

DEC 02 2016

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	EC-16-1015-KuMaJu
	)		
ROBERTO LARA RAMIREZ,	)	Bk. No.	15-26710
	)		
Debtor.	)		
_____	)		
	)		
ROBERTO LARA RAMIREZ,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
NATIONSTAR MORTGAGE LLC,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on October 20, 2016  
at Sacramento, California

Filed - December 2, 2016

Appeal from the United States Bankruptcy Court  
for the Eastern District of California

Honorable Ronald H. Sargis, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Roberto Lara Ramirez, pro se, on brief;  
Matthew Bryan Learned of McCarthy & Holthus, LLP  
argued for appellee Nationstar Mortgage LLC.

Before: KURTZ, MARTIN\*\* and JURY, Bankruptcy Judges.

\_\_\_\_\_  
\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1.

\*\*Hon. Brenda K. Martin, United States Bankruptcy Judge for  
the District of Arizona, sitting by designation.

1 **INTRODUCTION**

2 Chapter 13<sup>1</sup> debtor Roberto Lara Ramirez appeals from an  
3 order granting relief from stay to Nationstar Mortgage LLC. The  
4 bankruptcy court granted Nationstar retroactive relief from the  
5 stay, which effectively validated Nationstar's postpetition  
6 foreclosure sale. The sale was held one day after the  
7 commencement of Ramirez's latest bankruptcy case. The bankruptcy  
8 court also granted Nationstar prospective, in rem relief under  
9 § 362(d)(4).

10 All of the relief granted was based, at least in part, on a  
11 clearly erroneous finding of fact. Among other things, the  
12 bankruptcy court found that Ramirez engaged in a series of  
13 transfers in a deliberate attempt to interfere with Nationstar's  
14 foreclosure efforts. But there were no allegations or evidence  
15 of any such transfers anywhere in the record.

16 As a result, we must VACATE the bankruptcy court's order  
17 granting Nationstar relief from the automatic stay, and we must  
18 REMAND for further proceedings.

19 **FACTS<sup>2</sup>**

20 Ramirez commenced the underlying chapter 13 bankruptcy case  
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22 <sup>1</sup>Unless specified otherwise, all chapter and section  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
24 all "Rule" references are to the Federal Rules of Bankruptcy  
25 Procedure, Rules 1001-9037. All "Local Rule" references are to  
the Local Bankruptcy Rules for the Eastern District of  
California.

26 <sup>2</sup>Many of the facts set forth herein are drawn from the  
27 bankruptcy court's written rulings. Ramirez has not challenged  
28 on appeal the accuracy of these facts, many of which are  
procedural in nature and are supported by the history of  
Ramirez's bankruptcy filings.

1 on August 25, 2015. This was not Ramirez's first bankruptcy  
2 case. In fact, he had filed four others in the past few years,  
3 as follows:

4 (1) In December 2011, Ramirez filed a chapter 13 case. That  
5 case was dismissed in July 2013 for failure to cure defaults  
6 in plan payments and failure to file and seek confirmation  
7 of a modified plan to address the plan defaults.

8 (2) In April 2014, Ramirez filed, pro se, a chapter 7 case.  
9 That case was dismissed in May 2014 based on Ramirez's  
10 failure to file many of the documents required under  
11 § 521(a).

12 (3) In June 2014, Ramirez filed, pro se, another chapter 7 case.  
13 Ramirez received his discharge, and the case was closed in  
14 October 2014. Additionally, Nationstar sought and received  
15 relief from the automatic stay to proceed with a nonjudicial  
16 foreclosure against Ramirez's residence.

17 (4) In December 2014, Ramirez filed, pro se, another chapter 13  
18 case. That case was dismissed in June 2015 for failure to  
19 cure defaults in plan payments and failure to file and seek  
20 confirmation of a modified plan after the bankruptcy court  
21 denied confirmation of his initial chapter 13 plan. The  
22 record from this chapter 13 case also reflects Ramirez's  
23 failure to attend his § 341 meeting of creditors, his  
24 failure to complete all of the required chapter 13 documents  
25 - including his initial chapter 13 plan - and his failure to  
26 disclose his multiple prior bankruptcy cases.

27 In light of Ramirez's prior bankruptcy filings and pursuant  
28 to § 362(c)(3)(A), the automatic stay in the underlying

1 bankruptcy case was due to automatically expire with respect to  
2 the debtor as of September 24, 2015 - 30 days after the filing of  
3 Ramirez's latest bankruptcy petition. Ramirez filed three  
4 motions requesting that the court extend the automatic stay. The  
5 bankruptcy court denied the first motion to extend based on its  
6 finding that Ramirez had not rebutted the presumption of bad  
7 faith arising pursuant to § 362(c)(3)(C). Based on Ramirez's own  
8 admissions, the bankruptcy court in essence found that Ramirez  
9 had filed his latest bankruptcy case not for any legitimate  
10 bankruptcy purpose but rather to delay Nationstar's scheduled  
11 foreclosure sale in the hopes that he could persuade Nationstar  
12 to agree to a new loan modification.<sup>3</sup>

13 The bankruptcy court denied the second two motions to extend  
14 because they were untimely and because Ramirez still had not  
15 rebutted the bad faith presumption.

16 In December 2015, Nationstar filed its motion for relief  
17 from stay. In the motion, Nationstar requested both retroactive  
18 and prospective relief. More specifically, Nationstar explained  
19 that, to enforce its rights as a secured creditor, a foreclosure  
20 sale of Ramirez's residence had occurred on August 26, 2015, the  
21 day after Ramirez had filed his latest bankruptcy petition.  
22 Nationstar sought retroactive relief from the stay - also known  
23 as annulment of the stay - to validate its postpetition  
24 foreclosure sale. Nationstar also sought prospective relief from  
25 the automatic stay pursuant to § 362(d)(4), claiming that

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27  
28 <sup>3</sup>Nationstar and Ramirez already had entered into a prior  
loan modification agreement in 2010.

1 Ramirez's history of serial bankruptcy filings reflected a scheme  
2 by Ramirez to delay Nationstar from exercising its rights as a  
3 secured creditor.

4 In support of its request for retroactive relief, Nationstar  
5 submitted evidence indicating that it was unaware of Ramirez's  
6 August 25, 2015 bankruptcy filing at the time it conducted the  
7 August 26, 2015 foreclosure sale. Nationstar further asserted  
8 that it had been attempting to foreclose on Ramirez's residence  
9 since 2011, citing a 2011 notice of default and a 2011 notice of  
10 sale, which referenced a sale date of December 14, 2011.

11 Nationstar pointed out that Ramirez's first chapter 13 filing,  
12 commenced on December 2, 2011, prevented the foreclosure sale  
13 from occurring as scheduled. Nationstar also pointed out that it  
14 caused to be published another notice of sale in 2014 referencing  
15 a sale date of December 3, 2014, and that Ramirez's December 2,  
16 2014 bankruptcy filing prevented that 2014 foreclosure sale from  
17 occurring.

18 In his opposition, Ramirez claimed that he immediately gave  
19 Nationstar and its counsel notice of his latest bankruptcy filing  
20 but that Nationstar ignored the notices and proceeded with the  
21 foreclosure sale despite its knowledge of the automatic stay.  
22 According to Ramirez, these facts by themselves were sufficient  
23 to justify denial of retroactive relief.

24 As for prospective relief under § 362(d)(4), Ramirez argued  
25 that Nationstar attempted to justify the granting of this relief  
26 based solely on his serial bankruptcy filings. According to  
27 Ramirez, multiple bankruptcy filings, alone, cannot support a  
28 finding of a scheme to hinder, delay or defraud for purposes of

1 § 362(d)(4). Appellant also asked for an evidentiary hearing so  
2 he could present evidence of the notice he gave to Nationstar on  
3 August 25, 2015.

4 At the hearing on the relief from stay motion, the  
5 bankruptcy court ruled that Nationstar was entitled to the  
6 retroactive and prospective relief requested in its motion. On  
7 the issue of stay annulment, the bankruptcy court stated that it  
8 had considered the totality of the circumstances and had weighed  
9 the factors identified in Nat'l Env'tl. Waste Corp. v. City of  
10 Riverside (In re Nat'l Env'tl. Waste Corp.), 129 F.3d 1052, 1055  
11 (9th Cir. 1997); and in Fjeldsted v. Lien (In re Fjeldsted),  
12 293 B.R. 12, 25 (9th Cir. BAP 2003). The bankruptcy court  
13 concluded that the factors militated in favor of annulment.

14 At the time the bankruptcy court announced its ruling at the  
15 hearing, Ramirez renewed his request for an evidentiary hearing  
16 on the notice issue, but the bankruptcy court denied that  
17 request, stating that the notice issue was beyond the scope of  
18 the motion and beyond the scope of the court's reasoning for  
19 granting the motion, including retroactive relief.

20 The bankruptcy court's denial of an evidentiary hearing was  
21 made during the course of the following colloquy between the  
22 bankruptcy court and Ramirez:

23 MR. RAMIREZ: Then can I show you something, that I gave  
24 notice to the bank that I file the bankruptcy?

25 THE COURT: I am going to say no, because that really  
26 goes beyond the issue of this motion and the reason I  
27 am granting the relief, which includes making it  
28 retroactive.

MR. RAMIREZ: I have a document here that I sent to them  
on the 25<sup>th</sup>.

1 THE COURT: Okay. That is the day the foreclosure sale  
2 occurred. And what I am saying by this order is, there  
3 was no automatic stay in effect on the 25th when the  
4 foreclosure occurred.

5 Hr'g Tr. (Jan. 12, 2016) 8:8-18.

6 The bankruptcy court's statements made in support of its  
7 denial of the evidentiary hearing are at odds with its comments  
8 indicating that it had reviewed and considered all of the  
9 Fjeldsted factors. Furthermore, the bankruptcy court's written  
10 ruling suggests that it did consider the notice issue. The  
11 bankruptcy court noted both Nationstar's representation that it  
12 was unaware of the latest bankruptcy filing and Ramirez's failure  
13 to present evidence to support his notice allegations.

14 As for prospective, in rem relief, the bankruptcy court  
15 stated that it could grant relief under § 362(d)(4) if it found  
16 "a scheme to delay, hinder, or defraud creditors" involving  
17 either: (a) a transfer of an interest in the subject real  
18 property without creditor consent or court approval; or  
19 (b) "multiple bankruptcy filings affecting such real property."  
20 11 U.S.C. § 362(d)(4).

21 According to the bankruptcy court, the existence of such a  
22 scheme by Ramirez was evidenced not only by the number of  
23 Ramirez's prior bankruptcy filings but also by his frequent  
24 failure to prosecute his bankruptcy cases by filing required  
25 documents. The bankruptcy court also emphasized that Ramirez had  
26 attempted to "hide" his prior bankruptcy cases from the court.  
27 Ramirez attempted this, the court explained, by filing an amended  
28 statement of social security number in which he alleged that he  
had "lost" his social security number - after he earlier had

1 filed in the same case an acknowledgment of his social security  
2 number - a number which led the court to Ramirez's prior  
3 bankruptcy case filings.

4 There was one other factor the bankruptcy court pointed to  
5 in its ruling granting § 362(d)(4) relief. The bankruptcy court  
6 referenced certain transfers Ramirez allegedly made to  
7 beneficiaries who then filed bankruptcy in order to stay the  
8 foreclosure. As the bankruptcy court put it:

9 Movant has provided sufficient evidence concerning a  
10 series of bankruptcy cases being filed with respect to  
11 the subject property. **The unauthorized transfers of**  
12 **interests in the subject property to beneficiaries who**  
13 **then filed several bankruptcies were a deliberate**  
14 **attempt as a stay to any foreclosure.** The court finds  
15 that the filing of the present petition works as part  
16 of a scheme to delay, hinder, or defraud Movant with  
17 respect to the Property **by both the transfer of an**  
18 **interest in the property and the filing of multiple**  
19 **bankruptcy cases.**

20 Civil Minutes (Jan 12, 2016) at p. 5 (emphasis added).

21 This portion of the bankruptcy court's ruling is perplexing.  
22 Nationstar neither alleged nor submitted evidence of any such  
23 transfers, nor have we found any evidence of such transfers  
24 elsewhere during our independent review of the bankruptcy court's  
25 docket.

26 On January 19, 2016, the bankruptcy court entered its order  
27 granting Nationstar's stay relief motion, and Ramirez timely  
28 appealed.

On January 21, 2016, the underlying bankruptcy case was  
dismissed on the chapter 13 trustee's motion, based on a number  
of deficiencies in the prosecution of Ramirez's chapter 13 case,  
which the bankruptcy court found constituted unreasonable delay



1 under § 1307(c)(1).<sup>4</sup>

2 **JURISDICTION**

3 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
4 §§ 1334 and 157(b)(2)(G). An order granting or denying relief  
5 from the automatic stay is a final and appealable order, so we  
6 have jurisdiction under 28 U.S.C. § 158. See *Benedor Corp. v.*  
7 *Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346,  
8 351 (9th Cir. 1996).

9 **ISSUES**

- 10 1. Did the bankruptcy court abuse its discretion when it  
11 granted Nationstar relief under § 362(d)(4)?  
12 2. Did the bankruptcy court abuse its discretion when it  
13 annulled the stay in order to retroactively validate  
14 Nationstar's foreclosure sale?

15 **STANDARDS OF REVIEW**

16 We review the bankruptcy court's relief from stay order for  
17 an abuse of discretion. Id.; *First Yorkshire Holdings, Inc. v.*  
18 *Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*,  
19 470 B.R. 864, 868 (9th Cir. BAP 2012); *In re Fjeldsted*, 293 B.R.  
20 at 18.

21 A bankruptcy court abuses its discretion if it applies an  
22 incorrect legal standard or if its factual findings are

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24 <sup>4</sup>Even though Ramirez did not appeal the dismissal order,  
25 this appeal is not moot. The order on appeal provided for  
26 annulment of the stay and for in rem relief from the stay for a  
27 period of two years from the date of entry of the bankruptcy  
28 court's relief from stay order. If Ramirez were to prevail on  
appeal, we could grant him meaningful relief from both the  
retroactive and prospective effects of the bankruptcy court's  
relief from stay order.

1 illogical, implausible or not supported by the record. United  
2 States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)  
3 (en banc).

#### 4 **DISCUSSION**

5 On appeal, Ramirez, pro se, asserts the same arguments he  
6 asserted in the bankruptcy court. First, he claims there was  
7 insufficient evidence to support the bankruptcy court's grant of  
8 prospective, in rem relief under § 362(d)(4). And second, he  
9 claims the bankruptcy court should not have annulled the stay  
10 because he gave notice of his bankruptcy filing to Nationstar on  
11 the day the foreclosure occurred. We will address each of these  
12 claims in turn.

#### 13 **1. Section 362(d)(4)**

14 Under § 362(d)(4), the bankruptcy court may grant a secured  
15 creditor prospective, "in rem" relief from the automatic stay if  
16 the debtor has engaged in a scheme to delay, hinder or defraud  
17 creditors through multiple bankruptcy filings. In re First  
18 Yorkshire Holdings, Inc., 470 B.R. at 870. A properly entered  
19 and recorded § 362(d)(4) order prevents - for a period of two  
20 years - any subsequent bankruptcy filing by anyone with an  
21 interest in the subject property from operating as a stay of lien  
22 enforcement against the property. § 362(b)(20); In re First  
23 Yorkshire Holdings, Inc., 470 B.R. at 871.

24 The broad scope of this exception to the automatic stay  
25 potentially can have grave consequences for debtors seeking  
26 temporary relief from foreclosure activity. Alakozai v. Citizens  
27 Equity First Credit Union (In re Alakozai), 499 B.R. 698, 703  
28 (9th Cir. BAP 2013). Congress determined that this drastic form

1 of relief was necessary in order to deter schemes by the  
2 occasional debtor who filed serial bankruptcies and/or made a  
3 series of property transfers for the purpose of interfering with  
4 legitimate foreclosure efforts. Id. at 702; In re First  
5 Yorkshire Holdings, Inc., 470 B.R. at 870.

6 In order to grant § 362(d)(4) relief, a bankruptcy court  
7 must find: "(1) the debtor engaged in a scheme, (2) to delay,  
8 hinder or defraud the creditor, and (3) which involved either the  
9 transfer of property without the creditor's consent or court  
10 approval or multiple filings." In re Alakozai, 499 B.R. at 703.

11 Here, the bankruptcy court articulated the correct legal  
12 standard, made ample findings, and cited sufficient evidence to  
13 support most of those findings. In essence, the bankruptcy court  
14 determined from Ramirez's multiple bankruptcy cases **and** from the  
15 way Ramirez conducted himself in those bankruptcy cases that  
16 Ramirez had improperly utilized those cases to interfere with  
17 Nationstar's foreclosure efforts. The bankruptcy court's  
18 findings in support of this determination were not clearly  
19 erroneous - they were logical, plausible and supported by the  
20 record.

21 On the other hand, we don't know what to make of the  
22 bankruptcy court's additional findings that Ramirez engaged in a  
23 series of unauthorized transfers of his residence and that these  
24 transfers were part of his scheme to hinder, delay or defraud  
25 Nationstar. There were no allegations or evidence in the record  
26 reflecting such transfers, so the bankruptcy court's transfer-  
27 related findings were clearly erroneous.

28 Nor are we convinced that the transfer-related findings were

1 harmless error. We simply don't know for sure whether, in the  
2 absence of the transfer-related findings, the bankruptcy court  
3 still would have inferred Ramirez's scheme to hinder, delay or  
4 defraud Nationstar from the remaining findings. On the record  
5 presented, such an inference would not have been unreasonable;  
6 even so, such an inference was not inevitable.

7 Under these circumstances, we must vacate the bankruptcy  
8 court's grant of § 362(d)(4) relief and remand for a new  
9 determination of this issue.

## 10 **2. Stay Annulment**

11 Actions taken in violation of the automatic stay are void.  
12 In re Nat'l Env'tl. Waste Corp., 129 F.3d at 1054. However, under  
13 § 362(d)(1), the bankruptcy court may "annul" the stay in order  
14 to retroactively validate actions that otherwise would be void as  
15 stay violations. Id. (citing Schwartz v. United States  
16 (In re Schwartz), 954 F.2d 569, 572 (9th Cir. 1992)).

17 In deciding whether "cause" exists to annul the stay, the  
18 bankruptcy court must examine the circumstances of the particular  
19 case and balance the equities. In re Nat'l Env'tl. Waste Corp.,  
20 129 F.3d at 1055; In re Fjeldsted, 293 B.R. at 24. Two factors  
21 that have been considered critical in many cases are:

22 (1) whether the creditor was aware of the bankruptcy petition and  
23 automatic stay and (2) whether the debtor engaged in unreasonable  
24 or inequitable conduct. In re Nat'l Env'tl. Waste Corp., 129 F.3d  
25 at 1055. But these factors are not always determinative. Id.  
26 Each case presents its own unique circumstances that must be  
27 evaluated on a case by case basis. Id.

28 We have identified several other factors that can be

1 relevant in deciding whether to annul the stay:

- 2 1. Number of filings;
- 3 2. Whether, in a repeat filing case, the circumstances  
4 indicate an intention to delay and hinder creditors;
- 5 3. A weighing of the extent of prejudice to creditors  
6 or third parties if the stay relief is not made  
7 retroactive, including whether harm exists to a bona  
8 fide purchaser;
- 9 4. The Debtor's overall good faith (totality of  
10 circumstances test);
- 11 5. Whether creditors knew of stay but nonetheless took  
12 action, thus compounding the problem;
- 13 6. Whether the debtor has complied, and is otherwise  
14 complying, with the Bankruptcy Code and Rules;
- 15 7. The relative ease of restoring parties to the status  
16 quo ante;
- 17 8. The costs of annulment to debtors and creditors;
- 18 9. How quickly creditors moved for annulment, or how  
19 quickly debtors moved to set aside the sale or  
20 violative conduct;
- 21 10. Whether, after learning of the bankruptcy,  
22 creditors proceeded to take steps in continued  
23 violation of the stay, or whether they moved  
24 expeditiously to gain relief;
- 25 11. Whether annulment of the stay will cause  
26 irreparable injury to the debtor;
- 27 12. Whether stay relief will promote judicial economy  
28 or other efficiencies.

22 In re Fjeldsted, 293 B.R. at 25 (citations omitted). Here, the  
23 bankruptcy court stated that it had reviewed all of these factors  
24 and had considered the totality of the circumstances. At the  
25 same time, the bankruptcy court's ruling and its hearing comments  
26 suggest that it relied heavily on Ramirez's scheme to hinder,  
27 delay or defraud Nationstar in finding cause to annul the stay.  
28 This is why the bankruptcy court, in finding cause, referenced

1 its findings regarding Ramirez's "transparently purposeful"  
2 conduct in "prejudicing" Nationstar's foreclosure efforts and  
3 also stated that the underlying bankruptcy case was part of  
4 Ramirez's "scheme to prejudice" Nationstar.

5 As we explained above, the bankruptcy court's clearly  
6 erroneous transfer-related findings fatally infected the court's  
7 inference of a scheme to hinder, delay or defraud Nationstar.  
8 Because the existence of this scheme was a critical factor in the  
9 bankruptcy court's determination of cause to annul the stay, we  
10 must VACATE the bankruptcy court's grant of retroactive stay  
11 relief and must REMAND for a new determination of this issue.

12 **3. Denial of Ramirez's Request to Present Evidence on Notice**  
13 **Issue**

14 There is one other issue we need to address. It concerns  
15 Ramirez's request in his opposition for an opportunity to present  
16 evidence on whether Nationstar had knowledge of the automatic  
17 stay at the time it conducted its foreclosure sale. Ramirez  
18 renewed this request at the relief from stay hearing, at which  
19 point the bankruptcy court denied the request.

20 Ramirez did not even remotely comply with the requirements  
21 for obtaining an evidentiary hearing set forth in Local Rules  
22 9014-1(f) (1) (B)<sup>5</sup> and 9014-1(g) (3).<sup>6</sup> We already have upheld a

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24 <sup>5</sup>Local Rule 9014-1(f) (1) (B) provides in relevant part:

25 The opposition shall specify whether the responding  
26 party consents to the Court's resolution of disputed  
27 material factual issues pursuant to Fed. R. Civ.  
28 P. 43(c) as made applicable by Fed. R. Bankr. P. 9017.  
If the responding party does not so consent, the

(continued...)

1 prior version of the Local Rules, which contained similar  
2 requirements. See Tyner v. Nicholson (In re Nicholson), 435 B.R.  
3 622, 635-36 (9th Cir. BAP 2010), partially abrogated on other  
4 grounds by, Law v. Siegel, 134 S.Ct. 1188, 1196-98 (2014). In  
5 addition, Ramirez failed to include with his opposition papers  
6 any evidence that would have laid a foundation for a disputed  
7 factual issue regarding Nationstar's knowledge of the stay. This  
8 absence of evidence in Ramirez's opposition also violated Local  
9 Rule 9014-1(f) (1) (B).

10 On the other hand, in denying Ramirez's request to present  
11 evidence at the relief from stay hearing, the bankruptcy court  
12 did not invoke its Local Rules as the basis for the denial.  
13 Instead, in denying the request, the bankruptcy court suggested  
14 that the notice issue was largely irrelevant. This comment by  
15

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16  
17 <sup>5</sup>(...continued)  
18 opposition shall include a separate statement  
19 identifying each disputed material factual issue. The  
20 separate statement shall enumerate discretely each of  
21 the disputed material factual issues and cite the  
22 particular portions of the record demonstrating that a  
23 factual issue is both material and in dispute. Failure  
24 to file the separate statement shall be construed as  
25 consent to resolution of the motion and all disputed  
26 material factual issues pursuant to Fed. R. Civ.  
27 P. 43(c).

28 <sup>6</sup>Local Rule 9014-1(g) (3) provides:

An opposition and/or reply to a motion shall state  
whether a party consents to the use of affidavits in  
accordance with Fed. R. Civ. P. 43(c). Any party that  
fails to file the separate statement of disputed  
material facts as required by LBR 9014-1 will thereby  
consent to proceed on the basis of the written record  
without live testimony.

1 the bankruptcy court is difficult to reconcile with the  
2 bankruptcy court's statement that, in determining whether to  
3 annul the stay, it was considering the totality of the  
4 circumstances as well as the Fjeldsted factors. The comment is  
5 even harder to reconcile with the notion that the creditor's  
6 knowledge of the stay often is one of the most critical factors  
7 in determining whether to annul the stay. See In re Nat'l Env'tl.  
8 Waste Corp., 129 F.3d at 1055.

9 In any event, because we are remanding on other grounds, we  
10 need not resolve this conundrum. On remand, the bankruptcy court  
11 should clarify the grounds it is relying upon to support its  
12 denial of Ramirez's request to present evidence on the notice  
13 issue. Alternately, the bankruptcy court has the option on  
14 remand to exercise its discretion to reopen the record and permit  
15 the presentation of evidence.<sup>7</sup>

#### 16 **CONCLUSION**

17 For the reasons set forth above, we VACATE the bankruptcy  
18 court's order granting Nationstar relief from the automatic stay,  
19 and we REMAND for further proceedings.

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24  
25 <sup>7</sup>Also on remand, the bankruptcy court should note that, if  
26 it grants retroactive stay relief and validates Nationstar's  
27 foreclosure sale, it no longer would be necessary or correct to  
28 additionally grant Nationstar relief under § 362(d)(4), because  
Nationstar no longer would be "a creditor whose claim is secured  
by an interest in the property in question." See Ellis v. Yu  
(In re Ellis), 523 B.R. 673, 679-80 (9th Cir. BAP 2014).