UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 17, 2016 at 10:00 a.m.

1.	15-29600-A-11	ANTIGUA CANTINA & GRILL,	MOTION FOR
	RCO-1	INC.	RELIEF FROM AUTOMATIC STAY
	CHARLES N. TRAVERS VS.		4-28-16 [41]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Charles N. Teavers IRA #887220801 (un undivided 300/625 interest) and Charles N. Travers Money Purchase Plan #887221940 (an undivided 326/625 interest), seeks relief from the automatic stay as to the debtor's sole real property in Sacramento, California.

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 proffered evidence that the value of the property is $765,700 and the encumbrances against the property total approximately $1,207,135. The movant's evidence of value is based on a broker's price opinion and an accompanying declaration of Michael Murphy. Docket 45, Ex. C.

On the other hand, the debtor has submitted its own evidence of value for the property. The debtor's "as is" value of the property is $2,059,516.95.

The court is not persuaded that the movant has met its burden of persuasion on the value of the property. The declaration in support of the movant's broker's price opinion does not state that Mr. Murphy, the appraiser, inspected the

inside and outside of the property. His declaration merely states that he "prepared a Broker's Price Opinion and value analysis of [the property] for the purpose of arriving at an opinion of value." Docket 45, Ex. C at 1. Further, there is over a $1 million discrepancy in the two valuations of the property and the movant has filed no reply to the debtor's opposition attempting to reconcile the discrepancy.

The movant has not met its burden of persuasion on value and equity in the property. The motion will be denied.

2. 16-20912-A-11 SEAN SUH'S CARE HOMES, INC.
CLH-1 ALEJANDRO DELACRUZ VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
7-7-16 [60]

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1).

The movant holds a claim that is the subject of pending state court litigation. The claim stems from the movant's assertion that he was an employee of the debtor and other defendant entities and is owed unpaid wages and benefits as well as damages for fraud and violations of the Cal. Bus. & Prof. Code. The debtor is one of several defendants in the pending action.

The movant has filed a proof of claim in the bankruptcy for the same claims made in the state court. The claim is a significant one, representing approximately 60% of the unsecured claims. Although no objection to the proof of claim has been filed, the debtor has made clear that, absent a settlement, it intends to object to it. See Motion to Extend Exclusivity filed August 5, 2016, Dkt. 78.

Given that the claim is disputed by the debtor, given that it is material to the debtor's reorganization, given that there is pending state court litigation, and given that there are nondebtor defendants in that litigation, the court concludes there is cause to permit the state court action to go forward to judgment in order to liquidate the claim.

The parties shall bear their own fees and costs in connection with this motion.

3. 15-29421-A-12 JERRY WATKINS
CA-5
MOTION TO CONFIRM CHAPTER 12 PLAN
7-18-16 [50]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument.

The motion will be denied given the debtor's admission his plan cannot be confirmed. See Dkt. 68 filed October 11, 2016.

4. 14-30833-A-11 SHASTA ENTERPRISES
FWP-30
MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
9-9-16 [582]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R.

2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, 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.

Felderstein Fitzgerald Willoughby & Pascuzzi, attorney for the chapter 11 trustee, filed its third and final motion for approval of compensation. The requested compensation consists of $199,590.50 in fees and $4,996.13 in expenses, for a total of $204,586.63. This motion covers the period from September 1, 2015 through August 10, 2016. The court approved the movant's employment as the trustee's attorney on January 5, 2015. In performing its services, the movant charged hourly rates of $195, 405, and $495.

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 are explained in detail in the motion and the accompanying contemporaneous time records. The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved and the prior interim awards totaling $181,400.37 are approved on a final basis.

5. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO APPROVE COMPENSATION OF TRUSTEE
FWP-31 — 9-9-16 [588]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, 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 chapter 11 trustee has filed his first and final motion for approval of compensation. The requested compensation consists of $224,895 in fees and $2,729.10 in expenses, for a total of $227,624.10. The trustee provided services from December 29, 2014 through August 10, 2016. During that period, the trustee had his assistant spent a total of 825.7 hours performing services for the estate for which they have billed at rates of $300 and $150, respectively. Those services are detailed in the motion.

Of course, the trustee's compensation subject to the cap of 11 U.S.C. § 326(a). The requested compensation is under the cap. The trustee will make or has made

$11,591,579 in distributions to creditors. This means that the cap under section 326(a) on the movant's maximum compensation is $370,997. Hence, the requested trustee's fees do not exceed the cap of section 326(a).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

Here, the trustee's requested compensation is less than the statutory rate. And, the court's review of the trustee's motion and its exhibits indicates to the court that his services were reasonable, necessary, and beneficial to the estate.

The compensation will be approved.

6. 14-30833-A-11 SHASTA ENTERPRISES
FWP-32

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
9-9-16 [593]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, 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.

Evanhoe, Kellog & Company, accountant for the estate, has filed its motion for final approval of compensation. The requested compensation was previously awarded on an interim basis and consists of $11,647.50 in fees and $0.00 in expenses for services provided during the period from February 16, 2015 through April 20, 2016. The court approved the movant's employment as the estate's accountant on April 27, 2015. Docket 267. In performing its services, the movant charged hourly rates of $100 and $225.

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 the preparation of estate tax returns.

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

7.	15-29136-A-12	P&M SAMRA LAND	MOTION FOR
	MAS-7	INVESTMENTS L.L.C.	RELIEF FROM AUTOMATIC STAY
	AG-SEEDS UNLIMITED VS.		9-9-16 [336]

Tentative Ruling: The motion will be granted.

The movant, Ag-Seeds Unlimited, seeks relief from stay with respect to its pending state court action against the debtor and others alleging state law tort claims, a conspiracy to defraud, and successor liability.

The debtor filed a nonopposition to the motion requesting that the stay be modified to allow the Ag-Seeds' claim to be liquidated in state court. Docket 365.

The court will grant relief from stay under 11 U.S.C. § 362(d)(1) to permit the continued prosecution of the state court action against the debtor. The court previously determined that discretionary abstention under 11 U.S.C. § 1334(c)(1) was warranted as to the state court action. See Docket 323. The court abstained from litigating the debtor's objection to the movant's proof of claim, which was based on the state court action, as it would necessarily implicate the underlying state law claims of the action. Id. The court incorporates its analysis of discretionary abstention and findings of fact from its ruling on the objection to claim. Id.

If and when Ag-Seeds obtains a judgment against the debtor, Ag-Seeds may not enforce that claim against the debtor absent further relief from this court (unless this case has been dismissed or some other order of this court makes further relief unnecessary) other to file and/or amend its proof of claim in this case.

No fees and costs are 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 ordered waived.

8.	15-29136-A-12	P&M SAMRA LAND	MOTION FOR
	MAS-8	INVESTMENTS L.L.C.	CONTEMPT AND FOR SANCTIONS
			9-15-16 [342]

Tentative Ruling: The motion will be granted.

Ag-Seeds Unlimited, a creditor, seeks an order holding debtor P&M Samra Land Investments, L.L.C. and its counsel, Noel Knight in contempt for failure to obey a court discovery order and for sanctions of not less than $12,079.90. Ag-Seeds also requests an order to show cause as to why the debtor and its counsel should not be held in criminal contempt for failure to comply with discovery.

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 court entered an order on March 23, 2016, granting the motion. Docket 59 at 1.

On May 13, 2016, Ag-Seeds filed a motion to compel 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 granted Ag-Seeds' 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-Seeds in the amount of $875 no later than the close of business on June 17, 2016.

Docket 159, June 13, 2016 Order.

On July 29, 2016, Ag-Seeds filed another motion to compel 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 231. The debtor promised compliance with the June 13 order but then failed to actually comply. 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 court granted the July 29 motion to compel (docket 247) and awarded the requested $1,985 in sanctions to Ag-Seeds jointly and severally against both the debtor and its counsel, Noel Knight. In its ruling, the court made detailed findings as to numerous violations of this court's orders made by the debtor and its counsel. See Docket 246. The court incorporates by reference its findings of fact from its ruling made on August 15, 2016. Id. In its order granting the July 29 motion to compel, the court provided:

- In the event the documents are not produced to Ag-Seeds' 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-Seeds 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-Seeds' 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 as described in this ruling. The hearing on this order shall be on September 6, 2016 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.

Docket 247, August 17, 2016 Order.

At the September 6, 2016 hearing on the aforementioned order to show cause, the court determined that Mr. Knight and the debtor did not respond or attempt to further explain their conduct outlined in the court's ruling on Ag-Seeds' motion to compel heard on August 15 and did not address why the court should not assess additional sanctions against them, beyond the sanctions requested by Ag-Seeds in the motion to compel heard on August 15. Docket 318. The court then ordered the debtor and Mr. Knight, jointly and severally, to pay sanctions of $2,000. Docket 330.

The declaration of Mark A. Serlin, counsel for Ag-Seeds, which accompanies the instant motion, details the debtor's continued failure to comply with court compelled discovery. See Docket 344. Mr. Sterlin testifies that he has not received documents from the debtor pertaining to the loans secured by the debtor's real property and has not received Quicken/Quickbooks records, ledgers, detailed income and expense statements, and the like. Id.

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).

Despite a court order directing the debtor to appear at a Rule 2004 examination and produce documents, the debtor and its counsel have still failed and refused, without explanation, to produce documents that were subpoenaed long ago and required by subsequent order of this court. Further, the court issued coercive sanctions of $300.00 per day from and after August 18, 2016, but many of those court ordered documents have still not been produced. Ag-Seeds seeks a court order accounting for sanctions previously awarded so that it may obtain a writ of execution to levy against assets of the debtor and its counsel.

Ag-Seeds has requested sanctions related to attorney and court reporter work performed in addition to coercive sanctions of $8,400.00 plus $300.00 per day from and after September 15, 2016 until the earlier of (a) the date of the hearing on this motion or (b) the actual production of the previously ordered documents.

The court will award the requested sanctions in the amount of $21,679.90 to Ag-Seeds jointly and severally against both the debtor and its counsel, Noel Knight. The sanctions consist of: (1) $18,000.00 (representing $300.00 of coercive sanctions per day from August 18, 2016 through October 17, 2016); (2) $2,695.00 for 6 hours of work performed by Ag-Seeds' counsel at an hourly rate of $350.00 in preparation for unfruitful Rule 2004 examinations on July 15, 2016 and August 29, 2016 in addition to 1.8 hours spent preparing the instant motion; and (3) $984.90 for work performed by the court reporter at an hourly rate of $235.00 at the aforementioned examinations.

The continued failure of the debtor to produce documents requested by Ag-Seeds' March 22 subpoena and lack of disclosure of basic information about the debtor's operations by Paul Samra at the July 15 and August 29 examinations made the filing of this motion necessary.

The $21,679.90 in sanctions shall be paid by a cashier check directly to Ag-Seeds' counsel, Mark Serlin, within one week of entry of the order on this motion.

The court will not issue an order to show cause regarding criminal contempt as this exceeds the jurisdiction of a bankruptcy court. The Ninth Circuit has held that a bankruptcy court may "impose civil contempt sanctions, [. . .] 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).

In the event the documents are not produced within seven days of entry of the order granting the motion, the debtor will be prohibited from utilizing the documents that have not been produced or any information contained therein for any claim, defense, or any assertion in this bankruptcy proceeding.

These sanctions are awarded solely to coerce compliance with the court's orders. The court has previously issued multiple monetary sanctions that have not coerced compliance.

The debtor filed two motions apparently in response to this motion. The first is a countermotion to extend the automatic stay and for sanctions. Docket 369. The court has not awarded any damages to the debtor that would offset the sanctions ordered herein.

The second is the debtor's October 3, 2016 "reply" to the instant motion which

will be stricken because it is devoid of any evidence establishing its factual assertions, such as a declaration or affidavit. Docket 366.

Moreover, the debtor's opposition to this motion lacks merit and is non-responsive. It does not deny that the debtor has failed to produced all documents requested by Ag-Seeds' subpoena. It says that the debtor provided "99.9% of all chapter 12 documentation in its possession. " Docket 366 at 2.

It does not deny having the documents requested by Ag-Seeds subpoena and still not received by Ag-Seeds.

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

9.	15-29136-A-12 MAS-6	P&M SAMRA LAND INVESTMENTS L.L.C.	COUNTER MOTION TO EXTEND AUTOMATIC STAY, STRIKE ALL DOCUMENTS SUBMITTED BY AG-SEEDS UNLIMITED, SANCTIONS FOR VIOLATION OF AUTOMATIC STAY, SANCTIONS FOR VIOLATION, PUNITIVE SANCTIONS, PROTECTIVE ORDER 10-3-16 [369]

Tentative Ruling: This counter motion will be denied.

This counter motion includes the docket control numbers of Ag-Seeds Unlimited's motion to convert (DCN MAS-6) and motion for contempt and sanctions (DCN MAS-8). Although it is submitted as a response to Ag-Seed's motions, it does not specifically address the merits of those motions. It seeks the following relief:

- extension of the stay as to the debtor's business associates and co-debtors;

- striking all documents submitted by Ag-Seeds violating Fed. R. Bankr. P. 9037;

- sanctions for violations of the automatic stay;

- punitive sanctions under 11 U.S.C. §§ 105 and 362(k);

- sanctions for violation of Fed. R. Bankr. P. 9037; and

- a blanket protective order against any actions by Ag-Seeds.

The request to extend the automatic stay as to all the debtor's "business associates and co-debtors" will be denied. The extension of a stay, automatic or otherwise, to non-debtors (except as covered by 11 U.S.C. § 1201(a), which is not applicable here because the counter motion does not invoke any "*consumer debt[s] of the debtor*") is a request for injunctive relief. As such, it requires an adversary proceeding. See Fed. R. Bankr. P. 7001(7) & (9). The court cannot grant such relief on a motion.

Even in the absence of Rule 7001's requirement for an adversary proceeding, the court will deny the request for extension of the stay on the debtor's "business associates and co-debtors." The request is based on the broad assertion that Ag-Seeds is violating the law by pursuing discovery and sanctions against the debtor and its counsel. Given that the court has ordered the debtor to comply

with these discovery requests, the court will not stay that discovery or somehow penalize Ag-Seeds for pursuing that discovery. The debtor and its counsel have had adequate means and opportunity to respond to Ag-Seeds' motions and discovery requests. The orders on Ag-Seeds' motions are now final. The court will not be revisiting its final rulings on any prior motions by Ag-Seeds.

As to legal actions by Ag-Seeds against non-debtors, those actions have not taken place before this court. To the extent they have taken place before the state court presiding over Ag-Seeds' state court litigation against the debtor, its principals, and other parties, this court will not interfere. These are properly within the jurisdiction of the state court. This court has already abstained from adjudicating dispute concerning Ag-Seeds' proof of claim, and relief from the automatic stay has been granted to pursue that litigation to judgment.

This court has no legal authority to prohibit a creditor from collecting against a non-debtor on a debt that is not "of the debtor." See 11 U.S.C. § 1201(a).

The debtor also has not alleged its standing to seek the application of the automatic stay as to non-debtor entities. For instance, the counter motion gives no details about why or how the debtor is financially affected by the lack of the stay benefitting *particular* co-debtors and business associates.

The court will deny any damages or sanctions under 11 U.S.C. §§ 105 and 362(k).

Next, the court will deny the request to strike documents submitted by Ag-Seeds in violation of Fed. R. Bankr. P. 9037. The counter motion complains of Ag-Seeds disclosing check recipient information for the debtor and account information for Paul Samra, Manjit Samra, Rina Wamoie and Victor Valerio.

The debtor's information is not covered by Rule 9037 because that rule applies only to an individual's information.

"*Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number . . . .*"

Fed. R. Bankr. P. 9037(a).

The debtor is not an individual. It is a limited liability company.

As to the individuals Paul Samra, Manjit Samra, Rina Wamoie and Victor Valerio, the court has been unable to locate in Ag-Seeds' referenced exhibit (Docket 54) any financial account information for any of those individuals. See Dockets 370 & 371. The account number information on the checks where the names of individuals appear is the account information of the debtor. For example, the account number information on checks with Steven Samra's name is identical with the account number information where only the debtor's name appears. Docket 54 at 20-25.

Also, there is no evidence in the record of any damages sustained by any individual due to alleged violations of Rule 9037.

Further, the debtor has not alleged its standing to seek relief under Rule 9037 on behalf of others, including the above individuals. This counter motion is brought solely by the debtor. It is not brought by any of the individuals.

The court will award no damages or sanctions under Rule 9037.

Finally, the court will deny the request for a blanket protective order as to future actions with respect to the debtor, its co-debtors and secured creditors. Protective orders are adjudicated when there is an injury in fact, *i.e.*, something to protect another party from. See Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004).

The court will not prejudge any future requests for discovery or sanctions by Ag-Seeds or anyone else. The respondent will always have the opportunity to defend against discovery or sanction requests.

10.	15-29136-A-12 MAS-8	P&M SAMRA LAND INVESTMENTS L.L.C.	COUNTER MOTION TO EXTEND AUTOMATIC STAY, STRIKE ALL DOCUMENTS SUBMITTED BY AG-SEEDS UNLIMITED, SANCTIONS FOR VIOLATION OF AUTOMATIC STAY, SANCTIONS FOR VIOLATION, PUNITIVE SANCTIONS, PROTECTIVE ORDER 10-3-16 [369]

Tentative Ruling: This counter motion will be denied.

This counter motion includes the docket control numbers of Ag-Seeds Unlimited's motion to convert (DCN MAS-6) and motion for contempt and sanctions (DCN MAS-8). Although it is submitted as a response to Ag-Seed's motions, it does not specifically address the merits of those motions. It seeks the following relief:

- extension of the stay as to the debtor's business associates and co-debtors;

- striking all documents submitted by Ag-Seeds violating Fed. R. Bankr. P. 9037;

- sanctions for violations of the automatic stay;

- punitive sanctions under 11 U.S.C. §§ 105 and 362(k);

- sanctions for violation of Fed. R. Bankr. P. 9037; and

- a blanket protective order against any actions by Ag-Seeds.

The request to extend the automatic stay as to all the debtor's "business associates and co-debtors" will be denied. The extension of a stay, automatic or otherwise, to non-debtors (except as covered by 11 U.S.C. § 1201(a), which is not applicable here because the counter motion does not invoke any "*consumer debt[s] of the debtor*") is a request for injunctive relief. As such, it requires an adversary proceeding. See Fed. R. Bankr. P. 7001(7) & (9). The court cannot grant such relief on a motion.

Even in the absence of Rule 7001's requirement for an adversary proceeding, the

court will deny the request for extension of the stay on the debtor's "business associates and co-debtors." The request is based on the broad assertion that Ag-Seeds is violating the law by pursuing discovery and sanctions against the debtor and its counsel. Given that the court has ordered the debtor to comply with these discovery requests, the court will not stay that discovery or somehow penalize Ag-Seeds for pursuing that discovery. The debtor and its counsel have had adequate means and opportunity to respond to Ag-Seeds' motions and discovery requests. The orders on Ag-Seeds' motions are now final. The court will not be revisiting its final rulings on any prior motions by Ag-Seeds.

As to legal actions by Ag-Seeds against non-debtors, those actions have not taken place before this court. To the extent they have taken place before the state court presiding over Ag-Seeds' state court litigation against the debtor, its principals, and other parties, this court will not interfere. These are properly within the jurisdiction of the state court. This court has already abstained from adjudicating dispute concerning Ag-Seeds' proof of claim, and relief from the automatic stay has been granted to pursue that litigation to judgment.

This court has no legal authority to prohibit a creditor from collecting against a non-debtor on a debt that is not "of the debtor." See 11 U.S.C. § 1201(a).

The debtor also has not alleged its standing to seek the application of the automatic stay as to non-debtor entities. For instance, the counter motion gives no details about why or how the debtor is financially affected by the lack of the stay benefitting *particular* co-debtors and business associates.

The court will deny any damages or sanctions under 11 U.S.C. §§ 105 and 362(k).

Next, the court will deny the request to strike documents submitted by Ag-Seeds in violation of Fed. R. Bankr. P. 9037. The counter motion complains of Ag-Seeds disclosing check recipient information for the debtor and account information for Paul Samra, Manjit Samra, Rina Wamoie and Victor Valerio.

The debtor's information is not covered by Rule 9037 because that rule applies only to an individual's information.

"*Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number . . . .*"

Fed. R. Bankr. P. 9037(a).

The debtor is not an individual. It is a limited liability company.

As to the individuals Paul Samra, Manjit Samra, Rina Wamoie and Victor Valerio, the court has been unable to locate in Ag-Seeds' referenced exhibit (Docket 54) any financial account information for any of those individuals. See Dockets 370 & 371. The account number information on the checks where the names of individuals appear is the account information of the debtor. For example, the account number information on checks with Steven Samra's name is identical with the account number information where only the debtor's name appears. Docket 54 at 20-25.

Also, there is no evidence in the record of any damages sustained by any individual due to alleged violations of Rule 9037.

Further, the debtor has not alleged its standing to seek relief under Rule 9037 on behalf of others, including the above individuals. This counter motion is brought solely by the debtor. It is not brought by any of the individuals.

The court will award no damages or sanctions under Rule 9037.

Finally, the court will deny the request for a blanket protective order as to future actions with respect to the debtor, its co-debtors and secured creditors. Protective orders are adjudicated when there is an injury in fact, *i.e.*, something to protect another party from. See Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004).

The court will not prejudge any future requests for discovery or sanctions by Ag-Seeds or anyone else. The respondent will always have the opportunity to defend against discovery or sanction requests.

11.	15-29136-A-12 MAS-9	P&M SAMRA LAND INVESTMENTS L.L.C.	MOTION FOR CONTEMPT AND FOR SANCTIONS 9-16-16 [346]

Tentative Ruling: The motion will be granted.

Creditor Ag-Seeds Unlimited seeks for an order holding Michael Thiel in contempt and for sanctions in the amount of $1,250.00. Thiel ignored a personally served deposition subpoena and Ag-Seeds thus incurred attorneys' fees and costs based on his unexplained non-appearance.

Ag-Seeds caused a subpoena for appearance at deposition and production of documents to be personally served along with witness and mileage fees on Mr. Thiel. Mr. Thiel cashed the witness and mileage fees check, but failed to appear at the deposition. As of the date of this motion, counsel for the movant reports that neither Mr. Thiel nor any person purporting to represent Mr. Thiel has made any effort to contact him regarding his deposition or explain why he failed to appear for the deposition.

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 subpoena directing Mr. Thiel to appear at the August 19 deposition was proper. An attorney can sign the subpoena on behalf of the court in a case under the Code. See Fed. R. Bankr. P. 2004(c) & Fed. R. Civ. P. 45(a)(3). Further, a subpoena may be used to discover information pertaining to plan formulation and confirmation in chapter 12 cases. See Fed. R. Bankr. P. 2004(b) (specifically contemplating using Fed. R. Bankr. P. 9016 subpoenas). Here, counsel for the debtor signed the subpoena directing Mr. Thiel to appear at a deposition scheduled on August 19, 2016 for the purpose of gathering information pertaining to the debtor's chapter 12 plan. The subpoena was properly served personally on Mr. Thiel on July 19, 2016.

The motion reports that Mr. Thiel did not appear at the deposition and that neither Mr. Thiel nor any person purporting to represent Thiel has made any effort to contact counsel for debtor regarding his deposition or explain why he failed to appear for the deposition after being duly served with a subpoena and appropriate witness and mileage fees.

In Mr. Thiel's October 3, 2016 opposition to the instant motion, he admits he received the subpoena and states that he intended to respond by the deadline in the subpoena. Docket 367. The opposition then explains that Mr. Thiel did not appear at the deposition because he was in a vehicle accident the morning of the deadline for a response. Id. However, the traffic collision report attached to the opposition indicates that the accident occurred on September 6, 2016, over two weeks after the August 19 deposition date. Further, Mr. Thiel admits he did not notify Ag-Seeds that he would not be able to attend the August 19 deposition. The opposition has offered no excuse for not attending the August 19 deposition. Thus, Mr. Thiel is in contempt of court.

The court will award the requested sanctions in the amount of $1,250 to counsel for the debtor against Mr. Thiel. Counsel for the debtor spent 1.4 hours preparing the deposition subpoena and attending the deposition in addition to 1.5 hours of time preparing this motion at an hourly rate of $350.00. The sanctions also include $235 for work performed by a court reporter at an hourly rate of $235 in connection with the August 19 deposition.

It was reasonable for Ag-Seeds' counsel and the court reporter to prepare for and appear at the August 19 deposition, as Mr. Thiel did not provide prior notice that he would not appear at the deposition. Given the protracted litigation in this case, an hour and a half to prepare for and appear at the deposition was reasonable.

The failure of Mr. Thiel to explain his nonappearance at the August 19 deposition made the filing of this motion necessary. This motion and supporting declaration are five pages long, in addition to a notice of hearing and exhibits. Dockets 346-49.

The $1,985 in sanctions shall be paid by a cashier check directly to Ag-Seeds' counsel, Mark Serlin, in three installments of $661.66. Mr. Serlin must receive the first payment of $666.16 no later than October 24, 2016, the second no later than October 31, 2016, and the third no later than November 7, 2016.

The court will order Mr. Thiel to appear for the deposition with Mr. Serlin within seven days and when Mr. Serlin is available. While the court is sympathetic to the injuries Thiel sustained in the accident, there is no admissible and probative evidence of any medical conditions that would prohibit or impair Mr. Thiel's ability to testify at the deposition. Notably, there is no evidence of any medical condition that would prevent Mr. Thiel from appearing at the deposition at any point in time. See Fed. R. Evid. 701-03.

12. 15-29136-A-12 NCK-6 — P&M SAMRA LAND INVESTMENTS L.L.C. — MOTION TO CONFIRM PLAN 8-29-16 [264]

Tentative Ruling: The motion will be denied.

The debtor seeks confirmation of its "corrected" third amended chapter 12 plan, filed on August 29, 2016. Docket 264.

Each of the following parties has filed an opposition to plan confirmation:

- the Socotra Fund, L.L.C. along with Gary E. Roller, trustee of the Gary E. Roller Profit Sharing Plan and the Petit Revocable Trust, dated March 29, 1999 (first mortgage holder on the debtor's farm real property);

- IRA Services Trust Co. CFBO (second mortgage holder on the debtor's farm real property) and trust settlor Shankuntala Saini;

- unsecured creditor Ag-Seeds Unlimited.

Plan confirmation will be denied for the following reasons:

(1) The plan is not proposed in good faith because the debtor and its counsel have repeatedly violated discovery-related orders of the court. Thus, creditors have not been able to ascertain information about the debtor's income, expenses, and operations.

(2) Neither the plan nor the evidence in support of its confirmation provide sufficient detail to warrant a conclusion that it is feasible. The plan states that the debtor will implement the plan by "continuing its farming operations," but fails to elaborate with projections of revenue suggesting the plan payments will be made. Docket 266 at 7.

(3) Further, the plan's feasability apparently hinges on contributions from Stone Lake Farm Enterprises, Inc. "to the extent necessary." Id. Reliance on open-ended contributions from a third party is not likely feasible. More, the failure to identify an approximate amount of expected contribution precludes the court from analyzing the likelihood of such contributions.

(4) The arrangement with creditor Michael Thiel to pay $30 a month for the rental of a residence on the estate's real property prejudices other creditors, including the three mortgage creditors senior to the Thiel Trust, because the debtor is not receiving fair market rental value for that residence, while the plan is paying only interest to the senior mortgage creditors.

The court finds it unnecessary to address other basis for plan confirmation denial.

13.	15-29136-A-12 MAS-6	P&M SAMRA LAND INVESTMENTS L.L.C.	MOTION TO CONVERT CASE 9-8-16 [331]

Tentative Ruling: The motion will be denied without prejudice.

Creditor Ag-Seeds Unlimited renews its motion to convert this case from chapter 12 to chapter 7 on the ground that the debtor has committed fraud. A prior motion to convert was denied without prejudice because it was not served correctly. That imperfection has been corrected. Docket 204. The instant motion argues that the debtor and its counsel have defied a court order to comply with a Rule 2004 examination and produce documents and that such incompliance amounts to fraud.

Secured creditor IRA Services Trust Co. CFBO, Shankuntala D. Saini, has filed a joinder in the motion. Docket 363.

The debtor has filed a counter motion to extend the automatic stay and for sanctions but has not filed an opposition to this motion. Docket 369.

Conversion of a chapter 12 case to chapter 7 may be granted pursuant to a request by the debtor under 11 U.S.C. § 1208(a) or pursuant to a request by a party in interest, such as a creditor, under 11 U.S.C. § 1208(d). But, the court may convert the case on a motion by a party in interest only "upon a showing that the debtor has committed fraud in connection with the case." 11 U.S.C. § 1208(d).

The court has seen nothing in the record before it suggesting that the debtor has committed fraud in connection with this case. The movant does not offer, and the court cannot find, any case law that supports the contention that failure to comply with court discovery orders amounts to fraud.

The movant has other remedies for the debtor's failure to obey court discovery orders, including, without limitation, relief under Fed. R. Bankr. P. 2005 and further sanctions against the debtor and the debtor's counsel. The motion will be denied without prejudice.

The court will strike the joinder to the motion. Docket 363. The civil and bankruptcy rules do not allow for the joinder of parties to motions or oppositions to motions.

14. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO ABANDON
FWP-12 — 9-26-16 [329]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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.

The chapter 11 trustee wishes to abandon the estate's interest in real property at 130 Prairie Circle in Sacramento.

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.

130 Prairie Circle has a value of approximately $150,000 and it is subject to encumbrances totaling approximately $145,000. After taking into account administrative costs, such as sale costs that are typically 8% of the purchase price, or approximately $12,000 in this case, the estate has no equity to realize from the property.

Given that the trustee cannot realize equity for the estate from the property, it is of inconsequential value. It is also burdensome because the estate is required to maintain payments of taxes and insurance, among others, while retaining the property for administration. Accordingly, the motion will be granted and the property ordered abandoned.

15. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 9-9-16 [270]
THE BANK OF NEW YORK MELLON VS.

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 in part 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 real property following sale.

The subject property has a value of $150,000. The movant holds a claim of

$140,026 leaving only $9,974 of equity. The trustee has determined that this equity is insufficient to permit him to liquidate it for the benefit of the creditors and he has abandoned it. The small equity cushion is insufficient to protect the movant whose claim is not being paid.

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.

As a result of the abandonment, the automatic stay no longer applies to the trustee as the subject property is no longer property of the estate. Thus, the motion for relief from stay is moot as to the trustee and will be denied in part on this basis.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) as to the debtor to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

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 be waived.

16. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION FOR
MDE-3 — RELIEF FROM AUTOMATIC STAY
THE BANK OF NEW YORK MELLON VS. — 9-14-16 [284]

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 in part 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 real property following sale.

The subject property has a value of $150,000. The movant holds a claim of $145,697 leaving only $4,303 of equity. The trustee has determined that this equity is insufficient to permit him to liquidate it for the benefit of the creditors and he has abandoned it. The small equity cushion is insufficient to protect the movant whose claim is not being paid.

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.

As a result of the abandonment, the automatic stay no longer applies to the trustee as the subject property is no longer property of the estate. Thus, the motion for relief from stay is moot as to the trustee and will be denied in part on this basis.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) as to the debtor to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

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 be waived.

17. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-4
THE BANK OF NEW YORK MELLON VS.
9-14-16 [291]

Tentative Ruling: The motion will be granted in part 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 real property following sale.

The subject property has a value of $165,000. The movant holds a claim of $145,928 leaving only $19,072 of equity. The trustee has determined that this equity is insufficient to permit him to liquidate it for the benefit of the creditors and he has abandoned it. The small equity cushion is insufficient to protect the movant whose claim is not being paid.

The debtor's opposition is without merit. The property is in an uninsurable condition when the case was filed, is not producing rent, and needs substantial repairs.

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.

As a result of the abandonment, the automatic stay no longer applies to the trustee as the subject property is no longer property of the estate. Thus, the motion for relief from stay is moot as to the trustee and will be denied in part on this basis.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) as to the debtor to permit the movant to conduct a nonjudicial foreclosure sale and to obtain

possession of the subject property following sale.

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 be waived.