UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 24, 2015 at 10:00 a.m.

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1. 15-23700-A-12 JOE/MARIA PIMENTEL — MOTION TO CONFIRM CHAPTER 12 PLAN
WW-1 — 5-11-15 [5]

Tentative Ruling: The motion will be denied.

The debtors are seeking confirmation of their chapter 12 plan filed on May 11, 2015. Docket 7.

Because the meeting of creditors was on June 1, the chapter 12 trustee has had sufficient opportunity to examine the debtors and then file opposition, if any, to the confirmation of the plan.

Further, filed an earlier chapter 12 case, Case No. 14-27620, which was dismissed on April 6, 2015. A review of the certificate of service reveals that counsel for creditors appearing in the earlier case was not served with this motion. Specifically, the debtors did not serve Bank of Stockton's counsel even though the Bank of Stockton actively participated in the prior case. Given the close temporal proximity of the two bankruptcy cases, the counsel of creditors who appeared in the prior case should have been served with this motion.

2. 15-25213-A-11 BLU COMPANIES, INCORPORATED — STATUS CONFERENCE 6-29-15 [1]

Tentative Ruling: None.

3. 15-25626-A-11 GERT/LAURALEE JENSEN — STATUS CONFERENCE 7-15-15 [1]

Final Ruling: This case has bee transferred to Judge Bardwil.

4. 15-24727-A-11 RCK CONSERVATION CO-OP, L.L.C. — STATUS CONFERENCE 6-11-15 [1]

Tentative Ruling: None.

5. 15-24727-A-11 RCK CONSERVATION CO-OP, L.L.C. — MOTION TO DISMISS CASE
MLA-6 — 7-29-15 [87]

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

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

The motion will be granted in part and the case will be dismissed.

The debtor is seeking dismissal of the case because the court has not authorized use of cash collateral and that there is no automatic stay in effect.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(A), (B).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000).

The court dismissed the debtor's prior bankruptcy case due to the gross mismanagement of the estate's affairs by the debtor's managing member, David Major. This case was refiled on the same day the prior case was dismissed, June 11, 2015. As confirmed by this motion, nothing has changed with the debtor since dismissal of the prior case. "Debtor's circumstances have not materially changed during the prosecution of the current chapter 11 bankruptcy case." Docket 87 at 2. The debtor continues to be managed by the same managing member who mismanaged the estate's affairs in the prior case. That is why the court denied use of cash collateral in this case and that is why the court concluded that the automatic stay is inapplicable in this case. Dockets 83 & 98.

As the debtor is not permitted to use cash collateral and the stay is inapplicable in this case, the court concludes that there is substantial or continuing loss to or diminution of the estate and there is no reasonable likelihood of rehabilitation. This is cause for dismissal or conversion.

No general unsecured creditors have been scheduled, but the debtor has listed some priority unsecured tax debt in Schedule E. However, that priority tax debt is de minimis, less than $6,000.

So, while there is approximately $163,718 of equity in the debtor's real properties, the creditor secured by it is free to foreclose on it. Therefore, no purpose would be served by conversion. The case will be dismissed.

6. 15-24727-A-11 MLA-7 — RCK CONSERVATION CO-OP, L.L.C. — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY 7-31-15 [91]

Tentative Ruling: The motion will be denied.

The debtor's counsel, Abdallah Law Group, has filed what appears to be a first and final motion for approval of compensation. The requested compensation consists of $12,725 in fees and $1,927.63 in expenses, for a total of $14,652.63. This motion covers the period from June 11, 2015 through July 30, 2015. The court approved the movant's employment as the chapter 11 debtor's attorney on June 22, 2015. In performing services, the movant charged hourly rates of $200 and $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) preparing petition documents, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing and prosecuting a motion for extension of the stay, (5) preparing and prosecuting a cash collateral motion, (6) responding to a motion for determination that the stay is not in effect, and (7) preparing and filing employment and compensation motions.

The motion will be denied. The movant has charged $200 an hour for the services of an individual named Mervyn Naidoo. Yet, the motion does not explain who this person is and his professional qualifications. There is no declaration from Mr. Naidoo.

Further, the court is unable to conclude that any of the services provided by the movant were necessary in the administration of this estate. For example, the motion for extension of the stay was clearly unnecessary because, as pointed out by the court: "[B]oth section 362(c)(3) and section 362(c)(4) apply only to individual debtors. The debtor is not an individual. The debtor is a limited liability company." Docket 55.

Moreover, the filing of this case altogether was unnecessary and ill advised for the reasons explained by the court in its rulings on the motion to use cash collateral and the dismissal motion.

The court dismissed the debtor's prior bankruptcy case due to the gross mismanagement of the estate's affairs by the debtor's managing member, David Major. This case was refiled on the same day the prior case was dismissed, June 11, 2015. As confirmed by the debtor, nothing has changed with the debtor since dismissal of the prior case. "Debtor's circumstances have not materially changed during the prosecution of the current chapter 11 bankruptcy case." Docket 87 at 2.

Upon the filing of this case, the debtor continued to be managed by Mr. Major, who mismanaged the estate's affairs in the prior case. That is why the court denied use of cash collateral in this case and that is why the court concluded that the automatic stay is inapplicable in this case. Dockets 83 & 98. The court is puzzled as to why anyone would have thought the court would reach a different conclusion concerning Mr. Major's management.

Therefore, the court cannot conclude that any of the movant's services were necessary or that the requested compensation is reasonable. The motion will be denied.

7. 13-35329-A-12 KELLY/DEBORA HEISER — MOTION TO DISMISS CASE 7-17-15 [75]
JPJ-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the 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 and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtors have failed to prosecute this case.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

This case was filed on December 3, 2013. The debtors filed a plan on January 16, 2014 but voluntarily dismissed their plan confirmation motion, as noted in the minutes of the April 28, 2014 hearing on that motion. Docket 38. The debtors filed another plan on March 19, 2015 (Docket 67), but the court denied confirmation of that plan on May 11, 2015. Docket 72. The debtors have done nothing else to prosecute this case, which by now is approximately 22 months old. This is unreasonable delay that is prejudicial to creditors and it is cause for dismissal. The motion will be granted and the case will be dismissed.

8. 14-30833-A-11 SHASTA ENTERPRISES — STATUS CONFERENCE 10-31-14 [1]

Tentative Ruling: None.

9. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO USE CASH COLLATERAL, FOR REPLACEMENT LIENS AND FOR ADEQUATE PROTECTION 8-10-15 [345]
FWP-16

Tentative Ruling: The motion will be granted.

The chapter 11 trustee is seeking authorization to use the cash collateral of Redding Bank of Commerce and Joe Curto and Lavone Curto, as co-trustees of the Curto Family Trust, from August 30, 2015 through December 31, 2015, on substantially the same terms the estate has been using cash previously, since December 2014.

The estate requires the use of cash to continue the debtor's ownership and leasing of its real properties, given that rents are its only regular and material source of income. The cash collateral will be used to pay, among other things, "payroll expenses, yard maintenance and tools, office supplies, janitorial services and supplies, various outside services, taxes and license fees, insurance, utilities, other relevant and necessary expenses of the estate, and under appropriate circumstances, funding of tenant improvements for new leases that may be entered into during the Cash Collateral Period." Docket 345 at 4-5. As previously, the trustee will be making $20,000 monthly adequate protection payments to the secured creditors, divided pro-rata.

Given that the trustee is continuing to use cash collateral on substantially the same terms approved by the court previously, the motion will be granted. The court will approve cash collateral use through December 31, 2015.

10. 13-34541-A-11 6056 SYCAMORE TERRACE MOTION FOR
15-2070 L.L.C. CAH-3 ENTRY OF DEFAULT JUDGMENT
6056 SYCAMORE TERRACE L.L.C. V. BOZORGZAD 7-23-15 [20]

Tentative Ruling: The motion will be denied.

The plaintiff, 6056 Sycamore Terrace L.L.C., the debtor in the underlying bankruptcy case, seeks a default judgment against the defendant, Mahboob Bozorgzad, declaring that the plaintiff's interest in its real property is superior to a deed of trust granted to the defendant sometime before the petition date in connection with the marital dissolution of the defendant and the plaintiff's principal, Hossein Bozorgzad.

Specifically, the plaintiff is seeks a determination that the defendant holds no claim against the bankruptcy estate and that the defendant is not a creditor within the meaning of 11 U.S.C. § 101(10). The defendant filed a proof of claim on November 7, 2014 for $1,398,000, $1,106,000 of which is secured by the plaintiff's real property. POC 6.

In approximately October 2007, the defendant acquired a deed of trust against the plaintiff's real property, which was owned at the time by Mr. Bozorgzad. The deed of trust secured the claim reflected in proof of claim no. 6 and owed by Mr. Bozorgzad to Ms. Bozorgzad under the terms of the couple's marital settlement agreement.

The defendant never recorded the deed of trust. In approximately April 2012, Mr. Bozorgzad formed the plaintiff and transferred the real property to the plaintiff. On November 14, 2013, the plaintiff filed the underlying chapter 11 case. As of the petition date, the defendant still had not recorded the deed.

The plaintiff/debtor instituted this adversary proceeding against the defendant on April 7, 2015. The defendant's default was entered on May 21, 2015. Docket 9.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any

federal statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;
(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Valley Oak Credit Union v. Villegas (In re Villegas), 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

The relief sought by the plaintiff in its complaint is pursuant to 11 U.S.C. § 544(b)(1), which provides that: "(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." See also 11 U.S.C. § 1107(a) (providing that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, including the trustee's rights under 11 U.S.C. § 544).

In this case, it is the transfer of an interest in property under section 544(b)(1) that is implicated, namely, the deed of trust granted to Ms. Bozorgzad.

However, the court cannot avoid Ms. Bozorgzad's deed because section 544(b)(1) limits avoidance to "any transfer of an interest *of the debtor* in property."

When Ms. Bozorgzad acquired the deed, it was not the debtor's interest in the property that was transferred. At the time she acquired the deed, it was the debtor's principal, Mr. Bozorgzad, who owned the property. The debtor in the underlying bankruptcy case, 6056 Sycamore Terrace, L.L.C., did not own the property when Ms. Bozorgzad acquired the deed. Hence, it was Mr. Bozorgzad's interest in the property - and not the debtor's interest in the property - that was transferred to Ms. Bozorgzad. The court cannot avoid the granting of the lien to Ms. Bozorgzad because it was not the debtor's interest in the property that was transferred. Accordingly, the motion will be denied.

11.	13-34541-A-11	6056 SYCAMORE TERRACE	MOTION TO
	CAH-24	L.L.C.	VALUE COLLATERAL
	VS. MOHBOOB BOZORGZAD		7-9-15 [305]

Tentative Ruling: The motion will be denied as moot.

The debtor moves for an order valuing its sole real property in Pleasanton, California, in an effort to strip off a junior deed of trust held by Mohboob Bozorgzad, the former spouse of the debtor's managing member. However, the motion will be denied because the debtor has already obtained an order stripping off Ms. Bozorgzad's lien. Dockets 295 & 296.

12. 14-28468-A-11 BUALAI WHITE
MRL-10

MOTION FOR APPROVAL OF DISCLOSURE STATEMENT
7-7-15 [160]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to approve the disclosure statement filed on July 7, 2015. Docket 160.

The motion will be denied for the following reasons:

(1) The debtor has not filed the operating report for July 2015. That report was due August 17, 2015.

(2) The disclosure statement does not address that on its face the plan fails the liquidation test. The disclosure statement states that in a liquidation unsecured creditors will receive "a pro rata portion of approximately $54,715.20," which is 6.76% of the total $809,376.38 in general unsecured claims. Docket 160 at 25.

Yet, the debtor is paying only 6.70% to general unsecured creditors and contemplates reducing that dividend "by as much as 1/5th." Docket 160 at 25.

The court is also unclear how the liquidation analysis on page 25 of the disclosure statement can be reconciled with the liquidation analysis narrative on pages 32 and 33, where the debtor projects only a $9,000 net equity available to general unsecured creditors from the sale of real property. The debtor contends that the $57,621.58 from the sale of personal property would be unavailable for distribution to unsecured creditors as such property is claimed exempt. Docket 160 at 32-33.

(3) As the debtor is not promising a fixed dividend to general unsecured creditors and there is doubt about whether the debtor will be paying them at least what they would receive in a chapter 7 liquidation, the disclosure statement should have a discussion about the debtor's good faith in proposing the plan and how the debtor plans to ensure that unsecured creditors not accepting the plan will indeed receive at least what they would receive in a chapter 7 case. See 11 U.S.C. § 1129(a)(7)(A). The court has been unable to find such a discussion in the disclosure statement.

Future amendments of the disclosure statement should be accompanied by a red/black-lined version.

13. 15-21575-A-11 BR ENTERPRISES, A CALIFORNIA PARTNERSHIP
HLC-12

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT
7-31-15 [131]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor in possession, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 debtor moves under 11 U.S.C. § 1121(d)(1) for a 91-day extension, from August 26, 2015 to November 25, 2015, of the 180-day exclusivity plan acceptance deadline of section 1121(c)(3). This case was filed on February 27, 2015.

11 U.S.C. § 1121(a)-(d) provides that:

"*(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.*

"*(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.*

"*(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if--*

"*(1) a trustee has been appointed under this chapter;*

"*(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or*

"*(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.*

"*(d)(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.*

"*(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.*

"*(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.*"

This motion is timely as it was filed on the 154th day of the section 1121(c)(3) exclusivity period. The case was filed on February 27, 2015 and this motion was filed on July 31, 2015.

The motion will be granted. The debtor filed a plan already on June 26, 2015, on the 119th day of the 120-day exclusivity period of section 1121(b). See also 11 U.S.C. § 1121(c)(2). Objections to the debtor's disclosure statement have been filed and the debtor needs additional time to address those objections, as well as concerns raised by the court, by amending the disclosure statement. Thus, the debtor needs additional time to obtain plan confirmation.

The debtor appears to be prosecuting this case in good faith. It is meeting deadlines, such as those for filing operating reports, filing a plan within the 120-day exclusivity period, setting a hearing on the approval of a disclosure statement. The debtor is also paying its post-petition obligations as they come due. Docket 133 at 3.

Cause for the requested continuance has been established. The court will extend 180-day exclusivity period from August 26, 2015 to November 25, 2015. The motion will be granted.

14.	14-24088-A-13 HUGO/ALICIA CERVANTES 14-2222 LOPEZ ET AL V. CERVANTES ET AL	MOTION TO COMPEL AND FOR NEW DATE TO COMPLETE DISCOVERY 6-30-15 [62]

Tentative Ruling: The motion will be denied.

The plaintiffs, Eric Lopez and Araceli Chaveste, seek to compel responses, to a document production request, from the defendants, Hugo and Alicia Cervantes, the debtors in the underlying chapter 13 case. Specifically, the plaintiffs are seeking a formal written response under the penalty of perjury and several documents that have not been produced yet.

The defendants respond that they provided the plaintiffs with everything they had at the time. They claim the only item not provided to the plaintiffs was their 2014 tax returns, as the returns had not been prepared at that time. The returns have been now provided to the plaintiffs.

Fed. R. Civ. P. 34(b) provides:

"*(b) Procedure.*

"*(1) Contents of the Request. The request:*

"*(A) must describe with reasonable particularity each item or category of items to be inspected;*

"*(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and*

"*(C) may specify the form or forms in which electronically stored information is to be produced.*

"*(2) Responses and Objections.*

"*(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.*

"*(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.*

"*(C) Objections. An objection to part of a request must specify the part and permit inspection of the rest.*

"*(D) Responding to a Request for Production of Electronically Stored*

Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form--or if no form was specified in the request--the party must state the form or forms it intends to use.

"*(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:*

"*(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;*

"*(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and*

"*(iii) A party need not produce the same electronically stored information in more than one form.*"

The motion will be denied for several reasons. First, the motion's complaint that the box of documents the defendants provided to the plaintiffs were "uncategorized," is unpersuasive.

Nothing requires that the plaintiffs mark, categorize or otherwise organize the papers sought by the document production request. Rule 34(b)(2)(E)(i) requires only that the documents be produced "as they are kept in the usual course of business."

The plaintiffs sought the production of various documents evidencing various types of business transactions, including without limitation, sale or lease of the partnership business, the disposition of funds by the defendants, sales register tapes, bank statements, etc. Docket 62 at 2-3.

The court has no evidence that the documents were produced in a state other than the state they were kept in the usual course of business. The motion's supporting declaration mentions nothing about how the documents were organized, labeled, categorized, etc. Docket 63. The delivery of the documents in a box does not negate that they were produced in the way they were kept in the usual course of the defendants' business.

Additionally, the defendants have confirmed that they produced the documents "as they are kept in the usual course of business." Docket 72 at 2.

The court is not persuaded that the document production violates Fed. R. Civ. P. 34(b)(2)(E)(i).

Second, the plaintiffs' quibble that the defendants did not provide a formal written response under the penalty of perjury, along with their document production, makes no sense. Nothing in Fed. R. Civ. P. 34 requires that a written response to a document production request be under the penalty of perjury.

More, Rule 34(b)(2)(B) provides that "the [written] response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons."

In other words, in the absence of objections to the document production request, Rule 34 requires that the written response state only "that inspection and related activities will be permitted."

By delivering the documents in person, without providing the written response, the defendants' counsel waived any objections to the request and also obviated the necessity for a statement that inspection and related activities will be permitted, as he was obviously making them available for inspection in delivering them to the plaintiffs' counsel.

Moreover, the court is perplexed about how the plaintiffs are harmed by the defendants not providing a response to the document production request in writing? They are not as it was the defendants' counsel himself who delivered the documents in person to the plaintiffs' counsel, making his statements to the plaintiffs' counsel admissible against the defendants. See Fed. R. Evid. 801(d)(2)(A).

Third, the court will deny the request to compel discovery of any documents not yet produced because the defendants have unequivocally stated that they have no other documents to produce in their possession. Docket 73 at 4.

The court cannot compel the defendants to produce what they do not have.

Finally, this motion is untimely. The motion acknowledges that the deadline for producing documents was May 19, 2015 and that the defendants' counsel delivered a box of documents to the plaintiffs' counsel on that date. Docket 62 at 3-4. The motion also acknowledges that the discovery cut-off was June 18. Dockets 61 & 62 at 3. Nevertheless, this motion was not filed until June 30, after the June 18 discovery cut-off had passed.

Under Fed. R. Bankr. P. 9006(b)(1)(2), the standard on a motion for extension of time, "made after the expiration of the specified period," is excusable neglect. Yet, the plaintiffs make no effort to explain why it took them over 40 days after receiving the documents from the defendants to file this motion. Also, the original hearing date for this motion was August 10, over 40 days after the motion was filed. While the court had to continue the August 10 hearing on this motion to August 24, due to the unavailability of the defendants' counsel, the plaintiffs do not explain why they waited until June 30 to file the motion and why they set the motion for a hearing on August 10, 53 days after discovery ended and 83 days after the defendants' counsel delivered the documents in question to the plaintiffs' counsel.

There is no cause for extending discovery cut-off or for compelling discovery after discovery cut-off. The motion will be denied.

15. 14-24088-A-13 HUGO/ALICIA CERVANTES — STATUS CONFERENCE
14-2222 — 7-30-14 [1]
LOPEZ ET AL V. CERVANTES ET AL

Tentative Ruling: None.

16. 15-21691-A-12 JERRY WATKINS — MOTION TO DISMISS CASE
JPJ-1 — 7-17-15 [12]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case.

The debtor opposes dismissal, citing serious health issues, medical procedures and incarceration.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

11 U.S.C. § 1221 prescribes: "The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable."

This case was filed on March 3, 2015. The debtor has not filed a plan in this case yet. As such, he is in violation of section 1221. The 90-day deadline of section 1221 expired on June 1, 2015.

More, the debtor's counsel has done nothing to seek an extension of that deadline.

While the court is sympathetic of the debtor's health and family situation, the debtor must obtain an extension of the 90-day deadline of section 1221. The "shall file a plan" language of section 1221 indicates that the requirement for filing a plan by the deadline is mandatory. The case will be dismissed.

17. 15-20796-A-12 SILVIA LEPE — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 7-24-15 [32]
THE BANK OF NEW YORK MELLON VS.

Tentative Ruling: The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Dixon, California.

The debtor opposes the motion, contending that she is working on reaching a settlement with her parents, Jose and Alicia Lepe, who hold the junior lien on the property and who also own 50% interest in the property. The debtor is asking for more time to confirm a plan, in the event she proposes a new consensual plan, with respect to her parents, prior to the hearing on this motion.

11 U.S.C. § 362(g) provides that:

"In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues."

In other words, the moving creditor has the burden of persuasion as to the value of and lack of equity in the property while the debtors have the burden

of persuasion as to necessity to an effective reorganization. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 375 (1988). The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376. While bankruptcy courts demand a less detailed showing during the four months of exclusivity, "even within that period[,] lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief." Timbers at 376.

The movant has produced some evidence that the property has a value of $685,000 and it is encumbered by claims totaling approximately at least $1,137,202. Docket 35, Ex. 12. In Schedule A, the debtor has listed the value of the property at $600,000. Docket 1. The movant's deed is in first priority position and secures a claim of approximately $687,202.

The debtor has not come forward to establish necessity to an effective reorganization of the property. The debtor's response is not even supported by evidence, such as a declaration.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to an effective reorganization.

Accordingly, 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 that property following sale. No other relief will be awarded.

The court will grant relief also 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 debtor's third bankruptcy case since December 30, 2011. Each petition has affected the subject property.

On December 30, 2011, the debtor filed a chapter 13 case, Case No. 11-49918. That case was dismissed on February 8, 2012 due to the debtor's failure to file and prosecute a plan confirmation motion. The debtor filed another chapter 13 case on March 13, 2012, Case No. 12-24878. That case was converted to a chapter 12 proceeding on June 18, 2012. But, that case was also dismissed, on April 14, 2014, due to the debtor's failure to file or prosecute confirmation of a chapter 12 plan.

In both of the prior cases, the debtor had listed the subject property in her schedules. In the more recent prior case, the debtor did nothing during the 22

months the case was a chapter 12. The debtor did not even file a plan.

In this case, although the debtor has already filed a plan, that plan is unconfirmable on its face, given the debtor's ongoing litigation and dispute with her parents, who are part owners of the subject property. As even the debtor acknowledges, she cannot obtain plan confirmation absent some consensus with her parents. Docket 38.

The filing of this case then was part of a scheme to delay, hinder, or defraud creditors, involving multiple bankruptcy filings. The court will grant relief under section 362(d)(4).

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.