engine and Tires, in addition to seven recreational vehicles, including a 1997 Fleetwood Wilderness, 1994 King of the Road, 1997 Fleetwood Park Model, 1996 Skyline Aljo, 1999 Arctic Fox, 2005 Coughar high Country, and 2005 Thor/Dutchman Colorado. The sale is subject to any liens or interests.

The trustee believes that the equipment has a value of little less than the scheduled value of $60,700. The equipment is subject to secured claims in the amount of $14,049.48, excluding interest. The trustee believes that the RVs have a value of little less than the scheduled value of $32,000. The RVs are subject to secured claims in the amount of $26,000 (reduced from $35,000).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

3. 13-20623-A-7 MICHAEL/ELIZABETH KLAGENBERG
SMD-1
MOTION TO SELL
11-9-13 [19]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $4,483 the estate's interest in real estate commissions to the debtors. The commissions consist of $3,900 in earned but unpaid commissions and $32,126.25 in potential commissions from sales of listed real property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

4. 13-22425-A-7 JASON/BREANNA DESCHAINE
ULC-3
MOTION TO COMPEL ABANDONMENT
11-18-13 [44]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in the debtors' claims for intentional misrepresentation, negligence, breach of contract, promissory estoppel, violation of Cal. Civ. Code §§ 2923.6, 2923.7, and 2924, and "Equitable Action to Set Aside Sale," against Indymac Mortgage Services, Federal Home Loan Mortgage Corporation, MTC Financial, Inc. "and Does 1 through 50, inclusive." The claims are pending in the U.S. District Court for the Eastern District of California.

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

The trustee filed a report of no distribution on March 26, 2013. The litigation the debtors are seeking the court to abandon is primarily aimed at securing a loan modification for the debtors. And, the estate obviously does not have the means to retain an attorney to prosecute the claims. Given the foregoing, the court concludes that the litigation is of inconsequential value to the estate. The motion will be granted.

5. 13-31230-A-7 LEO VAUGHN
PD-1
FEDERAL NATIONAL MORTGAGE ASSOC. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
10-28-13 [16]

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

The movant, Federal National Mortgage Association, seeks relief from the automatic stay as to real property in Elk Grove, California. The movant's predecessor in interest, Citimortgage, Inc., purchased the property at a pre-petition foreclosure sale, on December 31, 2012. On April 11, 2013, Citimortgage transferred the property to the movant. The movant served the debtor with a notice requiring delivery of possession on June 3, 2013. On June 12, 2013, the movant commenced an unlawful detainer proceeding. The debtor filed the instant petition on August 27, 2013.

The movant asks for the following additional relief: "That the order provide that the Sheriff or Marshal may evict the Debtor and/or any other occupant of the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the date of the hearing on this Motion, upon recording the order in compliance with state laws governing notices of interest or liens in real property." Docket 18 at 3.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor or the estate. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

The additional relief requested by the movant will be denied. The court cannot order the Sheriff or Marshal to evict the debtor or anyone else in the property on this motion. The court is not finally determining the movant's interest in the property on this motion. Motions for relief from stay are summary proceedings, meaning that the court does not finally determine the validity of the movant's claim. Veal v. American Home Mortgage Servicing, Inc., (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998).

Further, the court will not order any relief that would survive the filing of other bankruptcies by anyone. The movant has not established that it is entitled to such relief. For instance, the motion does not ask or brief the requirements for relief under 11 U.S.C. § 362(d)(4).

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

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

6.	11-24633-A-7 BHS-5	ANDREW/KIMBERLEY BROCCHINI	MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $16,340.67, EXP. $4,814.41) 10-17-13 [62]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 18, to allow the movant to file a supplemental brief in support of the motion. The movant has filed a supplemental brief and an amended ruling from November 18 follows below.

Timmons, Owen & Owen, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $16,340.67 in fees (reduced from $18,395.20) and $4,814.41 in expenses, for

a total of $21,155.08. This motion covers the period from June 1, 2011 through October 9, 2013. The court approved the movant's employment as the trustee's special counsel on May 10, 2013.

This case was filed on February 24, 2011. After the debtors received their discharge on May 31, 2011, the case was closed on October 1, 2012. The case was reopened on February 5, 2013, as the debtors sought to amend their schedules to disclose the personal injury litigation.

The requested compensation is based on a contingency fee agreement, providing for a net recovery after costs of 33.3% if the case is settled prior to trial and a net recovery after costs of 40% if the case is "set for" trial.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) representing the estate in the prosecution of personal injury claims, (2) meeting with the debtors, (3) conducting extensive discovery, including the taking of depositions, (4) communicating with expert witnesses, (5) briefing and attending a mediation, (6) negotiating a settlement, and (7) communicating with the trustee about various issues.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The trustee did not know about the personal injury claims until after the case was reopened on February 5, 2013, when she apparently discovered that the debtors had been litigating the claims since June 2011. The movant had been working on the case since June 2011, but was not employed by the estate at that time because the trustee did not know then about the personal injury action and the movant did not know then about the pending bankruptcy case. The court is satisfied with the movant's explanation about why the estate failed to obtain prior court approval of its employment.

The movant provided valuable services for the estate, as it litigated the personal injury claims, eventually reaching a settlement agreement that generated $12,072.61 for the estate. The movant has satisfied the nunc pro tunc approval standard under THC Financial.

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

7. 13-25733-A-7 RODNEY/REGINA LARKINS — MOTION TO AVOID JUDICIAL LIEN
RAC-1
VS. CAL COAST CREDIT SERVICE, INC. — 11-5-13 [37]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtors in favor of Cal Coast Credit

Service, Inc. for the sum of $3,592.70 on November 9, 2009. The abstract of judgment was recorded with Sacramento County on September 9, 2010. That lien attached to the debtor's residential real property located in Sacramento, California.

The debtors are asking the court to avoid the lien under 11 U.S.C. § 522(f)(1)(A).

Cal Coast filed a declaration in opposition to the motion on November 25, eight days before the hearing. The opposition says that Cal Coast opposes the motion but without stating why it opposes the motion. Docket 42.

The opposition will be stricken because it was filed late. This motion was brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). The notice of hearing for the motion instructed Cal Coast to file its written opposition at least 14 days prior to the hearing. In this case, the deadline for oppositions was November 19.

Even if the court were not to strike the opposition, it has no merit. It gives no basis for opposing the motion.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $75,000 as of the date of the petition. The unavoidable liens total $79,015 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 35.

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

8. 13-32137-A-7 MARILYN DYER — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1
WELLS FARGO BANK N.A. VS. — 11-15-13 [15]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2012 Fiat 500 vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on September 16, 2013 and a meeting of creditors was first convened on October 23, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 16. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30

days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor has not done so timely. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 22, 2013, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on October 23, 2013, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 22, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

9. 13-30141-A-7 MARI RIDDLE — OBJECTION TO EXEMPTIONS
SLC-1 — 10-23-13 [16]

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtor's use of the special exemptions under Cal. Civ. Proc. Code § 703.140, as the debtor is not divorced - she is only separated - and there is no spousal waiver from the non-filing spouse.

Fed. R. Bankr. P. 4003(b)(1) provides the following procedure:

[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The trustee's objection was timely. It was filed on October 23, 2013, within 30 days of October 3, 2013, when the meeting of creditors was concluded.

Cal. Civ. Proc. Code § 703.110(a) provides the following restrictions:

"The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions. Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

In cases filed by a single spouse, absent a waiver signed by both the filing and the non-filing spouse, waiving the right to claim the Cal. Civ. Proc. Code § 703.140 exemptions in another bankruptcy case, the debtor cannot claim the exemptions of Cal. Civ. Proc. Code § 703.140.

The objection will be overruled because the debtor has filed a spousal waiver signed by herself and Keith Riddle. Docket 23.

10. 13-32846-A-7 KHASHAYAR/GOLNAR ZARGHAM — MOTION TO CONVERT CASE 11-7-13 [14]
CJY-2

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests conversion from chapter 7 to chapter 13.

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

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

However, the motion will be denied because it does not state and does not have evidence about whether the debtor is eligible for chapter 13 relief as prescribed by Marrama. Stating that the debtor is eligible for chapter 13 relief is a legal conclusion that is unsupported by factual assertions. Accordingly, the motion will be denied.

11. 12-36347-A-7 ARNOLD THREETS AND TESSA BANUELOS-THREETS — MOTION TO COMPROMISE CONTROVERSY 11-12-13 [169]
PA-11

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or

opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the City of Richmond, resolving a pending appeal by the debtors before the California Court of Appeal, from a $439,052.76 state court judgment against the debtors and in favor of the City, and also resolving a pending federal district court litigation by the debtors against the City.

The debtors have valued all causes of action against the City, including unasserted ones, at $17,345. Docket 175. The City has filed a proof of claim for $456,506.40 in this case. The estate has been unable to find special counsel to prosecute the appeal from the state court judgment. At this time, the deadline for filing of the opening brief on appeal has been extended to January 29, 2014.

Under the terms of the compromise, the City will pay $50,000 to the estate in full satisfaction of the estate's claims against the City. In addition, the City will withdraw its proof of claim. The appeal and the district court litigation will be dismissed as well. The parties will execute mutual releases.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the nearly $0.5 million state court judgment entered against the debtors, given the trustee's inability to find counsel to prosecute the state court appeal, given that the debtors have valued all causes of action against the City at $17,345, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

12. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR CONTEMPT, SANCTIONS AND EXPUNGMENT OF LIEN
DJH-12 — 11-18-13 [231]

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

The debtors are asking for sanctions against Charter Adjustment Corporation and Donald Sternberg for violation of the discharge injunction. Mr. Cesar complains that the respondents violated the discharge injunction because they have refused to remove a judgment lien against real property the debtors no longer own. Mr. Cesar complains that he applied for credit with Macy's but was denied because of the judgment lien on record.

CAC filed a state court complaint for money damages against debtor Joseph Cesar on October 6, 2008. Apparently, the suit was based on debt assigned from CIT Group/Commercial Services, Inc. to CAC. CAC obtained a default judgment for $6,970.47 against Mr. Cesar on November 6, 2009. On March 2, 2010, a notice of a trustee's sale as to the property in Carmichael, California was recorded. On or about March 8, 2010, CAC recorded an abstract of judgment, creating a judgment lien against the debtors' real property in Carmichael, California. On April 16, 2010, the real property was sold at foreclosure. On July 19, 2010, the debtors filed the instant chapter 7 bankruptcy case. The debtors' chapter 7 discharge was entered on November 16, 2010 and the trustee issued a report of no distribution on January 31, 2012. The case was closed on March 9, 2012. The trustee issued another report of no distribution on April 18, 2012, while the case was still closed.

Sometime in November 2012, Mr. Cesar applied for credit with Macy's. On November 30, 2012, Macy's rejected his credit application. Docket 234 Ex. 2.

The court reopened the case on August 30, 2013, pursuant to a request by the debtors. Docket 105. This motion was filed on August 26, 2013. The debtors complain that they requested CAC to remove the judgment lien they recorded pre-petition from the public record, but CAC has refused to remove it.

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

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

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the sanctions are justified. Namely, the party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

The court may award punitive damages for willful violation of 11 U.S.C. § 524. Nash v. Clark County District Attorney's Office (In re Nash), 464 B.R. 874, (B.A.P. 9th Cir. 2012) (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008)). A punitive damage award requires the trial court to make sufficient findings to warrant punitive damages. Rosales

v. Wallace (In re Wallace), Case No. NV-11-1681-KiPaD, 2012 WL 2401871, at *7-8 (B.A.P. 9th Cir., June 26, 2012); Fed. R. Civ. P. 52(a) & Fed. R. Bankr. P. 7052.

The motion will be denied as to Donald Sternberg because he is counsel for CAC. His involvement with the debtors is not in his individual capacity. He merely represents CAC.

As to CAC, for a lien to exist, both the property to which the lien attaches and the obligation that it secures must exist at same time. Wirum v. Great American Life Ins. Co. (In re Thompson), Case No. NC-06-1254-BSKu, 2007 WL 7541012, at *2 (B.A.P. 9th Cir. Mar. 30, 2007) (citing In re Baker, 217 B.R. 609, 613 (Bankr. N.D. Cal. 1998)).

A chapter 7 discharge extinguishes "in personam" liability on debt, but the discharge does not extinguish "in rem" liability. Such liability remains, but only to the extent the debtors continue to own interest in the pre-petition property that was subject to the pre-petition judgment lien on the petition date.

The debtors' personal liability on the debt giving rise to the judgment lien was extinguished when they received their chapter 7 discharge on November 16, 2010. CAC's lien on the property was extinguished when the property was foreclosed pre-petition. If the property had not been lost to foreclosure by the debtors pre-petition, the pre-petition lien on the property would have survived the bankruptcy.

The judgment lien was created pre-petition, on or about March 8, 2010. The property was also foreclosed pre-petition, on April 16, 2010. The bankruptcy case was not filed until July 19, 2010. This means that when the debtors received their bankruptcy discharge, on November 16, 2010, their in personam liability to CAC was extinguished. CAC's judgment lien on the property was extinguished at the April 16, 2010 foreclosure because the foreclosure sale was for the benefit of a senior in priority mortgage holder on the property. As the debtors no longer own the property subject to the judgment lien and the debt giving rise to the lien has been discharged, there is no longer in rem liability to CAC either.

The judgment lien is no longer valid because the underlying liability for the lien has been discharged. Stated differently, the lien can no longer attach to real property obtained after the debtors' bankruptcy discharge because the judgment lien is valid only so long as the judgment upon which it is based is valid.

For a lien to exist, both the property to which the lien attaches and the obligation that it secures must exist at same time. Wirum v. Great American Life Ins. Co. (In re Thompson), Case No. NC-06-1254-BSKu, 2007 WL 7541012, at *2 (B.A.P. 9th Cir. Mar. 30, 2007) (citing In re Baker, 217 B.R. 609, 613 (Bankr. N.D. Cal. 1998)). As the obligation being secured by the judgment lien has been discharged, the lien no longer exists.

The debtor has established by clear and convincing evidence that CAC violated the discharge injunction by continuing to demand that its judgment lien be paid.

CAC contacted the debtors at least eight times in December 2012 and January 2013, asking - directly or indirectly - for payment of the debt underlying the judgment. The e-mail exchange string between Mr. Cesar and CAC, attached as Exhibit 4 to the supporting declaration of Mr. Cesar, is titled "Collection" in the subject line of each e-mail. Docket 234.

Directly to Mr. Cesar, CAC:

- says that the debtors "owe because the lien was placed on the property prior to the filing of the bankruptcy" (Docket 234 Ex. 4),

- offers a discount of 20% to the debtors if they "can raise the difference" (Docket 234 Ex. 4),

- offers a settlement asking the debtors to promise to pay the now $9,000 judgment (Docket 234 Ex. 4),

- tells them that the payment should go directly to Mr. Sternberg, asks when do the debtors "expect payment to be made" (Docket 234 Ex. 4),

- tells them that "nobody will bother [them] after this is paid" (Docket 234 Ex. 4),

- promises Mr. Cesar that "[y]ou will not get chased" after the payment is made (Docket 234 Ex. 4),

- explains to them that "[i]n order for [the lien] records to be revised payment must be made" (Docket 234 Ex. 4) and

- represents that the judgment lien "will remain on your credit report and attach[] to whatever real property you may own until, that is, it is satisfied by payment in full or some other satisfactory payment arrangement" (Docket 234 Ex. 4).

CAC continued its attempts to collect on the judgment, even after the debtors retained counsel and this case was reopened. For example, in October 2013, CAC once again attempted to "settle" the judgment against the debtors, offering to settle for a payment of $1,250 by the debtors.

In other words, CAC was seeking to collect on a judgment and the corresponding judgment lien, even though the judgment had been discharged in bankruptcy. This is a violation of the discharge injunction. Regardless of what CAC thought about the surviving liability on the judgment after the debtors' bankruptcy discharge - "in rem" or "in personam" - it is clear from the record that CAC was collecting on the judgment that gave rise to the lien from the debtors, as if they still had "in personam" liability for the judgment. The debtors were being asked to pay the debt or settle the debt.

Incidentally, the debtors did not have to wait for CAC to record a release of the lien in order to have it erased from the public record. Counties have a post-bankruptcy procedure that allows for the recordation of the bankruptcy discharge and the release/satisfaction of an involuntary lien. The debtors could have simply recorded the bankruptcy discharge with the county where the lien was on record, releasing and/or satisfying the lien without the necessity of seeking CAC to release its lien, thereby avoiding much of the litigation with CAC. Obviously, the problem was aggravated when CAC persisted in the collection of the judgment underlying the lien.

CAC was clearly aware of the bankruptcy case and the discharge injunction, as it was encouraging the debtors to go back to the bankruptcy court to have the lien avoided. Docket 234 Ex. 4. In his correspondence to the debtors, CAC also references and acknowledges the debtors' bankruptcy discharge. Id.

The court is satisfied that the debtors have established by clear and convincing evidence that CAC knew the discharge injunction was applicable and CAC intended the actions which violated the injunction, *i.e.*, demanding that the debtors pay off the debt underlying the judgment lien. CAC violated the

discharge injunction willfully.

Turning to the award of relief, the court will deny the request to expunge the subject lien, as the lien was extinguished under California law when the debtors' property was sold in foreclosure. Also, such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2), (7), (9). The recordation of the bankruptcy discharge will prevent the attachment of the judicial lien on any property acquired after the discharge.

The court will award some sanctions against CAC.

The court cannot award emotional distress damages as there is insufficient and inadmissible evidence in the record to support such damages. The only evidence in support of the debtors' emotional distress, as resulting from CAC's collection efforts, is a declaration from Mr. Cesar, describing his feelings pertaining to the collection efforts, stating that he has "a great sense of apprehension," opining that he had a recurrence of acid reflux and shingles as a result of the collection efforts, opining that he suffered panic attacks and "flu-like symptoms without a fever" as result from the collection efforts, and experiencing stress in an attempt to resolve the purported debt to CAC. Docket 234.

Emotional distress is a scientific concept that defines a person's state of mind during a particular time period. Hence, determining the presence or absence of emotional distress requires specialized knowledge. Emotional distress damages require the testimony of an expert witness, who can render an opinion about the debtors' specific emotional distress resulting from a particular cause, in this case, namely, CAC's collection efforts. Fed. R. Evid. 702(a). The court cannot just take the debtors' word that they suffered emotional distress from CAC's collection efforts. They are not qualified as experts to render an opinion about what is and what is not emotional distress, whether they actually suffered emotional distress, and whether CAC's collection efforts actually caused the emotional distress. Fed. R. Evid. 701(a).

The debtors have submitted evidence that they incurred $5.00 in copying charges for obtaining documents from the County Recorder's Office and $45.75 in mileage for traveling to meet with their counsel (representing approximately 54 miles), for a total of $50.75. The court will award $50.75 as compensatory damages to the debtors.

The court will not award any damages to compensate the debtors for Macy's denial of credit to Mr. Cesar. Judgment liens in the public record, much less liens held by CAC, are not any of the reasons given by Macy's for denying credit to him. Docket 234 Ex. 1. The reasons for Macy's denial of credit included (1) serious delinquency, and public record or collection filed, (2) time since delinquency is too recent or unknown, (3) too few accounts currently paid as agreed, and (4) lack of recent installment loan information, with the most significant factor being "too many public records." Id. There is no evidence that CAC's collection efforts were the proximate cause for the debtors to incur damages from Macy's denial of credit to Mr. Cesar.

The court will award the debtors their attorney's fees and costs in having to litigate the violation of the discharge injunction with CAC. As the debtors have not produced evidence of attorney's fees and costs with this motion, the court will continue the hearing on this motion only to allow the debtors to produce evidence of reasonable and necessary attorney's fees and costs.

The court will not decide whether and to what extent to award punitive damages until it fixes an amount for the award of actual damages. The motion will be granted in part, denied in part and continued in part.

13. 13-32565-A-7 ALEJANDRO ALCOCER — MOTION FOR RELIEF FROM AUTOMATIC STAY
KKY-1 — 11-13-13 [12]
OPERATING ENGINEERS LOCAL UNION & #3 FEDERAL CREDIT UNION VS.

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

The motion will be granted.

The movant, Operating Engineers Local Union #3 Federal Credit Union, seeks relief from the automatic stay with respect to a 2005 Ford F-150. In addition to relief from stay, the movant is asking for an order directing the debtor to cooperate with the movant, as the movant contends that the debtor has been concealing the vehicle.

The debtor has filed a non-opposition, stating that he is surrendering the vehicle and that he has contacted the movant to arrange surrender.

The vehicle has a value of $4,978 and its secured claim is approximately $30,923.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on October 28, 2013. And, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The court will not enter an order directing the debtor to cooperate with the movant in the repossession of the vehicle. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(1), (7).

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

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

14. 13-25283-A-7 PATRICK BULMER
SMO-3

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $10,500.00, EXP. $146.74) AND FOR COMPENSATORY AND PUNITIVE DAMAGES
10-22-13 [66]

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

The former involuntary debtor, Patrick Bulmer, moves pursuant to 11 U.S.C. § 303(i) for an award against the petitioning creditor, Paul Den Beste, of $10,500 in attorney's fees, $146.74 in costs, $4,925 in compensatory damages, and $46,715.22 in punitive damages, relating to the filing and dismissal of this involuntary petition.

Mr. Den Beste opposes the motion. Among other things, he is:

- alleging felony fraud committed by Mr. Bulmer, contending the involvement of a "MAFIA law firm,"

- asserting that Mr. Bulmer committed a felony when he obtained $66,001.01 in a state court action where he had been appointed as a receiver,

- arguing that the instant motion is also a felony,

- stating that this court must refer the matter to an Article III judge with recommendation for an arrest warrant for Mr. Bulmer and his counsel,

- contending that Mr. Bulmer's motion to dismiss this case was defective,

- asking the court to sua sponte sanction Mr. Bulmer and and his counsel $1 million, and

- claiming that Mr. Bulmer has not established bad faith.

11 U.S.C. § 303(i) provides that "[i]f the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment-

(1) against the petitioners and in favor of the debtor for- (A) costs; or (B) a reasonable attorney's fee or

(2) against any petitioner that filed the petition in bad faith, for- (A) any damages proximately caused by such filing; or (B) punitive damages."

An award of fees and costs under 11 U.S.C. § 303(i)(1) does not require bad faith. Higgins v. Vortex Fishing Sys., 379 F.3d 701, 706 (9th Cir. 2004).

"[W]hen an involuntary petition is dismissed on some ground other than consent of the parties and the debtor has not waived the right to recovery, an involuntary debtor's motion for attorney's fees and costs under § 303(i)(1) raises a rebuttable presumption that reasonable fees and costs are authorized."

"This presumption helps reinforce the idea that '[t]he filing of an [i]nvoluntary [p]etition should not be lightly undertaken,' . . . and 'will serve to discourage inappropriate and frivolous filings.' Filing an involuntary petition should be a measure of last resort because even if the petition is filed in good-faith, it can 'chill[ ] the alleged debtor's credit and sources of supply,' and 'scare away his customers.'"

"Although the presumption operates in favor of the alleged debtor, the petitioner must be given an opportunity to rebut the 'presumption that fees and costs are authorized.' [O]nce the debtor has satisfied the burden of demonstrating the reasonableness of the fees requested, '[i]t is then the petitioning creditors' burden to establish, under the totality of the circumstances, that factors exist which overcome the presumption, and support the disallowance of fees.' However, this does not give the petitioning creditor license to conduct additional discovery and present evidence on an issue that has already been decided. The rebuttable presumption framework allows the court, which by this point in the process has heard all the evidence surrounding dismissal, to make 'an informed examination of the entire situation' without the burden of conducting another mini-trial."

Higgins at 707 (Citations omitted).

As part of the totality of circumstances test, courts are required to consider: 1) the merits of the involuntary petition; 2) the role of any improper conduct by the alleged debtor; 3) the reasonableness of actions taken by the petitioning creditors; 4) the motivations and objectives behind the filing of the petition; and 5) any other material factor that the bankruptcy court, in its discretion, deems relevant. Higgins at 707-08.

Despite the totality of the circumstances test, the Ninth Circuit has not abandoned the premise that any petitioning creditor should expect to pay the debtor's attorney's fees and costs, if the petition was dismissed other than on the consent of the parties. Higgins at 707.

The threshold requirements of 11 U.S.C. § 303(i)(1) for this motion have been met. The court dismissed the involuntary petition on July 1, 2013, without the consent of the petitioning creditor Mr. Den Beste, and Mr. Bulmer has not waived the right to a judgment. Dockets 26 & 29. On August 26, 2013, the court also denied Mr. Den Beste's motion to vacate the dismissal. Dockets 48 & 51. On September 11, 2013, Mr. Den Beste filed an appeal from the court's orders dismissing the petition and denying his motion to vacate the dismissal. Docket 54. Mr. Den Beste has not obtained a stay pending appeal.

Because the petition was not dismissed with the consent of the parties and because Mr. Bulmer has not waived his right to attorney's fees and costs, this motion for attorney's fees and costs, and other damages, raises the rebuttable presumption that reasonable fees and costs are authorized. Higgins at 707.

Mr. Den Beste has not rebutted this presumption. And, even without the presumption, the totality of the circumstances test of Higgins requires an award of attorney's fees and costs to Mr. Bulmer.

The involuntary petition had no merit. In its ruling dismissing the petition, the court made the following findings and conclusions:

"The court has reviewed the record and agrees with Mr. Bulmer that the petition should be dismissed.

"Mr. Den Beste is not a creditor of Mr. Bulmer. As indicated on the face page of the petition, Mr. Bulmer is a receiver. He was appointed a receiver by the Sonoma County Superior Court to assist in the collection of a judgment against Mr. Den Beste. Sonoma Superior Court Ruling Re: Funds Seized by Receiver, Docket 10, Ex. 3 to Motion at 1.

"Pursuant to a state court order, Mr. Bulmer received in his capacity as a receiver $66,001.01 from a bank account in the name of James L. Den Beste Family 1997 Trust. Subsequently, on September 29, 2010, Mr. Den Beste filed a chapter 7 bankruptcy case in the Northern District of California, Case No.

10-13558 (Judge Jaroslovsky presiding). Mr. Bulmer turned over the $66,001.01 to the chapter 7 trustee. On May 1, 2012, the bankruptcy court entered an order abandoning the funds back to Mr. Bulmer as a receiver. Docket 10, Ex. 1 to Motion. As quoted below, on December 10, 2012, the state court ordered the $66,001.01 to be applied to the satisfaction of Ms. Power's judgments against Mr. Den Bestes. Docket 10, Ex. 3 to Motion at 3.

. . .

"Mr. Den Beste acknowledges in the involuntary petition that Mr. Bulmer acted as a receiver. Mr. Den Beste has not established a direct creditor-debtor relationship with Mr. Bulmer. Mr. Den Beste disregards the state court ruling directing Mr. Bulmer to apply the $66,001.01 to satisfy Ms. Power's judgments against Mr. Den Beste. Mr. Den Beste denies that Mr. Bulmer "still has authority to act as a receiver appointed by Sonoma Superior Court to assist Mandy Power." But, this court is not concerned about Mr. Bulmer's current authority to act as a receiver. It is only his authority to act as a receiver at the time he seized the funds and applied the funds to the judgments that is relevant. The Sonoma County Superior Court's December 10, 2012 ruling on the seized funds states that the receiver seized the funds pursuant to the authority given to him by the Sonoma County Superior Court. Docket 10, Ex. 3 to Motion at 3. Thus, Mr. Den Beste's sole claim against Mr. Bulmer is for Mr. Bulmer's recovery of the $66,001.01 in his capacity as a receiver.

. . .

"By filing the petition [Mr. Den Beste] misrepresented the fact that he is a creditor of Mr. Bulmer. Mr. Bulmer is only a receiver, appointed by the state court to recover funds for the satisfaction of judgments held by third parties. To the extent Mr. Den Beste has an issue with Mr. Bulmer, Mr. Den Beste's remedies lie solely with the state court that appointed Mr. Bulmer as a receiver, the Sonoma County Superior Court. Yet, Mr. Den Beste is attempting to circumvent and disregard the orders of that court. Mr. Den Beste's filing of this involuntary petition constitutes unfair manipulation of the Bankruptcy Code, as he is attempting to thwart Mr. Bulmer's execution of his duties as a receiver and the state court's orders pertaining to Mr. Bulmer's receivership duties."

Docket 26 at 4, 5.

To the extent Mr. Den Beste challenges the court's findings and conclusions pertaining to the merits of the petition, Mr. Den Beste cannot relitigate those findings and conclusions by the court. They have been litigated by Mr. Den Beste. After dismissal of the petition, he filed a motion to vacate the dismissal, which was denied by the court.

Mr. Den Beste then filed an appeal from the orders dismissing the petition and denying the motion to vacate. This means that the doctrine of exclusive appellate jurisdiction prevents this court from even reconsidering what it ruled about the merits of this petition in connection with its ruling on the dismissal motion.

"The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); [Marino v. Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 769 (B.A.P. 9th Cir. 1999)]; 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.32[1] (3rd ed. 1999). The trial court cannot take actions "over those aspects of the case involved in the appeal." Griggs, 459 U.S. at 58, 103

S.Ct. 400.

"The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the order on appeal because such supplementation would change the status quo. McClatchy Newspapers v. Central Valley Typographical Union, 686 F.2d 731, 734-35 (9th Cir. 1982)."

Hill & Sanford, L.L.P. v. Mirzai (In re Mirzai), 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999).

In other words, this court is bound by the findings and conclusions in its ruling on the dismissal motion. And, the reason this court may proceed with the subject motion by considering its ruling on the dismissal motion, despite the pending appeal, is that Mr. Den Beste has not obtained a stay pending the appeal of the dismissal order.

With respect to "the role of any improper conduct by the alleged debtor," this court found no improper conduct by Mr. Bulmer. In its ruling on the dismissal motion, this court found that "Mr. Bulmer's only relationship with Mr. Den Beste is in the state court litigation where Mr. Bulmer is a receiver. Mr. Bulmer has established that he owes no debt to Mr. Den Beste in Mr. Bulmer's personal capacity." Docket 26 at 5.

This means that the filing of this petition by Mr. Den Beste was wholly unreasonable, unwarranted and without any merit.

Further, "[b]y filing the petition [Mr. Den Beste] misrepresented the fact that he is a creditor of Mr. Bulmer. Mr. Bulmer is only a receiver, appointed by the state court to recover funds for the satisfaction of judgments held by third parties." "Mr. Den Beste's filing of this involuntary petition constitutes unfair manipulation of the Bankruptcy Code, as he is attempting to thwart Mr. Bulmer's execution of his duties as a receiver and the state court's orders pertaining to Mr. Bulmer's receivership duties." "Mr. Den Beste's filing of this petition is an attempt to circumvent the orders of the state court." Docket 26 at 5.

Accordingly, Mr. Den Beste's objective in filing this petition against Mr. Bulmer individually was to recover the funds Mr. Bulmer collected from a trust in his capacity as a receiver in the state court action, to prevent Mr. Bulmer from continuing to collect in the state court action, and to circumvent the orders of the state court authorizing the actions of Mr. Bulmer in his capacity as a receiver. Such motives were improper and impermissible, without regard for the requirements of an involuntary petition in 11 U.S.C. § 303(b)(1).

The totality of the circumstances then, even if relevant here, requires that attorney's fees and costs are awarded against Mr. Den Beste, in favor of Mr. Bulmer.

The court has reviewed the attorney's fees and costs incurred by Mr. Bulmer and finds them reasonable and necessary. He spent 22.5 hours on services representing Mr. Bulmer in this proceeding. Docket 69. His clerk also spent 10 hours of time on the services provided to Mr. Bulmer. Those services were reasonable and necessary, given the involuntary filing by Mr. Den Beste, given Mr. Den Beste's contentious approach as to all matters brought before the court, given that Mr. Den Beste disputed nearly everything relating to the state court action and Mr. Bulmer's authority as a receiver, given that Mr. Den Beste implicated a prior bankruptcy case filed by him and his wife in the Northern District of California, and given Mr. Den Beste's filing of motions for an arrest warrant to be issued for Mr. Bulmer, for return of the funds Mr. Bulmer collected in the state court action, and for vacating of the dismissal.

The court will make a correction to the attorney's fees calculations, however. Mr. Bulmer's counsel has made a mathematical error in calculating his fees. His hourly rate is $400, meaning that his total fees should be $9,000 (22.5 hours times $400 an hour). Along with the fees incurred by his clerk, 10 hours times $90 an hour, the total attorney's fees should be $9,900. The court will award to Mr. Bulmer $9,900 in fees and $146.74 in expenses, for a total of $10,046.74.

Turning to other damages, an award of compensatory and punitive damages under 11 U.S.C. § 303(i)(2) requires bad faith. See 11 U.S.C. § 303(i)(2). The alleged debtor has the burden of establishing bad faith. In re Tichy Elec. Co., Inc., 332 B.R. 364, 372 (Bankr. N.D. Iowa 2005).

In assessing whether bad faith exists, courts generally look to the totality of the circumstances. Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994)(bad faith in the context of a chapter 13 case dismissal); see also In re John Richards Homes Bldg. Co., LLC, 291 B.R. 727, 730 (Bankr. E.D. Mich. 2003); In re Cadillac by DeLorean & DeLorean Cadillac, Inc., 265 B.R. 574, 582 (Bankr. N.D. Ohio 2001). This includes factors such as misrepresented facts in the bankruptcy petition, unfair manipulation of the Bankruptcy Code, or otherwise inequitable circumstances surrounding the petition filing and egregious behavior. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

A finding of bad faith, however, does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt, at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also In re Cabral at 573.

The court has already found bad faith in the filing of this petition. In its ruling on the dismissal motion, the court concluded that "this involuntary petition was filed by Mr. Den Beste in bad faith." Docket 26 at 5. For the reasons explained above, the court does not have reconsider or reevaluate this conclusion.

Thus, an award of compensatory and punitive damages is warranted here. Mr. Bulmer requests compensatory damages in the amount of $4,925, representing 19.7 hours he spent on this case, seeking damages at $250 an hour for not being able to work in his business, California Receivership Services. The court assumes that the requested $250 an hour rate corresponds to the hourly rate Mr. Bulmer charges for his receivership services.

The court cannot award the damages requested by Mr. Bulmer because there is no evidence that he actually lost work for having to address the issues raised by the filing of the instant petition. Mr. Bulmer's declaration states only that he "could have spent" the hours "working in [his] business." Docket 70. The court cannot tell whether he actually had work in his business that he lost.

Given the conclusion that Mr. Den Beste filed this involuntary petition in bad faith and given the egregious circumstances under which he did it, the court will award punitive damages in the amount of $20,093.48, twice the $10,046.74 in attorney's fees and costs the court is awarding to Mr. Bulmer. Mr. Den Beste shall pay Mr. Bulmer the awarded attorney's fees and costs and damages, totaling $30,140.22, no later than 30 days after entry of the order on this motion.

Insofar as Mr. Den Beste asks this court to refer the matter to the district court, the bankruptcy court has no method of any such referral. Nor is a "report and recommendation" warranted given that the resolution of the motion to dismiss the involuntary petition and the related fee and damage issues are clearly core matters over which this court has jurisdiction.

The motion will be granted in part and denied in part.

15. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-6
VS. HANSON BROTHER ENTERPRISES — 10-14-13 [80]

Tentative Ruling: The motion will be denied.

A judgment was entered against Debtor David Burkhart in favor of Hansen Bros. Enterprises for the sum of $29,862.75 on March 7, 1997. The abstract of judgment was recorded with Sacramento County on May 27, 1998. The judgment was assigned to J.P. Odbert, III on September 1, 2004. That lien attached to the debtors' residential real property in Elk Grove, California.

The debtors are seeking to avoid the lien.

The motion will be denied. The subject lien has been extinguished as the underlying judgment is no longer valid. See Cal. Civ. Proc. Code § 683.020 (providing that "[a]ny lien created by an enforcement procedure pursuant to the judgment is extinguished" "upon the expiration of 10 years after the date of entry of a money judgment"). And, the court has no evidence that the underlying judgment has been renewed.

Additionally, even if the lien was still valid, the judgment was assigned to J.P. Odbert, III on September 1, 2004 and Mr. Odbert has not been served with the motion. Docket 83, Ex. F-4; Docket 84. The motion will be denied.

FINAL RULINGS BEGIN HERE

16. 12-33107-A-7 JOHN ARISHIN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $2,250) 11-5-13 [58]
SLF-10

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

The motion will be granted.

The Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,250 in fees and expenses, reduced from $9,568 in fees and $406.38 in expenses. This motion covers the period from September 10, 2012 through the present. The court approved the movant's employment as the trustee's attorney on September 17, 2012. In performing its services, the movant charged hourly rates of $195, $225, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing the debtor's petition documents, (2) analyzing whether the trustee should file objections to discharge and to exemptions, (3) preparing seven stipulations for the extension of deadlines for filing such objections, (4) negotiating a settlement with the debtor about his recovery and disposition of nonexempt property, (5) obtaining court approval of the settlement/sale, and (6) preparing and filing employment and compensation motions.

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

17. 08-37910-A-7 MARK JOCOY — MOTION FOR TURNOVER OF PROPERTY 11-4-13 [79]
DNL-4

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

The motion will be granted.

The trustee asks for an order directing the debtor to turn over to the estate the keys to a condominium in Mexico the trustee is attempting to sell, to turn over the certificates of ownership and related tenancy documentation relating to the condominium, and to account for the post-petition rents from the condominium. The court has approved a compromise between the estate and the co-owner of the condominium, allowing for the sale. The trustee and the co-owner have retained a local realtor who has listed the condominium for sale.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case. If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

Fed. R. Bankr. P. 7001(1) allows a request to compel the debtor to deliver property to the trustee to be brought by a motion rather than by an adversary proceeding complaint.

The debtor has not responded to this motion and the court does not have evidence that the debtor is unable to turn over the subject items and account for the rents. Hence, the court will order the debtor to turn over to the estate the keys, the certificates of ownership, the tenancy documents, and to provide an accounting for the post-petition rents. As there is no evidence that the debtor is not in possession of the above items, the court awards no money judgment for the value of the items.

18. 09-39713-A-7 SCOTT DINSDALE — MOTION TO AVOID JUDICIAL LIEN
TJW-2
VS. THOMAS HALASZYNSKI — 11-5-13 [31]

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)." Also, the exhibits to the motion have not been authenticated by a declaration.

Finally, the abstract of judgment attached to the motion identifies the debtor as the plaintiff and not the judgment debtor. Docket 33, Ex. 1.

19. 13-30013-A-7 JON/FAITH PARMER — OBJECTION TO EXEMPTIONS
MPD-3
11-1-13 [31]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the

defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the debtors' $19,978.72 exemption claim in a "personal loan note," with a value of $34,326.60.

"The debtors break down this exemption with $18,628.72 taken under §703.140(b)(5) and $1,350.00 taken under that same statute. . . . The debtors should have taken the $1,350.00 under §703.140(b)(1), instead of §703.140(b)(5). For purposes of this Objection Reger will assume the $1,350.00 is taken under §703.140(b)(1)."

While the debtors have not responded to this objection, they amended their Schedule C on November 20, decreasing the amount of the subject exemption to $1,500. Because the merits of the objection do not implicate the amount of the exemption, this ruling will address the objection with respect to the new $1,500 exemption claim.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

The objection is timely as it was filed within 30 days of the October 3 amendment of Schedule C. Docket 22. This objection was filed on November 1.

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

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."

A claim of exemption is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Under Rule 4003(c), once an exemption has been claimed, the objecting party has the burden to prove that the exemption is improper. Carter at 1029 n.3; Cerchione at 548. This means that the objecting party has both the burden of production, *i.e.*, to produce evidence in support of the objection (also known as the burden of going forward) and the burden of persuasion. Carter at 1029 n.3; Cerchione at 548.

But, when the objecting party produces sufficient evidence to rebut the presumptive validity of the exemption claim, the burden of production shifts to the debtors to establish the validity of the exemption. Even though the burden of persuasion always remains with the objecting party, when the objecting party overcomes the presumptive validity of the exemption claim, the debtors have the burden "to come forward with unequivocal evidence to demonstrate that the exemption is proper." Carter at 1029 n.3; see also Cerchione at 549.

The standard for the objecting party's burden of persuasion is preponderance of the evidence. Nicholson at 631-33, 634 (holding that the applicable standard

to exemption objections is preponderance of the evidence and citing Grogan v. Garner, 498 U.S. 279, 286 (1991), and resolving the issue of what is the standard for establishing bad faith in the context of exemption objections). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." Id. at 631 (quoting United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994)).

Exemptions can be amended at any time during the pendency of a bankruptcy case, unless they are asserted in bad faith or would prejudice creditors. Arnold v. Gill (In re Arnold), 252 B.R. 778, 784 (B.A.P. 9th Cir. 2000); see Fed. R. Bankr. P. 1009(a); see also In re Rolland, 317 B.R. 402, 424 (Bankr. C.D. Cal. 2004). Bad faith is determined by examining the totality of the circumstances. Rolland at 414-15.

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present." Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold at 786.

The concealment of assets, though, is sufficient to constitute bad faith. Arnold at 785-86; Rolland at 415.

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

The objection will be sustained on the basis of bad faith. There is significant evidence that the debtors attempted to conceal their interest in the subject loan. Initially, the court infers intent to conceal the loan from the debtors' failure to disclose the loan in their Schedule B, filed on the July 31, 2013 petition date, and their disclosure of the loan only after the trustee specifically asked about the loan. The original Schedule B does not mention the subject loan. Docket 1.

At the September 4, 2013 meeting of creditors, the debtors affirmed the veracity of the bankruptcy schedules and statements they filed on the petition date. The trustee then asked the debtors about whether they had made loans to anyone, including the persons to whom they sold a furniture business in 2005. The debtors admitted to having made loans to their son-in-law from time to time and admitted to holding an approximately $34,000 note payable by the buyers of the business. When asked why the note was not scheduled, the debtors replied that they "didn't think of it." Docket 34 at 21. On October 3, the debtors filed Amended Schedules B and C, disclosing the loan with a value of $34,326.60 and claiming an exemption in the amount of $19,978.72. Docket 22.

An intent to conceal is further evidenced from the fact that the debtors - who are represented by counsel - made several serious misrepresentations in their schedules. The debtors own a commercial real property in Redding, California, with a scheduled value of $1.2 million. They generate rental income from the property. In Schedule D, filed on the petition date, the debtors listed two encumbrances on that property, a mortgage for approximately $1,280,621 held by North Valley Bank and a "2nd on commercial property" for approximately $563,633 held by Enrico Raffanti, the brother-in-law of Debtor Faith Parmer.

At the meeting of creditors on September 4, the trustee questioned the debtors about the purported secured status of the claim held by Enrico Raffanti, discovering that the claim is an unsecured note and the claim of NVB is the only encumbrance on the property.

On September 4, the debtors filed Amended Schedule F, changing the status of Enrico Raffanti's claim to a general unsecured claim. Docket 13.

Further, the original Schedule I listed $2,214.31 in monthly rental income from the commercial property. At the meeting of creditors, on September 4, the trustee discovered that the income from the commercial property is actually $13,607.50 a month, over $11,000 more than what was originally disclosed. The debtors filed Amended Schedule I on September 4, correcting the rental income from the commercial property.

The debtors have made other questionable representations that the court finds unnecessary to address for purposes of this ruling.

The debtors are sophisticated in understanding business transactions, in operating a business, and in obtaining financing on property. They own a commercial property, receive rental income from the property, owned and operated a furniture business for some considerable time pre-petition, sold their furniture business for a substantial sum of money - at least $715,000, and ran a scissor business.

The court rejects the explanation that the debtors simply "didn't think" of the loan they gave to the buyers of the furniture business, when they were listing their assets in this case, given their sophisticated business background. The failure to disclose the loan and the failure to disclose over $11,000 in monthly income from the commercial property evidences a pattern and intent to conceal assets.

Even if the debtors did not have fraudulent intent, malice, ill will or an affirmative attempt to violate the law, their failure to disclose the loan has prejudiced the trustee and the creditors in delaying the investigation of the debtors' affairs and potentially jeopardizing the recovery of assets. This is bad faith as well. The objection to the new $1,500 exemption claim in the loan will be sustained.

20. 11-44616-A-7 LOYD/VERNA HOSTETTER — MOTION TO COMPEL ABANDONMENT 11-15-13 [37]
LBG-1

Final Ruling: The hearing on the motion has been continued by the parties to January 27, 2014 at 10:00 a.m.

21. 10-45219-A-7 JOSEPH SCROGGINS — MOTION FOR CONTEMPT AND SANCTIONS 9-30-13 [28]
BLG-1

Final Ruling: This motion has been resolved by stipulation.

22. 13-30727-A-7 MARVA BURRELL-MCWHORTER — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-4-13 [37]
CJO-1
GREENTREE SERVICING, L.L.C. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $154,000 and it is encumbered by claims totaling approximately $181,730. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2013.

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

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

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

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

23. 11-21932-A-7 CYRISHJADE DISCIPULO — MOTION TO AVOID JUDICIAL LIEN
TJW-2
VS. MAGDALENA CASUGA — 11-15-13 [20]

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)." Also, the exhibits to the motion have not been authenticated by a declaration.

24. 13-30136-A-7 MARTIN BERDEJA AND NANCY BURGESS — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
GREENTREE SERVICING, L.L.C. VS. — 11-5-13 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii)

is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $112,881 and it is encumbered by claims totaling approximately $297,043. The movant's deed is in first priority position and secures a claim of approximately $234,309.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 5, 2013.

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

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

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

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

25. 13-28242-A-7 MARK DUMALIG — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 10-24-13 [29]
PENNYMAC LOAN SERVICES, L.L.C. VS.

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

The motion will be granted in part and dismissed as moot in part.

The movant, Pennymac Loan Services, seeks relief from the automatic stay as to real property in Sacramento, California.

Given the entry of the debtor's discharge on October 7, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $124,690 and it is encumbered by claims totaling approximately $257,690. The movant's deed is in first priority position and secures a claim of approximately $218,846.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 31, 2013.

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

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

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

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

26. 13-25844-A-7 LEVI/KIMBERLEE DELANEY — MOTION TO COMPEL ABANDONMENT 10-25-13 [58]
DBJ-5

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their 2011 Dodge Caravan vehicle. The vehicle is over-encumbered.

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

value and benefit to the estate.

The vehicle has a value of $15,315, whereas it is encumbered by a claim held by Santander Consumer in the amount of $24,672. Given the scheduled value of and encumbrances against the vehicle, the court concludes that the vehicle is of inconsequential value to the estate. The motion will be granted.

27. 13-30948-A-7 PAUL MOSBY
NLG-1
CENTRAL MORTGAGE COMPANY VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-23-13 [16]

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

The motion will be granted.

The movant, Central Mortgage Company, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $273,000 and it is encumbered by claims totaling approximately $428,288. The movant's deed is in first priority position and secures a claim of approximately $348,288.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 25, 2013.

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

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

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

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

28. 12-38363-A-7 WILLIAM ST CLAIR
PA-11

MOTION TO
EXTEND DEADLINE
11-4-13 [177]

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

The motion will be granted.

Creditor Leo Speckert as trustee of California Capital Loans, Inc., Profit Sharing Plan, moves for a 181-day extension, from November 4, 2013 to May 4, 2014, of the deadlines for filing complaints to determine the dischargeability of debts pursuant to 11 U.S.C. § 523.

Fed. R. Bankr. P. 4007(c) provides that the court may extend the deadline for filing section 523 complaints for cause. The motions must be filed before the deadlines expire.

The deadline for filing 11 U.S.C. § 523 complaints, pursuant to a prior extension of the deadline by the court, was November 4, 2013. Docket 163. This motion is timely as it was filed on November 4.

The movant is asking for extension of the deadline because he needs more time to determine whether filing of a 11 U.S.C. § 523 complaint is warranted. Particularly, the movant has been seeking to foreclose on property that is in a trust, as to which the debtor and his daughter have asserted rights that appear to be inconsistent with representations the debtor made in obtaining a loan with the movant pre-petition. The movant needs more time to determine the exact nature of the assertions of the debtor and his daughter as to the property.

On August 15, 2013, the debtor's daughter filed a state court complaint against the movant, to quiet title of the property and set aside a deed of trust securing the movant's claim.

Given this new state court action pertaining to the property and its apparent inconsistency with the debtor's representations in connection with his obtaining the loan from the movant, cause for extension of the deadline exists. The motion will be granted and the deadline will be extended to May 4, 2014.

29. 13-31263-A-7 AARON KRESS
RCO-1
SETERUS, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-31-13 [12]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Seterus, Inc., seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $242,352 and it is encumbered by claims totaling approximately $264,002. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 15, 2013.

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

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

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

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

30. 13-33865-A-7 JOLEEN NOBLE — ORDER TO SHOW CAUSE 11-6-13 [9]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on November 6, 2013. No prejudice has resulted from the delay.

31. 13-30389-A-7 CHARLES/VICTORIA TINGLER — MOTION TO EXTEND DEADLINE 11-5-13 [13]
UST-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted.

The U.S. Trustee seeks a 84-day extension, from November 8, 2013 to January 31, 2014, of the deadline for filing a complaint objecting to discharge under 11 U.S.C. § 727.

Bankruptcy Rule 4004(b) provides that the court may extend the deadline for filing Section 727 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing 11 U.S.C. § 727 complaints here was November 8, 2013. This motion was timely as it was filed on November 5, 2013. Thus, the motion complies with the temporal requirements of Rule 4004(b).

The trustee, interested parties and the movant need additional time to review documents pertaining to the debtors' disposal of a $363,843 tax refund they received in 2008. The court also notes that the debtors did not appear at the November 4 meeting of creditors and the debtor did not appear at the November 18 meeting of creditors.

The foregoing is cause for extension of the deadline. The motion will be granted as to the movant, the trustee and the debtors' creditors. The deadline will be extended to January 31, 2014.

32. 11-49390-A-7 GREG/CYNTHIA WIESSNER
SLF-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $4,000.00)
11-5-13 [109]

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

The motion will be granted.

The Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,000 in fees and expenses, reduced from $17,406 in fees and $617.17 in expenses. This motion covers the period from February 8, 2012 through the present. The court approved the movant's employment as the trustee's attorney on March 5, 2012. In performing its services, the movant charged hourly rates of $195, $225, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assessing the debtor's personal injury claims, (2) analyzing the debtor's exemption claims, (3) communicating with counsel prosecuting the personal injury claims, (4) obtaining an extension of the deadline for objecting to the debtor's exemptions, (5) assisting the estate with the sale of vehicles via an auction, (6) assisting the estate with the sale of the estate's interest in a vehicle to the debtor, and (7) preparing and filing employment and compensation motions.

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