UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 19, 2015 at 1:30 p.m.

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1. 11-48832-E-13 MIKE/JAMIE MCGUIRE
RFM-1 Mohammad M. Mokarram

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-3-15 [63]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the May 19, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 3, 2015. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Mike and Jamie McGuire ("Debtor") commenced this bankruptcy case on December 13, 2011. U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as:

(1) 2007 Moomba Outback, VIN No. xxxxC707;

(2) 2007 Indmar 350 MPI Direct #137542; and

(3) 2007 Boat Mate Tandem Axle, VIN No. xxxx3176

(the "Property"). The moving party has provided the Declaration of Melanie Halmes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Halmes Declaration provides testimony that Debtor has not made four post-petition payments in default, with post-petition arrearage of $1,379.30.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $20,053.44, as stated in the Halmes Declaration, while the value of the Property is determined to be $26,350.00, as stated in Schedules B and D filed by Debtor.

The Halmes Declaration also seeks to introduce evidence establishing the value of the asset. Though the *NADA* valuation is attached as an Exhibit, it is not properly authenticated. Furthermore, the Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 6, 2015.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Under the terms of the confirmed plan, the Creditor is provided for as a Class 4 claimant. As such, the plan provides that "[e]ntry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is then pending under chapter 13." Dckt. 5, § 3.15. This is further cause.

The court shall issue an order terminating and vacating the automatic stay to allow U.S. Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule

4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by U.S. Bank, N.A.("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a:
>
> (1) 2007 Moomba Outback, VIN No. xxxxC707;
>
> (2) 2007 Indmar 350 MPI Direct #137542; and
>
> (3) 2007 Boat Mate Tandem Axle, VIN No. xxxx3176
>
> ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.
>
> No other or additional relief is granted.

2. **15-22838-E-13 WILLIAM WATSON** **MOTION FOR RELIEF FROM**
EAT-1 **Pro se** **AUTOMATIC STAY**
4-21-15 [10]

WELLS FARGO BANK, N.A. VS.
CASE DISMISSED 04/27/2015

Final Ruling: No appearance at the May 19, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

The only relief sought in the motion is the termination of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). No annulment of the stay, confirmation that no stay existed or was terminated pursuant to 11 U.S.C. § 362(c)(3) or (4), or prospective relief pursuant to 11 U.S.C. § 362(d)(4).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

3. 15-20784-E-13 TERESA BRIZUELA **MOTION FOR RELIEF FROM**
TJS-1 Peter G. Macaluso **AUTOMATIC STAY**
4-17-15 [23]

PENNYMAC LOAN SERVICES, LLC
VS.

Final Ruling: No appearance at the May 19, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 17, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Pennymac Loan Services, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 220 Oak Avenue, Galt, California (the "Property"). Movant has provided the Declaration of Regina Chatman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Chatman Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of $3,421.41 in post-petition payments past due. The Declaration also provides evidence that there are 25 pre-petition payments in default, with a pre-petition arrearage of $13,645.90.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 29, 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $288,792.52 (including $241,166.52 secured by Movant's first deed of trust), as stated in the Chatman Declaration and Schedule D filed by Teresa Brizuela

("Debtor"). The value of the Property is determined to be $250,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim. Additionally, the Movant failed to state with particularity the grounds for attorney's fees nor did they provide any time sheets to justify any attorneys fees. Merely requesting attorney fees in the prayer of the Motion is improper under Fed. R. Bankr. P. 9013. FN.1.

FN.1. The request for attorneys' fees was just included in the prayer, with no allegation of the basis for fees or evidence of the amount of such reasonable fees. It is likely that the cost of conducting further fee allowance hearings, as one would do after a trial, will likely cost more for counsel's time and the court's time than for the actual motion for relief.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Pennymac Loan Services, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Pennymac Loan Services, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 220 Oak Avenue, Galt, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

4. 14-91565-E-11 RICHARD SINCLAIR — **MOTION FOR PROTECTIVE ORDER, OBJECTIONS TO SUBPOENA**
Pro se — **5-7-15 [188]**

Tentative Ruling: The Motion for Protective Order was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditors, and Office of the United States Trustee on May 11, 2015. By the court's calculation, 8 days' notice was provided.

The Motion for Protective Order was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, 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. At the hearing ----------.

The Motion for Protective Order is denied.

On May 7, 2015 a document titled Motion for "Protective Order, Objection to Subpoena" was filed. Dckt. 188. No Docket Control Number is provided for the Motion. L.B.R. 9014-1. No hearing time and date is stated on the face of the pleading. No Notice of Hearing for the Motion has been filed. The Certificate of Service states that above "motion" was served on Hilton Ryder, attorney for the creditor seeking to conduct the 2004 examination. Proof of Service, Dckt. 189.

In the upper left hand corner of the "motion" the following information is provided:

"RICHARD C. SINCLAIR, SBN: 068238

ATTORNEY AT LAW
P.O. Box 1628
Oakdale, CA 95361
TEL: (209) 840-7677
E-MAIL: rsinclairlaw@msn.com"

Dckt. 188. No information is provided as to the clients for whom Mr. Sinclair is serving as counsel. (Richard Sinclair, Debtor in Possession and Debtor in this bankruptcy case.)

The "motion" is actually a creature created by stitching together multiple pleadings, all single spaced, titled "Introduction" (four pages long), "Memorandum of Points and Authorities" (six pages long), "[Creditor's] Specific Bad Acts That Justify a Protective Order" (three pages long), and "Declaration of Richard C. Sinclair" (six pages long). Each of these "pleadings;" the motion, points and authorities, and declaration must be filed as separate documents with the court. L.B.R. 9004-1, Revised Guidelines for Preparation of Documents.

Most of the pleading titled "motion" consists of a 21 page, single spaced document constituting a long narrative alleging many "facts" which may, or may not, be in dispute in the bankruptcy case. Many go to the contention that the Debtor transferred property into trust and other persons, which transfers may be subject to the avoiding powers of the fiduciary Debtor in Possession or bankruptcy trustee, if one is appointed in this case. FN. 1. Arguing the merits of the underlying potential factual issues relating to the asserted transfers is beyond the scope of a request for a protective order. Merely because the Debtor states what he believes the facts are, that does not preclude the Creditor from conducting discovery.

FN.1. From the pleadings already presented to the court, the Debtor-in-Possession and this Creditor have been involved in a decades long death struggle, with the litigation spanning multiple cases, in both federal and state court, and includes a 66 day trial. Pleading practices in which the parties seek to argue "all of the issues" at every turn in not consistent with the requirements of federal court law and motion practice.

The Introduction-Points and Authorities-Bad Conduct portion of the pleading is signed "/s/ Richard Sinclair." No clients of Mr. Sinclair are identified as part of the signature block. The Declaration portion of the pleading is that of Richard Sinclair. No other person provides any testimony in support of the pleading.

In the second paragraph of the section of the pleading titled "Introduction," reference is made that a "Dr. Machado is concerned that [Creditor] will continue that policy to destroy Sinclair and his family." Dckt. 188 at 3. (From other proceedings in this case, the court is aware that a Dr. Machado is the Debtor's sister and is identified by Debtor as trustee of a trust and officer of corporations in which Debtor states he does not have an interest.)

The next paragraph states that "The debtor and Dr. Machado seek to restrain disclosure of those items;" making reference to one of the principals

of Creditor having been a "Stalker."

It is not clear that Dr. Machado is a party to this Pleading. On page six, the Pleading states "He asks for and the court should protect..." Id. The "he" being referenced is Richard Sinclair, the Debtor in Possession.

STANDING OF RICHARD SINCLAIR TO OBJECT TO DISCOVERY OF THIRD PARTY

As an initial point, Richard Sinclair, the Debtor in Possession, is not the subject of the 2004 Examination. Rather, it is a trust and other entities in which Mr. Sinclair asserts he has no interest. But it is Richard Sinclair who is requesting that discovery of these entities, in which he has no interest, should be prohibited. He does not have standing to litigate the rights of these third parties. See *In re S(3) Ltd.*, 242 B.R. 872 (Bankr. E.D. Va. 1999) (the burden is on the *party in which the information is being sought* to object to the discovery request as a trade secret)(emphasis added)

REQUESTED ITEMS TO BE EXCLUDED COULD INDICATE THAT 2004 EXAMINATION IS WARRANTED

To quote William Shakespear, "The lady doth protest too much, methinks." Hamlet, by William Shakespear, 1602. Though Richard Sinclair asserts he has no interest in the entities which are the subject of 2004 Examination, he vehemently protests that the 2004 Examination should proceed to develop evidence of whether he does, or does not, have any interests in those entities or the properties transferred into those entities.

On page 4 of the Pleading, Richard Sinclair, the Debtor in Possession, requests that the following be "protected:"

> 1. All studies that Sinclair Ranch has done - that does not determine ownership.
>
> 2. Andrew Katakis and his attorneys have a history of contacting those who have dealt with Richard Sinclair to negate his actions or to cause them to sue. He will contact those people to destroy Sinclair Ranch and then buy it for cheap.
>
> 3. All documents before November 24,2004 are more than 10 years and should be protected.
>
> 4. Through 2008, we were just seeking to cut the land ultimately into 60 five acre parcels. We received substantial objection from our neighbors. After that date, the Sinclair Ranch plan came into being. It is a protectable plan developed by the Sinclair family. In 2008, we submitted to Tuolumne County a proposed plan to cut into lots on 234 acres. Robert Sinclair did not participate with his 80 acres. CSERC and neighbors objected and that plan was dropped.
>
> 5. Since 2009, all loan applications and all emails to lenders and the County and all studies and parties took place to put into play the Sinclair Ranch Plan. It is Andrew Katakis

> method to begin to destroy everything that Sinclair develops, drive down the value, pick it up cheap and then restore the value. All activities since 2009 must be protected and avoid Katakis Destruction. The questions asked by Katakis are designed to get that information.
>
> 6. All personal notes.

Id. While the temporal request, those more than ten years older, may have merit, Richard Sinclair, the Debtor in Possession, clearly states that within the ten-year period,

A. "[W]e [which appears to include Richard Sinclair, the Debtor] were just seeking to cut the land ultimately into 60 five acre parcels.

B. "[W]e [which appears to include Richard Sinclair, the Debtor] received substantial objection from our neighbors. After that date, the Sinclair Ranch plan came into being. It is a protectable plan developed by the Sinclair family.

C. "In 2008, we [which appears to include Richard Sinclair, the Debtor] submitted to Tuolumne County a proposed plan to cut into lots on 234 acres."

D. "Since 2009, all loan applications and all emails to lenders and the County and all studies and parties took place to put into play the Sinclair Ranch Plan."

It appears that all of these "development documents" could have information which could be relevant to the ownership of the various properties and entities. Though claiming no interest, a group identified as "we," which appears to include Richard Sinclair, the Debtor, has been actively working to develop the properties.

This Pleading also states that Dr. Machado purchased some portion of the "Sinclair Ranch" in the Summer of 2014. *Id.* p. 6. In response to Question 10 on the Statement of Financial Affairs Debtor states under penalty of perjury that there were no transfers, other than in the ordinary course of business, during the two years immediately preceding the 2015 commencement of this bankruptcy case. The court cannot tell "what portion of the Sinclair Ranch" Dr. Machado was purchasing in 2014 - within two years of the commencement of this bankruptcy case.

For the Declaration portion of the Pleading provided by Richard Sinclair, the Debtor in Possession, much of his testimony is a recitation of what is required under the 2004 Examination subpoena. The balance of the "Declaration" is a recitation of the decades of battles between the parties, and why Richard Sinclair, the Debtor in Possession, thinks that Creditor and its principals have lied, cheated, and stolen. Other than trying to litigate past battles, the Declaration provides little evidence relevant to the present Pleading.

CREDITOR'S OBJECTION

Andrew Katakis, California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association ("Creditors") filed a response to the instant

Motion on May 14, 2015. Dckt. 195.

The Creditors first assert that the Debtor-in-Possession failed to comply with the court's order requiring that the Debtor-in-Possession file and serve written objections, with particularity, to the requested documents or matters to be addressed. Dckt. 173 and 175. The Creditors asserts that the Debtor-in-Possession merely made generalized objections and then rehashed arguments unrelated to the pending 2004 examinations.

Before arguing the merits of the objections, the Creditor states that the Debtor-in-Possession has only objected to document requests 13-20 for Sun-One, LLC, Dustykay, LLC and Golden Hills, Chinese Camp, LLC. The Creditor notes that the Debtor-in-Possession's Motion only discusses those items and that their response will be limited to those items specified in the Debtor-in-Possession's Motion. These items are:

> 13. Any and all DOCUMENTS evidencing or constituting any bills, invoices, or statements for property taxes or any Utilities for Sinclair Ranch (or any part thereof) at any time from 2007 to the present.
>
> 14. Any and all DOCUMENTS evidencing or referring to any payments for property taxes or any Utilities for Sinclair Ranch (or any part thereof) at any time from 2007 to the present.
>
> 15. Any and all DOCUMENTS sufficient to Identify any tenant on Sinclair Ranch (or any part thereof) at any time from 2007 to the present.
>
> 16. Any and all DOCUMENTS evidencing, discussing or referring to any terms, conditions, agreements, or leases under which any tenant occupied any portion of Sinclair Ranch (or any part thereof) at any time from 2007 to the present, including any amendments thereto.
>
> 17. Any and all DOCUMENTS evidencing, discussing or referring to the payment or receipt of any rent, security deposits, lease payment, or other deposit or sum or amount paid in connection with any tendency on Sinclair Ranch (or any part thereof) at any time from 2007 to the present.
>
> 18. Any and all appraisals of the Sinclair Ranch (or any part thereof).
>
> 19. Any and all DOCUMENTS evidencing, discussing or referring to: the engagement or hiring of any Consultants by any of the Sinclair Related Parties, to perform work or services relating to the Sinclair Ranch (or any part thereof; any work or services provided as part of such engagement; any oral, written or electronic communications between any such Consultants and any of the Sinclair Related Parties relating to any such work or services; or any fees or charges of such Consultants for such work or services, including without limitation any invoices or statements for such work or

services and evidence of any payments thereof.

20. Any and all DOCUMENTS evidencing, discussing or referring any oral, written or electronic communications between any of the Sinclair Related Parties and any lender, mortgage company, loan broker, finance company or source of funding, relating to any loan or possible loan to any of the Sinclair Related Parties for use in connection with the Sinclair Ranch (or any parl thereof), such as for any development of or improvements to the Sinclair Ranch (or any parl thereof).

21. Any and all DOCUMENTS evidencing, discussing or referring loans or financing (including without limitation, construction, bridge, interim, take out or permanent financing) sought or obtained by any of the Sinclair Related Parties, for use in connection with the Sinclair Ranch (or any part thereof, such as for any development of, improvements to or marketing or advertising of the Sinclair Ranch (or any part thereof), including without limitation, prequalification letters, loan commitments, loan applications, evidence of income (such as tax returns or financial statements), any loan agreements, security agreements, pledges, personal guaranties and any receipt of funds and the uses made thereof.

22. Any and all DOCUMENTS evidencing, discussing or referring to any oral, written or electronic communications between any of the Sinclair Related Parties and any governmental agency, department, commission or board relating to the ownership or development of the Sinclair Ranch (or any part thereof) at any time from 2003 to the Present.

23. Any and all feasibility studies, groundwater studies, surface water studies, projections, pro forms, business plans, marketing plans, or development plans relating to the Sinclair Ranch (or any part thereof), at any time from 2003 to the present.

24. Any and all title reports, preliminary title reports, title insurance policies, chain of title reports, escrow instructions, closing statements, or agreements relating to the Sinclair Ranch (or any part thereof), at any time from 2003 to the present.

25. Any and all DOCUMENTS evidencing, discussing or referring to any oral, written or electronic communications between any of the Sinclair Related Parties on the one hand, and any title company or escrow company on the other hand, referring or relating to any escrow involving the Sinclair Ranch (or any part thereof) regardless of whether such escrow closed, did not close or is currently open.

26. Any and all DOCUMENTS evidencing any general plan amendments, zoning changes, vesting tentative maps, vesting tentative subdivision maps, parcel maps, or other entitlements, relating to the Sinclair Ranch (or any part

thereof), obtained at any time from 2003 to the present.

27. All applications for building permits, and any building permits issued in responses thereto, for the Sinclair Ranch (or any part thereof).

28. Any listings of amounts paid or incurred in connection with the operation or development of the Sinclair Ranch (or any part thereof), at any time from 2003 to the present.

29. Any and all policies of property insurance for the Sinclair Ranch (or any part thereof) in effect al any time from 2003 to the present, all bills or invoices for premiums for such insurance, and any and all DOCUMENTS evidencing, referring or relating to any payments of premiums for such insurance or any claims made on such insurance.

30. Any and all DOCUMENTS evidencing, discussing or referring to the ownership, control or content of the website www.sinclairrranch.com, as well any contacts, questions, or inquiries received through such website, at any time from 2003 to the present.

Dckt. 197, Exhibits B, C, and D.

The Creditor first argue that the Debtor-in-Possession's trade secret objections are unfounded. The Creditor asserts that Debtor-in-Possession merely makes generalized statements that emails, business plans, dealings with lenders, etc. relating to Sinclair Ranch are trade secrets. Of the items cited by the Debtor-in-Possession in his Motion, the Creditors argue that none of the items are trade secrets and that the Debtor-in-Possession failed to make any specific arguments to show that these items are, in fact, trade secrets.

The Creditor next asserts that even if a few of the above requested documents are trade secrets, they should be produced on a limited basis. The Creditor argues that for the documents that may constitute a trade secret, the court could issue a confidentiality order limiting the use of the information or the court could issue a limited protective order and designate a custodian for all the confidential documents.

As to the necessity of the documents, the Creditors argue that all the documents requested encompass legitimate areas of inquiry. The Creditors state that the information is meant to determine if there have been any fraudulent transfers or conveyances made by the Debtor-in-Possession. The Creditors point to the Debtor-in-Possession's admissions made in previous pleadings that he has made several transfers of the property of Sinclair Ranch between 2003 and 2014. The Creditors assert that the documents requested are meant to determine the current ownership interests in the Sinclair Ranch, especially since the Debtor-in-Possession had not previously disclosed the transfers to his brother and his sister or the $193,000,000.00 alleged to have been received in tentative commitments for the Sinclair Ranch plan.

The remaining section of the Creditors' opposition, titled "The Debtor Continues to Reargue and Re-Litigate Matters Previously and Unsuccessfully Argued in the Present Action, the State Court Action and the RICO Case," do not

address the merits of the Debtor-in-Possession's evidentiary objections. Instead, this section addresses the Debtor-in-Possession's arguments in the Motion over the prior state and federal cases. These arguments do not relate to the current Motion.

APPLICABLE LAW

Fed. R. Bankr. P. 2004, entitled "Examinations," provides for the following:

> (a) Examination on motion
>
> On motion of any party in interest, the court may order the examination of any entity.
>
> (b) Scope of examination
>
> The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.
>
> (c) Compelling attendance and production of documents
>
> The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.
>
> (d) Time and place of examination of debtor
>
> The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.
>
> (e) Mileage
>
> An entity other than a debtor shall not be required to attend

> as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

The scope of a 2004 examination is "unfettered and broad" and has been compared to "a fishing exhibition." *See In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Cankr. D. Mass. 1983). A Rule 2004 examination allows for the discovery or assets and "unearthing frauds." Id.

It has been well established that Fed. R. Civ. P. 26(c), which governs protective orders in adversary proceedings and contested matters, is inapplicable to Fed. R. Bankr. P. 2004 examinations. *See In re Handy Andy Home Imp. Centers, Inc.*, 199 B.R. 376, 380 (Bankr. N.D. Ill. 1996). If the information the parties seek to protect is of secret, confidential, scandalous, or defamatory nature, Fed. R. Bankr. P. 9018 permits the court to enter a protective order. *See id.*

Fed. R. Bankr. P. 9018 states:

> On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

The burden of proof is on the party seeking a protective order under Fed. R. Bankr. P. 9018. *See In re Robert Landau Assocs., Inc.*, 50 B.R. 670 (Bankr. S.D.N.Y. 1985).

Furthermore, Fed. R. Bankr. P. 9016 incorporates Fed. R. Civ. P. 45 into cases arising under Title 11. As such, pursuant to Fed. R. Civ. P. 45, a party may claim privilege in information subpoenaed. Specifically, Fed. R. Civ. P. 45 provides:

> (e)(2) Claiming Privilege or Protection.
>
> > (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
> >
> > (I) expressly make the claim; and

> (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

The entity resisting discovery has the burden to establish that the information sought is a trade secret, confidential, or otherwise not subject to disclosure. *In re S(3) Ltd.*, 242 B.R. 872 (Bankr. E.D. Va. 1999). Once the entity makes a showing of privilege, the burden shifts to the party seeking the information to show that the information is relevant and necessary. *Id.*

DISCUSSION

Richard Sinclair, the Debtor, chose to voluntarily file this Chapter 11 case. He has invoked the protections of the Bankruptcy Code, as well as subjecting himself and those who have chosen to deal with him to the obligations that go with that. Bankruptcy can be a very financially invasive process. Whether Richard Sinclair, the Debtor, appreciated that when he chose to commence the case, or if he was seduced by the automatic stay and his prior erroneous belief that a bankruptcy judge could vacate orders issued by state court judges and U.S. District Court judges may never be known.

But, Richard Sinclair, the Debtor in Possession, in various pleadings and hearings has stated that properties and interests have been transferred by him to family members and other insiders. While Mr. Sinclair has his understanding of the facts and the conclusions he draws therefrom, his personal findings of fact are not determinative.

Further, it is clear from this Pleading that it is Richard Sinclair, the Debtor in Possession, who is seeking the relief to protect the persons and properties in which he has no interest from providing the information required in a 2004 Examination. In the six months of this bankruptcy case preceding this Pleading, Dr. Machado has never appeared in court. Dr. Machado and the other entities in which Richard Sinclair, the Debtor in Possession, states he has no interest have not appeared and been represented by any attorney to protect their interests, other than possibly Richard Sinclair, as the fiduciary Debtor in Possession. The court is not confident that Dr. Machado and these other entities, to the extent that they actually have property in which Richard Sinclair, the Debtor, and now the bankruptcy estate does or does not have an interest, are aware of these proceedings, the representations being made, and Richard Sinclair, the Debtor in Possession, is effecting what are allegedly their rights.

Also, as noted supra, the Debtor-in-Possession may not even have standing to object to any of the information sought since the information is being sought from the third-party entities and not the Debtor-in-Possession personally. As made clear by Fed. R. Bankr. P. 9016, which incorporates Fed. R. Civ. P. 45, it is the party who is being subpoenaed who has the burden of showing that the information is privileged – not an independent third party. The Creditors have issued subpoenas as to Sun-One, LLC, Dustykay, LLC and Golden Hills, Chinese Camp, LLC. Since the document requests are not to the Debtor-in-Possession personally, the Debtor-in-Possession does not have standing to state that they are trade secrets – it is for these entities to

object. The Debtor-in-Possession is not purporting to be the attorney for these entities.

Possibly, if Dr. Machado and the various other entities were represented by independent attorneys, and not by Richard Sinclair, the Debtor in Possession fiduciary of the bankruptcy estate, who is obligated to investigate the identified transfers and avoid such transfers as appropriate, this 2004 Examination process could be quickly resolved. Even what is normally a relatively simple process for conducting a 2004 examination is beginning to take on the stench of the decades long battles between Richard Sinclair, pre-petition and now as Debtor in Possession, and this Creditor.

Reviewing the items that the Debtor-in-Possession seeks a protective order on do not appear to contain any trade secrets that would prejudice the Debtor-in-Possession or Sinclair Ranch. As has been clear from the plethora of pleadings and back-and-forth with the parties, the interests in the Sinclair Ranch is continually being developed, with the Debtor-in-Possession periodically revealing more and more transfers of the property in the past decade. The Debtor-in-Possession insists in the Motion that the documents requested do not aid the Creditors in determining the actual ownership interests. However, given this continuing piecemeal reveal of the ownership interests and the failure of the Debtor-in-Possession to plead specifics as to which portions of any of the documents is a true trade secret, the court does not find that any of the requested document productions are trade secrets that would justify a protective order.

The Debtor-in-Possession string citing to cases concerning protective orders and then rehashes the contentious and extensive litigation history of the parties as grounds for the relief sought. The court is not persuaded by this form of argument, nor does it create grounds to justify this court issuing a protective order. Even construing the Motion under Fed. R. Bankr. P. 9018, the Debtor-in-Possession has not pleaded any facts that raise to the level to show that the information sought is trade secret or that it somehow defames the Debtor-in-Possession or contains scandalous material. The Debtor-in-Possession desires the court to take statements such as “Our present plan is a trade secret and one that disclosure would damage” or conclusive statements as to the ownership of the property. However, as seen in the Debtor-in-Possession’s pleadings, the ownership interests in the property is not as cut and dry as the Debtor-in-Possession attempts to represent.

Unlike discovery in non-bankruptcy civil matters, the Rule 2004 examination is much broader. As courts have noted, a 2004 examination can equate to a “fishing expedition” relating to conduct of the debtor, rights of the bankruptcy estate and property (including potential property) of the bankruptcy estate. In the instant case, given the history of the parties and the complicated ownership transactions concerning the property, the documents requested all seem to be for the purpose of uncovering the true ownership interests of the property as well as to determine if any of the alleged transfers were fraudulent or improper. As the Debtor-in-Possession pointed out in his pleadings, there have been numerous transfers, partial transfers, and sales, which the Creditors and the court will need to know to determine if the bankruptcy estate and Debtor-in-Possession have any remaining interests.

While this court cannot know what has transpired in the District Court, it assures the parties that dilatory conduct, abusive conduct, abuse of the

federal judicial process, abuse of the parties in this case and third-parties, and failure to diligently and properly prosecute the case, claims, and interest will not be tolerated. In enacting the Bankruptcy Code and providing for the exercise of federal judicial process in bankruptcy cases and related to proceedings, Congress did all parties a great favor. Bankruptcy judges are dedicated to have their sole focus on bankruptcy cases, proceedings arising in the bankruptcy case, and matters related to the bankruptcy case. Bankruptcy judges' attention is not diverted by criminal cases, family law cases, immigration cases, prisoner writ of habeas corpus matters, Social Security claims, and the like. The debtor, creditors, and all parties in interest have the right to, and will so have, their matters promptly determined as provided under the Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure.

CONCLUSION

Richard Sinclair, the Debtor in Possession, and Dr. Machado, to the extent that she is a party to this Motion, have not shown proper grounds to limit the requested 2004 Examination of third-parties Dr. Machado and the other entities (in which Richard Sinclair asserts he has no interest and no interest in the properties they own). In fact, the Debtor-in-Possession's Motion seems to only seek protection as to document production for Sun-One, LLC, Dustykay, LLC and Golden Hills, Chinese Camp, LLC and not himself nor Dr. Machado.

To the extent that Richard Sinclair, the fiduciary Debtor in Possession, is representing these third-parties, they have failed to show proper grounds for limiting the 2004 Examinations. Merely because Richard Sinclair asserts that the Creditor does not need to know the information of the dealings and transactions of these entities to which he states he has been involved (the "we" reference in the Pleading) until it is proven that the he has interests in the entities and properties does not determine the proper scope of the 2004 Examination. These activities, and the documents relating thereto, may well provide probative, credible evidence, or lead to such evidence, on the issue of whether Richard Sinclair, the Debtor, had interests in the properties and entities, which would now make those interests property of the bankruptcy estate.

Therefore, the Motion for Protective Order is denied, with the one exception stated below.

The court will consider whether the following item(s), or some portion thereof, should be excluded from the current 2004 examination, subject to further order:

> "23. Any and all feasibility studies, groundwater studies, surface water studies, projections, pro forms, business plans, marketing plans, or development plans relating to the Sinclair Ranch (or any part thereof), at any time from 2003 to the present."

The court will review, at the time of the 2004 examinations, the documents brought to the 2004 Examination to determine whether any such documents, or parts thereof, should properly be excluded from the 2004 examination due to it having confidential business information outside the scope of issues relating

to the transfers, ownership of the property, interests in the property, interests in any entities claiming to own the property, or other rights or interests of the bankruptcy estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Protective Order filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.
>
> **IT IS FURTHER ORDERED** that the court will consider, after conducting an in camera review, of any documents produced in the following category:
>
> > "23. Any and all feasibility studies, groundwater studies, surface water studies, projections, pro forms, business plans, marketing plans, or development plans relating to the Sinclair Ranch (or any part thereof), at any time from 2003 to the present;"
>
> to consider only the issue of whether such documents, or any portions thereof, should properly be excluded from the current 2004 Examinations based on it containing confidential business information which does not relate to any items within the scope of the 2004 Examination, including, relating to the transfers of the property, ownership of the property, interests in the property, interests in any entities claiming to own the property, or other rights or interests of the bankruptcy estate.
>
> The reservation of this one issue does not excuse any party physically bringing all such documents at the appointed time for the 2004 Examination and making such objection or claim that the documents, or portion thereof, should properly be excluded from the current 2004 Examination.