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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MOTI KOKA,

Case No. C 13-3930 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

BANK OF AMERICA, et al.,

Defendants.

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Plaintiff Moti Koka brought this action alleging that defendants wrongfully foreclosed against his property. Koka seeks damages and to set aside the foreclosure sale. Defendants moved for summary judgment on several grounds. As a threshold matter, defendants argued Koka lacks standing because the asserted claims are the property of the bankruptcy estate.

Because that argument appeared potentially to have merit but had not been fully crystalized until the reply brief, Koka was invited to submit supplemental briefing. In that briefing, Koka asserts he has moved to reopen his bankruptcy case and requests that this action be stayed pending conclusion of the bankruptcy proceedings. Koka, however, does not dispute that he lacked standing when this action was filed, and still lacks standing, absent abandonment of the claims by the bankruptcy trustee.

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Defendants urge the Court to find at this juncture that Koka’s claims are barred by judicial estoppel. As with defendants’ arguments going to the merits, the lack of standing precludes consideration of that issue. *Cf. Dzakula v. McHugh*, \_\_\_ F.3d \_\_\_, 2014 WL 128605, \*1 n. 2 (9th Cir. 2014) (noting there was no dispute that claims had been abandoned to the debtor before addressing judicial estoppel); *Ah Quin v. County of Kauai Department of Transportation*, 733 F.3d 267, 270 (9th Cir. 2013) (noting trustee’s abandonment of claim, prior to analyzing judicial estoppel).

Accordingly, summary judgment will be granted solely on the grounds that Koka lacked standing at the time the complaint was filed. *See Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir.2001) (“Standing is determined by the facts as they exist at the time the complaint is filed.”). A separate judgment will issue.

IT IS SO ORDERED.

Dated: 3/11/14

  
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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE