UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 15, 2016 at 10:00 a.m.

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

1, 2, 4, 6, 7, 8, 16, 17

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. 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 SEPTEMBER 12, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 29, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 6, 2016. 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. 16-23907-A-7 MICHELLE HENDERSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JBC-1 — 7-29-16 [20]
VIMAL SINGH VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Vimal Singh, seeks relief from the automatic stay as to real property in Sacramento, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On May 23, 2016, the debtor filed a chapter 7 case (case no. 16-23351). But, the court dismissed that case on June 3, 2016 due to the debtor's failure to timely file documents. The debtor filed the instant case on June 16, 2016. The prior case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on July 16, 2016, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on July 16, 2016, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

2. 14-24008-A-7 CALVIN CHANG — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 7-22-16 [43]
DITECH FINANCIAL, L.L.C. 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, Ditech Financial, L.L.C., seeks relief from the automatic stay as to real property in Davis, California.

Given the entry of the debtor's discharge on August 4, 2014, 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 $207,000 and it is encumbered by claims totaling approximately $207,349. The movant's deed is in first priority position and secures a claim of approximately $35,053.

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.

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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in

connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.

3.	13-35110-A-7 SSA-3	MARIO/BRISA LIMA	MOTION TO SELL 7-22-16 [36]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $47,500 the estate's one-half interest in real property in Stockton, California to debtor Brisa Lima. The debtors own 50% interest in the property. The other 50% interest is owned by Mrs. Lima's parents. The property has a scheduled value of $100,000, subject to a single mortgage in the amount of approximately $23,914.

The sale is "as is," "where is" and subject to all encumbrances.

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 sufficient proceeds to pay a 100% dividend to unsecured creditors. 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.	16-20912-A-11 PCB-2	SEAN SUH'S CARE HOMES, INC.	MOTION TO EXTEND TIME AND EXCLUSIVITY PERIOD O.S.T. 8-5-16 [78]

Tentative Ruling: The motion will be granted.

The debtor moves for extension of: exclusivity to file a chapter 11 plan and the time to file a chapter 11 plan, as set by the court, by 60 days, from August 16, 2016 through October 15, 2016. The court's March 22, 2016 status conference order directed the debtor to file a pln no later than August 16, 2016. Docket 43 at 1.

11 U.S.C. § 1121(e) provides that "*[i]n a small business case-*

"*(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—*
(A) extended as provided by this subsection, after notice and a hearing; or
(B) the court, for cause, orders otherwise;

"*(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and*

"*(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129 (e) within which the plan shall be confirmed, may be extended only if—*
(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;
(B) a new deadline is imposed at the time the extension is granted; and
(C) the order extending time is signed before the existing deadline has expired."

In determining whether to extend exclusivity, courts have relied on the following factors:

(1) size of debtor and difficulty of formulating plan of reorganization for large debtor with complex financial structure;

(2) need of creditors' committee to negotiate with debtor;

(3) whether there has been good faith progress towards reorganization;

(4) existence of unresolved contingency;

(5) fact that debtor is paying bills as they become due;

(6) length of any previous extensions of exclusivity;

(7) breakdowns in plan negotiations, such that continuation of debtor's exclusivity periods would give debtor unfair bargaining position over creditors;

(8) any failure by debtor to resolve fundamental reorganization matters essential to its survival; and

(9) any gross mismanagement of debtor.

See Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.), 292 B.R. 639, 643-44 (B.A.P. 8th Cir. 2003). Not all factors are relevant in every bankruptcy case. Id.

This is a small business case. See Docket No. 1 at 1. This case was filed on February 18, 2016. The debtor seeks the extension in an effort to conduct a mediation with the estate's largest unsecured claimant (approximately 60% of total unsecured claims), Mr. DeLa Cruz, resolving pending state law claims asserted by the claimant against the debtor. "Debtor contends that the DeLa Cruz claim is objectionable, and Debtor will object to it unless agreement can be reached." It also contends that "the disposition of DeLa Cruz's claim will have significant impact on the terms of the reorganization plan to be proposed by Debtor."

As the debtor is seeking the extension in order to attempt to settle the largest unsecured claim against the estate, the court will extend the deadlines as requested.

However, the debtor should note that the plan confirmation and claim objection processes are separate and independent. Nothing requires the debtor to have concluded the claim objection process prior to confirming a plan. And, the court will not permit the debtor to intertwine plan confirmation with claim objection. In other words, if the debtor is unsuccessful at settling with Mr. DeLa Cruz, the court expects to see a timely filed plan providing for the eventuality that the debtor is defeated on account of Mr. DeLa Cruz's pending claims.

5.	15-29136-A-12 MAS-3	P&M SAMRA LAND INVESTMENTS LLC	MOTION TO COMPEL O.S.T. 7-29-16 [231]

Tentative Ruling: The motion will be granted.

Ag-Seeds Unlimited, a creditor of the estate, seeks to compel the debtor to produce documents in connection with a Rule 2004 examination, and asks for the issuance of joint and several sanctions of $1,985 against the debtor and its counsel.

Ag-Seeds filed a motion for a Rule 2004 examination and production of documents relating to the debtor on March 22, 2016. Docket 56. The debtor and its counsel were served with Ag's request for examination and document production on March 22, 2016. Docket 58. The court entered an order on March 23, 2016, authorizing Ag "to examine [the debtor] pursuant to FRBP 2004(a) on the subjects specified in FRBP 2004(b)" and "[t]hat pursuant to FED. R. BANKR. P. 2004(c), attendance for examination and production of documentary evidence may be compelled in the manner provided in FRBP 9016 for the attendance of witnesses at a hearing or trial." Docket 59 at 1.

On May 13, 2016, Ag filed a motion to compel, similar to the instant one, seeking another order directing the debtor to appear at a Rule 2004 examination and produce documents, and asking for sanctions, as the debtor had refused the examination and production of documents. Docket 119. The court held a hearing on that motion on June 13, 2016, making the following findings:

"*The debtor's refusal of to bee [sic] examined and to produce the documents was in bad faith as the debtor was notified of the court March 23 order (Docket 64) and the debtor did nothing to seek a protective order. Indeed, the debtor actually promised compliance with the order. Docket 122, Ex. C. The debtor then reneged on the promise by changing dates, asserting unavailability. Id. After a back and forth on dates and availability, the debtor's counsel suggested to Ag's counsel to 'take it to [the court].'*"

"*From the foregoing actions by the debtor and its counsel, the court infers bad faith on the part of the debtor and its counsel, Noel Knight, involving ill will or, at the least, an affirmative attempt to violate the law – violation of the court's March 23 order.*"

Docket 152.

As a result, the court granted Ag's motion to compel:

- ordering the debtor to appear for a Rule 2004 examination on June 20, 2016,

- ordering the debtor to produce no later than the close of business on June 17, 2016 "without objection all documents requested in the subpoena previously

served by Ag-Seeds on the Debtor . . . attached hereto as Exhibit B," and

- directed the debtor and its counsel, Noel Knight, to jointly and severally pay sanctions to Ag in the amount of $875 no later than the close of business on June 17, 2016.

Docket 159, June 13, 2016 Order.

Without any prior notice to Ag, the debtor did not produce the documents in Ag's subpoena by June 17, the debtor did not pay the ordered sanctions by June 17, and the debtor did not appear for the Rule 2004 examination on June 20. Ag's counsel spent two hours preparing for the Rule 2004 examination, spent $235 on reporter fees for the June 20 examination, and spent another one and one-half hours conferring with the debtor's counsel about another date for the document production and examinataion, and payment of sanctions. The hourly rate for Ag's counsel is $350. Docket 233; Docket 188.

After further "negotiations," the debtor agreed to appear for a Rule 2004 examination on July 15, 25 days after the court ordered June 20 examination. Paul Samra appeared on behalf of the debtor at the July 15 examination but without the debtor having produced the documents in Ag's subpoena.

This court has inherent authority to impose sanctions. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). The authority covers a broad range of conduct that goes beyond the violation of an order. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009). While it may be used to impose civil contempt sanctions, this inherent authority may be applied without resorting to contempt proceedings, but only so long as the sanctions are intended to coerce compliance or compensate. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that the inherent sanction authority, and civil penalties in general, must either be compensatory in nature or designed to coerce compliance); see also Miller v. Cardinale (In re Deville), 280 B.R. 483, 495 (B.A.P. 9th Cir. 2002) (citing and discussing Chambers at 42-51 and Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278 (9th Cir. 1996)).

Chambers at 43 holds that the inherent sanction authority includes power to control admission to the court's bar and to discipline attorneys who appear before the court. See also Lehtinen at 1059 (reminding the suspended attorney that attorney disciplinary proceedings are neither civil nor criminal in nature and are not for the purpose of punishing but to maintain the integrity of the courts and the profession).

To exercise its inherent authority to sanction, a court must make explicit finding of bad faith or willful conduct, which is conduct more egregious than mere negligence or recklessness. Lehtinen at 1058.

Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). The misrepresentation of facts, the unfair manipulation of the Bankruptcy Code, the history of filings and dismissals, and the presence of egregious behavior are all factors to be considered in determining whether bad faith exists." Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

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).

A violation of an order is willful when the respondent knows of the order and intentionally performs the action violating it. See Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002).

The debtor and his counsel, Noel Knight, have once again violated an order of this court pertaining to Ag's March 22 request for Rule 2004 examination and document production. The debtor and its counsel did the same with the court's June 13 order as they had done with the court's March 23 order. See Docket 152 (making findings relating to the debtor's violations of the March 23 order). The debtor promised compliance with the June 13 order but then failed to actually comply.

At the June 13 hearing pursuant to which that order was entered, the debtor promised compliance with the terms of the ruling, which established the June 17 and June 20 dates for document production, payment of the sanctions, and the Rule 2004 examination. As the court recalls, the debtor's counsel even agreed with the court's ruling posted for the June 13 hearing.

Noel Knight and his client have once again blatantly disobeyed a clear and unambiguous order of the court by failing to satisfy the June 17 and June 20 requirements. The debtor did not produce the documents by the June 17 deadline, did not pay the sanctions based on Ag's prior motion to compel by the June 17 deadline, and did not appear on June 20 for the examination.

The debtor did not comply with the court's June 13 order even after Ag gave it another opportunity to appear for a Rule 2004 examination and produce documents.

At the July 15 examination, Paul Samra testified as the debtor's principal that he had never seen Ag's subpoena and thus he made no effort to gather the documents sought by the subpoena. Docket 216 at 10 (docket pages). Mr. Samra provided evasive responses to many questions.

Paul Samra did not provide details about the debtor's purchase of its sole real property, stating "I don't have those details with me." Docket 216 at 9. Paul Samra did not answer how much an individual that financed the purchase of the real property, John Roathe, loaned to the debtor, stating "I don't have those details." Docket 216 at 10-11. Paul Samra claimed not to know what is " seller carryback financing." Docket 216 at 11. Paul Samra did not explain the discrepancy between his claim that the debtor's real property has 162 acres, whereas an appraisal the debtor produced of the property states that the acreage is only 145.71 acres. Docket 216 at 46.

Paul Samra refused to answer questions about Stone Lake Farm Enterprises, Inc., even though Stone Lake and the debtor are managed and owned by Paul Samra and Stone Lake will be contributing an indispensable sum of money toward the debtor's anticipated chapter 12 plan operations. Docket 216 at 37-38. He also denied knowing of any agreements between the debtor and Stone Lake. Docket 216 at 86.

Paul Samra did not identify the cost of the seed for the corn planted on the property, even though he is the one who admittedly acquired the seed. Docket 216 at 49. He did not identify when the debtor purchased the corn seed. Docket 216 at 49-50. He did not identify the vendor who sold him the seed. Docket 216 at 50. He did not identify the cost of and the vendor who sold him

the organic fertilizer for the corn. Docket 216 at 50-51. He did not identify the anticipated cost of irrigation—even at an approximation, from whom the debtor purchased crop insurance, how much was the crop insurance, or where the debtor's records were kept. Docket 216 at 52-54.

He did not identify the cost of land preparation. Docket 216 at 54-55. He did not give any details about the debtor's certification as an organic farmer. Docket 216 at 84-86.

Despite Paul Samra's numerous references to documents he would need to consult to answer the creditors' basic questions, "Debtor has produced no bank statements, no cancelled checks, no check registers, no balance sheets, no Quicken/Quickbook records, in essence, nothing of the business records that a debtor in business would normally keep[,] . . . the debtor has produced no documents relating to any of its [four] secured loans other than documents relating to the loan from Socotra." Docket 233 at 2; see also Docket 188.

At the July 15 examination, Paul Samra denied knowing nearly all the information sought by the questions posed from Ag's counsel. The examination was worthless and a waste of time. Mr. Samra denied knowing even basic information about the debtor's operations.

In every instance above, where Mr. Samra did not provide information sought by a question, he denied knowing the information. Often, he would say that he must consult documents to know the information, even though the questions mostly sought general and basic information about the debtor's affairs.

Paul Samra cannot be the manager and owner of the debtor while not knowing virtually anything about the debtor's basic operations, including the planting of its flagship crop, organic corn. Not knowing anything about the debtor's organic corn operations is unbelievable as Mr. Samra is the debtor's manager and the planting of the corn is the cornerstone of the debtor's chapter 12 plan.

Paul Samra did not even identify the location of the debtor's books and records. Docket 216 at 52-54. Whether this was just another attempt to block discovery or he genuinely did not know where the debtor's books and records are, it is clear that the debtor has done virtually nothing to respond to this subpoena as ordered by the court. Paul Samra admitted that he had never seen Ag's subpoena prior to July 15 and thus the debtor made no effort to gather the documents sought by the subpoena. Docket 216 at 10.

Nor has the debtor sought a protective order from the court. When a court enters a valid order, the order must be complied with. The only exception to compliance is another order, a protective order. The debtor is represented by counsel and has no reason to have been mistaken about the required compliance with the court's June 13 order.

Both the debtor and its counsel were aware of the court's June 13 order. The debtor's failure to:

- produce documents on June 17;
- pay the sanctions by June 17—which were assessed jointly and severally against both the debtor and its counsel;
- appear at the June 20 examination;
- produce the requested bank statements, cancelled checks, check registers, balance sheets, Quicken/Quickbook records, documents relating to all its four

loans secured by the real property; and
- provide the basic information asked for by Ag at the July 15 examination of Paul Samra,

amounts to bad faith and willful violation of the court's June 13 order by both the debtor and its counsel, Noel Knight. As the debtor admitted at the July 15 examination to not making an effort even to gather the documents requested by the subpoena, it is both the debtor and its counsel that should be held accountable for the violations. The debtor's counsel, Noel Knight, had communicated with Ag's counsel about the subpoena for several months prior to the July 15 examination. The knowledge of the subpoena by Mr. Knight is imputed on the debtor, as Mr. Knight is the debtor's counsel and agent in this case. This is consistent with Paul Samra's deferring to Mr. Knight multiple times during the July 15 examination, even on basic information about the debtor's affairs, such as the certification of the debtor to farm organic crop. See, e.g., Docket 216 at 86.

Accordingly, the debtor and its counsel are both in contempt of court. The court will award the requested $1,985 in sanctions to Ag jointly and severally against both the debtor and its counsel, Noel Knight. The sanctions represent five hours of work performed by Ag's counsel at an hourly rate of $350 and $235 of reporter fees for the June 20 examination. The five hours of work consist of: two hours of Ag's counsel preparing for the ordered June 20 Rule 2004 examination, one and one-half hours of Ag's counsel conferring with the debtor's counsel about another date for the document production, payment of sanctions and examination, and one and one-half hours of Ag's counsel preparing and prosecuting the instant motion.

The sought sanctions are reasonable and are calculated to compensate Ag for its loss due to the debtor's failure to comply with court orders.

It was reasonable for Ag's counsel to prepare for the June 20 examination of the debtor, as he did not receive prior notice of the debtor's plan not to appear at the examination. Given the long history between the parties and the protracted litigation in this case, two hours to prepare for the June 20 examination was reasonable.

Given the debtor's and his counsel's history of failure to cooperate in discovery, as outlined by this motion, it was reasonable for Ag's counsel to spend one and one-half hours conferring with the debtor's counsel about another examination and document production date, after the debtor had already violated the June 13 order.

The continued failure of the debtor to produce documents requested by Ag's March 22 subpoena and lack of disclosure of basic information about the debtor's operations by Paul Samra at the July 15 examination made the filing of this motion necessary. This motion and supporting declaration are five and one-half pages long, in addition to a notice of hearing, exhibits and a request for order shortening time. Dockets 230-35. The $525 representing one and one-half hours for the preparation of those pleadings is reasonable.

The $1,985 in sanctions shall be paid by a cashier check directly to Ag's counsel, Mark Serlin, no later than August 22, 2016. Mr. Serlin must receive the payment no later than August 22.

The court will order the debtor once again to produce all documents requested by Ag's March 22, 2016 subpoena, without objections, including, without

limitation, the debtor's bank statements, cancelled checks, check registers, balance sheets, Quicken/Quickbook records, and all documents relating to all four loans secured by the debtor's real property. Such documents shall be produced to Ag's counsel, Mark Serlin, at his office, no later than the close of business on Thursday, August 18, 2016.

In the event the documents are not produced to Ag's counsel by August 18, the court assesses further sanctions — calculated to coerce future compliance — jointly and severally against both the debtor and Mr. Knight, in the amount of $300 a day, for every day the documents are not produced after August 18.

The court will also order Paul Samra to appear for a further Rule 2004 examination no later than August 29, 2016, to provide Ag with the information he failed to disclose at the July 15 examination, on the basis that he did not know.

In the event Paul Samra does not make himself available prior to August 29 for another Rule 2004 examination, at a time also convenient for Ag's counsel, the court assesses further sanctions — calculated to coerce future compliance — jointly and severally against both the debtor and Noel Knight, in the amount of $200 a day, for every day Paul Samra does not make himself available for a further examination after August 29.

Further, the court will issue an order to show cause for why the debtor and Noel Knight should not be additionally sanctioned for their misconduct before this court. The hearing on this order shall be on September 6, 2015 at 10:00 a.m. The debtor and Mr. Knight may file any papers in connection with the order no later than August 22, 2016.

Next, the debtor's August 1, 2016 "reply" to Ag's March 22, 2016 motion for Rule 2004 examination and production of documents shall be stricken for two reasons. Docket 238. The record on Ag's March 22 motion has been closed since the court entered an order on the motion on March 23. Dockets 56 & 59. When an order is entered, the record is closed and the debtor's only remedy is to seek another order from the court — in this case, a protective order. The debtor has not sought a protective order from the court and the court will not permit further briefing on a motion that has been already adjudicated.

The August 1 "reply" will be stricken also because it is devoid of any evidence establishing its factual assertions — such as a declaration or affidavit, and it also lacks the attachments referenced in the body of the pleading, such as the bank statements. Although it states that the bank statements are "enclosed," there are no attachments or enclosures to the pleading. Docket 238.

Finally, the debtor's opposition to this motion is unhelpful, non-responsive and contemptuous. Docket 237.

It is not supported by any evidence—much less admissible evidence such as a declaration.

It does not deny that the debtor has not produced all documents requested by Ag's subpoena — it says that the debtor provided "*most all* the documents in its possession." Docket 237 at 2.

It does not deny having the documents requested by Ag's subpoena and still not received by Ag.

It suggests that the debtor's due diligence in locating and producing further documents under Ag's subpoena is being hampered by the filing of this motion. Docket 237 at 2. The court disagrees. The debtor has had since approximately March 23, 2016 to respond to the document production request.

It downplays the misconduct addressed in this motion by mocking Ag's counsel for having "fine-tuned the motion-for-sanctions mechanism as a profit center for his firm." Docket 237 at 2.

It claims that the debtor produced to Ag "whatever *it believed* to be responsive," without regard for what was actually ordered to be produced. Docket 237 at 2.

It does nothing to explain the violations of the June 13 order.

It mentions the July 15 examination of Paul Samra without explaining why the document production was not effectuated prior to that examination. Without the documents Ag had requested, the examination was largely meaningless.

It does not explain Paul Samra's lack of basic knowledge about the debtor's operations, including the issues raised at the July 15 examination and outlined by this ruling above.

It states that the debtor "remains willing to comply with any existing discovery requests or Orders." This cannot be further from the truth, given that the debtor and its counsel have now disobeyed two orders pertaining to the same conduct. Those orders are still in force and have not been obeyed.

6.	16-23247-A-7 ROSE FACIANE BDA-3 CARRINGTON MORTGAGE SERVICES, L.L.C. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-20-16 [57]

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, Carrington Mortgage Services, seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of approximately $310,000 and it is encumbered by claims totaling approximately $456,064. 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.

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.

7. 16-23548-A-7 HOWARD HAYES — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDW-2 — 7-18-16 [30]
CAM XIV TRUST VS.

Tentative Ruling: The motion will be granted in part.

The movant, CAM XIV Trust, seeks relief from the automatic stay as to real property in Roseville, California under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4).

The court will grant relief under section 362(d)(4), which prescribes that:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

This is the third bankruptcy case involving the property since March 4, 2016. Russell Hayes, one of the two borrowers on the loan secured by the property (Russell and Janet Hayes), filed a chapter 13 case, Case No. 16-21340, on March 4, 2016, just three days prior to a foreclosure sale set by the movant for March 7. The case was dismissed on March 22 due to Mr. Hayes' failure to file documents timely.

On April 26, 2016, one day prior to another foreclosure sale date, another chapter 13 case was filed, Case No. 16-22653, by Russell and Janet Hayes. That case was dismissed on May 16, 2016 due to the Hayes' failure to file documents

timely.

On May 16, Russell Hayes executed a grant deed transferring the property to himself and the debtor as joint tenants. Docket 34, Ex. 7; Docket 33. This was just two weeks prior to the instant May 31 petition date and June 1 next foreclosure sale. The movant was apprised of the transfer and bankruptcy filing only on June 1. Docket 33 at 3. The movant did not consent to the transfer.

In addition, the debtor appears to be related to Russell and Janet Hayes, as his last name is also Hayes. From the timing of this filing and his apparent familial relationship with the original borrowers, it is evident that the debtor was aware of the May 16 transfer. Yet, he did not list his interest in the property in the schedules he filed here on May 31.

From the foregoing, the court infers that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, involving multiple bankruptcy filings and transfer of the property without the consent of the movant. Accordingly, the court will grant relief under section 362(d)(4).

Next, relief under section 362(d)(2) will be denied as the motion contains no admissible evidence of value for the property. The motion alleges that the property has a value of $577,837. The motion's evidence of value is a declaration from a paralegal with the movant's counsel, Simone Dvoskin, basing an opinion on a zillow.com valuation report. Dockets 35 & 36.

This evidence of value is inadmissible hearsay and inadmissible expert evidence because the declarant is basing her opinion on research and on what zillow.com says about the value of the property. It is inadmissible hearsay because the debtor is repeating out-of-court statements of third parties about the value of the property. Fed. R. Evid. 802.

More, the declarant has not been qualified as an expert witness to render an opinion of value under Fed. R. Evid. 702 as an expert witness. The declarant is not an owner of the property either. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). The declarant then cannot give an opinion of value for the property. See Fed. R. Evid. 701(c) (prohibiting lay witnesses from testifying in the form of an opinion based on "scientific, technical, or other specialized knowledge"). Nor does the court have evidence about zillow's valuation basis or methodology for arriving at the valuation. As the court does not have admissible evidence of value for the property, relief under section 362(d)(2) will be denied.

Finally, relief under section 362(d)(1) will be granted. The debtor's failure to disclose his interest in the property, his apparent familial relationship with the borrowers on the loan secured by the property, and his filing of this case on May 31, just one day prior the June 1 foreclosure sale, evidences bad faith in the filing and prosecution of this case. This is cause for the granting of relief from stay as to the debtor.

The trustee filed a report of no distribution on July 19, 2016. This is cause for the granting of relief from stay as to the estate.

The motion will be granted as to both the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) 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) is not 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.

8.	16-23648-A-7 GME-1 MICHAEL TOMASI, ET AL. VS.	ALEX GRISHAM AND OCTAVIA JACKSON	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-1-16 [24]

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, Michael Tomasi and Theresa Penman, seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtors leased it from the movant. The debtors defaulted under the lease agreement pre-petition. The movant filed an unlawful detainer action against the debtors on May 23, 2016. The movant amended the complaint on May 31. The debtors filed this bankruptcy case on June 3, 2016.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay rent due to the movant.

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) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to

recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be 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 waived.

9. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
JHC-2 COMPEL ABANDONMENT
7-18-16 [43]

Tentative Ruling: The motion will be dismissed without prejudice because it was not served on all creditors, in violation of Fed. R. Bankr. P. 6007(a). The master address list contains hundreds of creditors and this motion was served only on about eight parties.

10. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
JHC-3 COMPEL ABANDONMENT
7-18-16 [39]

Tentative Ruling: The motion will be dismissed without prejudice because it was not served on all creditors, in violation of Fed. R. Bankr. P. 6007(a). The master address list contains hundreds of creditors and this motion was served only on about eight parties.

11. 16-24261-A-7 C.C. MYERS, INC. MOTION FOR
JHC-4 RELIEF FROM AUTOMATIC STAY
SAFECO INSURANCE COMPANY OF AMERICA VS. 7-18-16 [48]

Tentative Ruling: The motion will be denied without prejudice.

Secured creditors Liberty Mutual Insurance Company and Safeco Insurance Company of America seeks relief from stay to sell collateral securing their $26 million claim against the estate.

The motion will be denied without prejudice 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)(7), which provides that "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)."

Although the motion refers to a supporting declaration, the court has been unable to locate it in this record.

The motion will be denied also because it does not contain a plain description of the collateral items the movants are seeking to sell. Even though there is an attached spreadsheet with a table containing the collateral items, for many of the items the spreadsheet contains largely technical specifications and no plain description of the collateral.

Also, the motion should be served on the trustee's counsel, whose employment approval order was entered on July 19, only one day after this motion was filed.

Next, the opposition by Bay Cities Paving & Grading, Inc., does not establish its standing to appear and be heard in this matter.

Both the constitutional and prudential requirements of standing must be met. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

Bay Cities asserts no interest in the subject property and it does not allege an otherwise pecuniary interest in the outcome of the motion. In other words, Bay Cities lacks the injury in fact element of standing under Article III of the Constitution.

Further, even if the court were to consider Bay Cities' opposition to the motion, the court will not impose on the movants a "continuing duty . . . to report to the Trustee and all parties in interest upon request with respect to its collection efforts including an asset-specific accounting of each and every item of Equipment, Steel, and each Vehicle." Docket 95 at 2. This motion has nothing to do with the movants' general collection efforts in the case. It pertains solely to their exercise of state law remedies with respect to specific collateral items.

The court does not award relief based on a response to a motion. If Bay Cities wants some relief from this court, it should file its own motion. The court also notes that ordering the movants to report or provide an accounting may amount to injunctive relief, which requires an adversary proceeding. Fed. R. Bankr. P. 7001(7).

Finally, it is well-established law that motions for relief from stay are only summary proceedings, meaning that the court does not finally determine the validity, extent or priority 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). Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

In other words, the court does not have the authority to adjudicate the validity, extent or priority of the movant's claim on a motion, much less a stay relief motion. Fed. R. Bankr. P. 7001(2).

12. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHC-5 — 7-18-16 [35]
SAFECO INSURANCE COMPANY OF AMERICA VS.

Tentative Ruling: The motion will be denied without prejudice.

Secured creditors Liberty Mutual Insurance Company and Safeco Insurance Company of America seeks relief from stay to honor its bonds, complete construction

projects that were not completed by the debtor and collect approximately $6.9 million in contractually due payments. The movants hold a claim of approximately $26 million, secured by virtually all assets of the debtor.

The motion will be denied without prejudice 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)(7), which provides that "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)."

Although the motion refers to a supporting declaration, the court has been unable to locate it in this record.

Also, the motion should be served on the trustee's counsel, whose employment approval order was entered on July 19, only one day after this motion was filed.

Next, the opposition by Bay Cities Paving & Grading, Inc. does not establish its standing to appear and be heard in this matter.

Both the constitutional and prudential requirements of standing must be met. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

Bay Cities asserts no interest in the subject property and it does not allege an otherwise pecuniary interest in the outcome of the motion. In other words, Bay Cities lacks the injury in fact element of standing under Article III of the Constitution.

Further, even if the court were to consider Bay Cities' opposition to the motion, the court will not impose on the movants a "continuing duty . . . to report to the Trustee and all parties in interest upon request with respect to its collection efforts." Docket 95 at 2. This motion has nothing to do with the movants' general collection efforts in the case. It pertains solely to their exercise of state law remedies with respect to specific collateral items.

The court does not award relief based on a response to a motion. If Bay Cities wants some relief from this court, it should file its own motion. The court also notes that ordering the movants to report anything may amount to injunctive relief, which requires an adversary proceeding. Fed. R. Bankr. P. 7001(7).

Finally, it is well-established law that motions for relief from stay are only summary proceedings, meaning that the court does not finally determine the validity, extent or priority 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). Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

In other words, the court does not have the authority to adjudicate the validity, extent or priority of the movant's claim on a motion, much less a stay relief motion. Fed. R. Bankr. P. 7001(2) & (8).

13. 16-22163-A-7 SYLVIA KINERSON — OBJECTION TO EXEMPTIONS
ADJ-3 — 7-7-16 [24]

Tentative Ruling: The objection will be sustained in part and overruled in part.

The trustee objects to the debtor's exemption of three household furnishing items under Cal. Civ. Proc. Code § 703.140(b)(3), which allows for the exemption of "[t]he debtor's interest, not to exceed six hundred and seventy-five dollars ($675) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor."

The household furnishing items include:

- a sofa purchased on April 1, 2016, five days prior to the April 6 petition date, for $1,949.95,

- a table purchased on April 1, 2016, five days prior to the April 6 petition date, for $929.95, and

- a three-piece dining set purchased on April 1, 2016, five days prior to the April 6 petition date, for $898.95.

The debtor opposes the objection.

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 after the meeting of creditors concluded on June 7, 2016. The objection was filed on July 7. Docket 24.

Turning to the merits of the objection, rights to exemptions of property are determined as of the date the petition is filed. In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

This means that the operative date for deciding the objection is April 6, five days after the personal property items were purchased.

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Proc. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

Here, although the debtor asserts that the value of each item does not exceed $675, she has not satisfied her burden of proof. For instance, she says nothing about the condition of the items as of April 6, the petition date and five days after they were purchased. The condition of these personal property items as of April 6 is pivotal to their value as of that date.

More, the opposition lacks supporting evidence. There is no declaration establishing the factual assertions in the opposition.

Nevertheless, some of the debtor's assertions are proven solely based on the trustee's evidence, namely the receipt for the items. Docket 27. The assertion that the debtor paid $650 and not $1,949.95 for the sofa is supported by the receipt. The $1,949.95 figure is in the column titled "price each." But, the adjacent and most right column titled "amount" contains the $650 figure, immediately to the right of the $1,949.95 figure, suggesting a downward adjustment to the price of the sofa to $650.

The court then is unconvinced that the sofa had a value in excess of $675 as of April 6. The objection as to the sofa will be overruled.

The objection as to the dining set will be overruled as well. Although the debtor purchased the dinning pieces as a set, Cal. Civ. Proc. Code § 703.140(b)(3) allows for exemption of $675 in value "in any particular item," meaning that the $675 value of the exemption applies to each piece of the dinning set separately. At a purchase price of $898.95 for the entire set on April 1, the court is unconvinced that any piece in the set had a value in excess of $675 as of April 6.

Finally, the table had a purchase price of $929.95 (or $915.33 per the debtor) as of April 1. As the court has no evidence from the debtor about the condition of the table as of April 6, five days later, it assumes the table was in the same or substantially similar condition it was when purchased on April 1. From this, the court infers that the table had a value of more than $675 on the April 6 petition date. Accordingly, the court will sustain the objection as to the table.

14. 11-34464-A-7 STUART SMITS
11-2636
BARDIS V. SMITS

APPLICATION AND
ORDER TO APPEAR FOR EXAMINATION
(STUART LANSING SMITS)
10-14-15 [61]

Tentative Ruling: None. The judgment debtor shall appear and be sworn in

prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

15. 11-49968-A-7 STEPHEN/SANDRA PADILLA — MOTION TO AVOID JUDICIAL LIEN
HLG-2 — 7-7-16 [39]
VS. AMERICAN EXPRESS CENTURION BANK

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Steve Padilla in favor of American Express Centurion Bank for the sum of $26,501.79 on August 2, 2010. The abstract of judgment was recorded with Sacramento County on October 13, 2011. That lien attached to the debtor's residential real property in North Highlands, California. The debtor is asking the court to avoid the lien.

The subject real property had an approximate value of $91,700 as of the petition date. Dockets 1, 41, 42. The unavoidable liens totaled $193,162 on that same date, consisting of a mortgage for $123,638 in favor of Bank of America and a mortgage for $69,524 in favor of Bank of America. Dockets 1, 37, 42. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Dockets 36 & 41.

The motion will be denied because the debtor amended Schedule C on July 7, 2016, to add an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the altered exemption claim. Docket 36. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

16. 16-21683-A-7 GERALDYNE METZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 6-24-16 14]
JPMORGAN CHASE BANK, N.A.

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

The hearing on this motion was continued from August 1. The trustee filed a nonopposition to the motion on August 4.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to real property in Springfield, Illinois.

Given the entry of the debtor's discharge on July 15, 2016, 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 trustee filed a nonopposition to the motion on August 4. This is cause for the granting of relief from stay.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) 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 property has a value of $145,000 and it is encumbered by claims totaling

approximately $123,984.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

17. 14-22888-A-7 ROSS PEARSON AND MICHELLE — MOTION TO
LBG-7 WRIGHT — AVOID JUDICIAL LIEN
VS. SMW 104 FEDERAL CREDIT UNION — 7-28-16 [65]

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 respondent creditor 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.

A judgment was entered against the debtors in favor of SMW 104 Federal Credit Union for the sum of $8,269.10 on February 26, 2014. The abstract of judgment was recorded with El Dorado County on March 18, 2014. That lien attached to the debtors' residential real property in Cool, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $220,000 as of the petition date. Dockets 67 & 1. The unavoidable liens totaled $287,297 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 67 & 1. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 67 & 1.

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).

18. 16-23191-A-7 PAUL/MICHELLE TRACE — MOTION TO AVOID JUDICIAL LIEN
SBS-1
VS. CITIBANK, N.A.
7-6-16 [13]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Paul Trace in favor of Citibank for the sum of $26,406.23 on August 6, 2012. The abstract of judgment was recorded with San Joaquin County on September 14, 2012. That lien attached to the debtor's residential real property in Stockton, California. The debtor is asking the court to avoid the lien.

The subject real property had an approximate value of $192,207 as of the petition date. Dockets 16 & 1. The unavoidable liens totaled $88,104 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 1, 10, 16. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $104,103 in Amended Schedule C. Dockets 16 & 10.

The motion will be denied because the debtor amended Schedule C on June 22, 2016, to alter an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the altered exemption claim. Docket 10. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

19. 16-23191-A-7 PAUL/MICHELLE TRACE — MOTION TO AVOID JUDICIAL LIEN
SBS-2
VS. CITIBANK, N.A.
7-6-16 [18]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Paul Trace in favor of Citibank for the sum of $19,896.74 on October 1, 2012. The abstract of judgment was recorded with San Joaquin County on October 24, 2012. That lien attached to the debtor's residential real property in Stockton, California. The debtor is asking the court to avoid the lien.

The subject real property had an approximate value of $192,207 as of the petition date. Dockets 21 & 1. The unavoidable liens totaled $88,104 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 1, 10, 21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $104,103 in Amended Schedule C. Dockets 21 & 10.

The motion will be denied because the debtor amended Schedule C on June 22, 2016, to alter an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the altered exemption claim. Docket 10. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

20. 16-23693-A-7 ALI MOBLSAZ
JHW-1
MERCEDES-BENZ FINANCIAL SERVICES USA, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-14-16 [13]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Mercedes-Benz Financial Services U.S.A., seeks relief from the automatic stay with respect to a 2011 Mercedes-Benz E350 vehicle.

The debtor opposes the motion, stating that he intends to become current on his payments to the movant.

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 June 7, 2016 and a meeting of creditors was first convened on July 13, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 7. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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 retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, 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 July 7, 2016, 30

days after the petition date.

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 July 14, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 7, 2016.

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.

FINAL RULINGS BEGIN HERE

21. 15-29033-A-7 FRANCISCO PENA — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
GMR-2 — 7-22-16 [79]

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,788.50 in fees and $100.25 in expenses, for a total of $1,888.75. This motion covers the period from April 1, 2016 through July 13, 2016. The court approved the movant's employment as the estate's accountant on April 11, 2016. In performing its services, the movant charged an hourly rate of $365.

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, preparing estate tax returns, preparing tax analysis about the sale of estate assets, and preparing Form 593-E relating to tax withholdings.

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

22. 15-26147-A-7 WESLEY HAWKINS — MOTION TO APPROVE COMPROMISE
EJN-1 — 7-9-16 [15]

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 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 trustee requests approval of a settlement agreement between the estate on one hand and the debtor and his parents on the other, over an avoidance claim

involving $6,500 transferred by the debtor to his parents pre-petition.

Under the terms of the compromise, the debtor will pay $3,500 to the in full satisfaction of the avoidance claim.

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 small amount at stake and 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.

23. 16-23256-A-7 JOHN/PAMELA GALES — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1
BOSCO CREDIT, L.L.C. VS. — 7-8-16 [20]

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, Bosco Credit, L.L.C., seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $293,761 and it is encumbered by claims totaling approximately $416,246. The movant's deed is in second priority position and secures a claim of approximately $167,259.

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 June 28, 2016.

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.

24. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBG-1 — 7-26-16 [75]
VINCENT SOLANO VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on the trustee's counsel. Docket 78.

Further, the movant has provided only 20 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. This is another reason for dismissing this motion.

25. 09-23465-A-7 MOORE EPITAXIAL, INC. — MOTION TO ABANDON
MDM-3 — 7-13-16 [277]

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 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 trustee wishes to abandon the estate's interest in silicon wafer technology patents, which he has been unable to liquidate via usual liquidation channels.

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 estate has only $25,000 on hand and the trustee has determined that it would not be prudent to spend those funds on advertising the patents for sale. The trustee estimates that advertising to sell the patents will cost as much as $15,000.

Given the trustee's inability to sell the patents, they are of inconsequential value to the estate.

In addition, maintenance expenses must be paid for the patents, starting in 2017. As the trustee has been unable to sell the patents, such expenses would be burdensome on the estate. Accordingly, the court will order the patents abandoned. The motion will be granted.

26. 16-23981-A-7 JANICE JOHNSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
BMW BANK OF NORTH AMERICA VS. — 7-7-16 [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, BMW Bank of North America, seeks relief from the automatic stay with respect to a 2014 BMW 328i. The movant has possession of the vehicle. The movant has produced evidence that the vehicle has a value of $25,901 and its secured claim is approximately $40,593. Docket 14.

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 July 25, 2016.

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

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 has possession of the vehicle and it is depreciating in value.