UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 28, 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 hearing on this motion has been continued multiple times, the last being from October 17 to November 28.

The movant, Charles N. Teavers IRA #887220801 (an 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 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 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 states only 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 filed additional pleadings in support of the motion, including a reply with exhibits. But, none of the factual assertions in the reply are supported by admissible evidence, such as a declaration. See Local Bankruptcy Rule 9014-1(d)(6). Nor are the exhibits authenticated by a declaration. They are inadmissible hearsay. Fed. R. Evid. 802.

More, the movant's additional pleadings will be stricken, as the court has not reopened the record on the motion. Dockets 83 & 84. The record on this motion closed on May 24, seven days prior to the May 31 initial hearing on the motion. Docket 58.

The request in the reply for adequate protection payments will be denied also because that request is not in the motion. Docket 41 at 3-4. The court will not allow the movant to seek new relief in the reply, depriving the debtor from an opportunity to respond.

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

2. 16-25405-A-7 NICOLE MOSBY — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 10-17-16 [23]
SPECIALIZED LOAN SERVICING, L.L.C. VS.

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 7, 2016, to provide the debtor with the opportunity to file a response. The debtor had until November 14 to file a response to the motion. No response was filed.

The movant, Specialized Loan Servicing, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $265,000.00 and it is encumbered by claims totaling approximately $350,699.25. The movant's deed is in first priority position and secures a claim of approximately $350,699.25.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 6, 2016 and filed a statement of nonopposition to this motion on October 30, 2016.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed

of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

3.	16-20912-A-11 PCB-3	SEAN SUH'S CARE HOMES, INC.	MOTION TO CONFIRM PLAN 10-17-16 [110]

Tentative Ruling: The motion for final approval of the disclosure statement will be denied without prejudice.

The court will deny final approval of the debtor's disclosure statement for the following reasons:

(1) The definition of the "effective date" on page 3 does not take into consideration a stay pending appeal in the event there is an appeal from the order confirming the plan.

(2) The formal definition of the plan's "effective date" on page 3 contradicts the narrative pertaining to the plan's effective date on page 7. On page 3 there is no mention of an appeal from the plan confirmation order, whereas on page 7 an appeal from the plan confirmation order is taken into account. Docket 110. Only one of those different definitions should govern.

(3) The disclosure statement provides that the debtor has agreed to allow a $600,000 proof of claim in favor of unsecured creditor Alejandro De La Cruz, whereas the debtor provides only for a $60,000 claim in favor of Mr. De La Cruz. This discrepancy should be corrected. Docket 110 at 3 & 5.

(4) The disclosure statement should reflect the October 31, 2016 amendment of IRS' $78,086.14 proof of claim to $2,000. The debtor was planning to borrow funds to pay IRS' claim in the event it was unsuccessful at objecting to the $78,086.14 proof of claim. Docket 110 at 4. Now that IRS' claim has been reduced to $2,000, the disclosure statement and plan must reflect whether and how this claim will be paid.

(5) As the current version of the disclosure statement and plan provides that the debtor will be incurring additional debt to pay some claims (*e.g.*, IRS' claim), the disclosure statement should explain how the plan complies with 11 U.S.C. § 1129(a)(11) (precluding confirmation of a plan likely to be followed by "the need for further financial reorganization").

(6) It is not clear why the creditors in class 4 ("Selena So's Care Home and Reach Adult Development") are labeled as insiders. The disclosure statement should explain this. Docket 110 at 4.

(7) The disclosure statement and plan does not identify the amount of the claims held by "Selena So's Care Home and Reach Adult Development."

(8) The treatment of the class 3 claim of Hong Ran Cohen, the mother of the debtor's principal (Sean Suh) in the amount of $132,200, provides that "Cohen has agreed to accept monthly payments from Suh (or for which the funds are lent to Debtor by Suh), on terms and conditions to be determined subsequent to the Effective Date." Docket 110 at 4. This is a substantial claim and the plan is to have the debtor's principal somehow pay the claim. Yet, there is no disclosure about:

- whether the debtor's principal has the means to pay the claim,
- how the claim will be paid if the debtor's principal does not pay the claim,
- whether the debtor's principal in his individual capacity has agreed to pay the claim,
- what will be the terms of repayment, and
- what will happen if there is no agreement with the creditor over the terms of repayment.

On its face, the treatment of this class 3 claim calls for further financial reorganization, such as the renegotiation of debt, in violation of 11 U.S.C. § 1129(a)(11) (precluding confirmation of a plan likely to be followed by "the need for further financial reorganization").

(9) The disclosure statement and plan says nothing about the original terms of repayment for the $132,200 class 3 claim of Hong Ran Cohen.

(10) The disclosure statement and plan should provide more background for how and why the debtor incurred substantial insider debt.

The court finds it unnecessary to reach plan confirmation. Any future amendments of the disclosure statement and plan should be accompanied with a red/black-lined version.

4.	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.

The court continued the hearing on this motion from October 17 to November 14, in order to assess the further filings promised by the debtor in connection with Ag's motion for sanctions. The court then continued the hearing once again to November 28 at the request of the debtor. As the record on this motion has closed, the ruling from November 14 follows below.

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 noncompliance amounts to fraud. Also, Ag's counsel has argued that Paul Samra's wife and son have been taking cash from the debtor for their own purposes.

Secured creditor IRA Services Trust Co. CFBO, Shankuntala D. Saini, has filed a

joinder in the motion. Docket 363.

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 supporting the contention that failure to comply with court discovery orders amounts to fraud.

Specifically, the debtor's further filings in connection with the motion for sanctions indicate that there may be invoices and receipts at least for some of the cash purchases done by Paul Samra's wife and son. The debtor has apparently discovered documents that should have been produced but were not produced by the debtor to Ag pursuant to the March 23, 2016 Rule 2004 order. Docket 418. As such, the court cannot conclude that Paul Samra's wife and son have been taking cash from the debtor for their own purposes.

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.

5.	15-29136-A-12 MAS-8	P&M SAMRA LAND INVESTMENTS L.L.C.	MOTION FOR CONTEMPT AND/OR SANCTIONS 9-15-16 [342]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from October 17, 2016 to November 14, in order to permit the debtor to file additional papers concerning its production of documents. The court then continued the hearing once again to November 28 at the request of the debtor. As the record on this motion has closed, the ruling from November 14 follows below.

Creditor Ag-Seeds Unlimited (Ag) 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 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.

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 court ordered a Rule 2004 examination and a document production per Ag's request on March 23, 2016. Dockets 56 & 59.

Thereafter, Ag filed a motion to compel compliance with the order and for sanctions. On June 13, the court entered an order directing the debtor to produce the documents in the subpoena and awarding compensatory sanctions against the debtor and its counsel, Noel Knight, jointly and severally.

Believing that the debtor had failed to comply with the June 13 order, Ag filed another motion to compliance and for sanctions. This prompted the debtor's promise to comply with the court's orders but then it once again failed to comply. The court granted Ag's second motion and awarded the $1,985 in sanctions jointly and severally against both the debtor and Mr. Knight. The court made detailed findings as to numerous violations of its orders. See Docket 246. The court incorporates by reference those findings and conclusions. Id.

In its order granting Ag's second motion, the court provided:

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

- The court will also order Paul Samra to appear for a further Rule 2004 examination no later than August 29, 2016, to provide Ag-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.

- 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 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's second motion to compel and for sanctions, and did not address why the court should not assess additional sanctions against them, beyond the sanctions requested by Ag's second motion. Docket 318. The court then ordered the debtor and Mr. Knight, jointly and severally, to pay sanctions of $2,000. Docket 330.

Ag's instant motion establishes that Ag 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. Docket 344.

The court continued the hearing on this motion from October 17 in order to provide the debtor with opportunity to explain what it has already produced to Ag, when it was produced, what has not been produced, and why it has not been produced. Specifically, the court instructed the debtor to have the person most knowledgeable, as required by the subpoena, execute a declaration attesting to these issues.

The debtor's further pleading concerning the document production is titled, "Debtor's Response to Court Request for History of All Document Production to AG Seeds Unlimited; Corrected with Signature Addition Page 6." Docket 418. The response consists of information about documents previously produced to Ag, how documents were produced to Ag, when documents were produced, which documents were not produced, and new documents discovered by the debtor and recently produced to Ag. Docket 418.

However, the debtor's response is wanting.

The response is executed by the debtor's counsel, Noel Knight, declaring that "I hereby attest, under penalty of perjury, that all of the above commentary on Debtor document production and submitted documentation is correct and truthful." Docket 418 at 8.

Yet, the response does not state that Mr. Knight has personal knowledge about the information in it. And, he is not the custodian of the debtor's documents,

nor is he the person most knowledgeable about the debtor's affairs or its records. Throughout this proceeding, the debtor has tendered Paul Samra, its managing member, as the person most knowledgeable concerning the debtor's affairs and its books and records.

The response, while signed by Paul Samra, is signed only in his individual capacity. He has not signed it on behalf of the debtor. Docket 418 at 9.

More, his attestation that "the matters stated therein are true" is based on information and belief. "I am informed and believe . . . ." Docket 418 at 9. He is admitting that he does not necessarily have personal knowledge of the information in the response. The response says nothing about his personal knowledge of the information in the response. See Fed. R. Evid. 602.

For instance, the response refers to newly discovered documents in Hood, California. Yet, Paul Samra does not say that he discovered the documents or was present at their discovery. Paul Samra's signature and attestation merely refer to the several attestations and signatures of Noel Knight in the response, as basis for his attestation that the information in the history is true. In other words, Mr. Samra attests that, based on what Mr. Knight told him, the facts in response are true.

In short, the signatures and attestations of Mr. Knight and Paul Samra purporting to establish and authenticate the statements in the response are meaningless.

Further, even if true, the statements in the response are vague, ambiguous and incomplete.

For example, the response provides a list of documents admittedly not produced to Ag, including, without limitation, documents relating to the transfer of assets, account books, records, ledgers, etc. Docket 418 at 5-6. Documents on the list are not numbered in sequential order and the court cannot tell whether documents are missing, they are misnumbered or the debtor is using the numbers from the subpoena to identify the documents. In the list, documents 1-6, 8-10, 14-15 and 19-21 appear to be missing. Docket 418 at 5-6. The court should not have to speculate about this.

The response also states that the documents not produced to Ag "were not available for transmission or in existence at the time of the above listed document productions, nor in our possession or control." Docket 418 at 5.

But, the court cannot tell what "not available" or "not in existence" means. As the debtor just discovered many new documents, which is discussed in more detail below, it seems the debtor had the documents, or many of them, all along — it just had not searched for them. If documents were truly not available for transmission, the debtor has not explained why they were not available. Not once has the debtor objected to the document production or sought a protective order during the last approximately eight months, identifying documents that were not available for production and explaining why they were not available. The same is true as to documents not in existence. The debtor has not identified a single document not produced because it was not in existence at the time the court entered the March 23 order.

Also, with regard to some of the missing documents, Mr. Knight further declares in another signed statement that, "I hereby attest, under penalty of perjury, that the Debtor does not have available nor maintains the following . . . Check

Registers, Book Ledgers, and Bookkeeping paraphernalia." Docket 418 at 7.

Immediately after the above statement, Mr. Knight further declares that "Debtor has now acquired software to address all record keeping deficiencies." Id.

Yet, there is nothing in the response explaining why the debtor never maintained bookkeeping records. This is especially important as Paul Samra admits in a declaration that "over the past 3 years, [he] ha[s] made periodic cash disbursements to both [his] wife Manit and [his] son Steven for the purchase of parts, goods, supplies, and services for which, there may not be either invoice or receipt." Docket 418 at 11. Paul Samra's wife, Manjit Samra, also admits that "[she] may not have a receipt for [the purchase or farm related parts and supplies]." Docket 418 at 13.

These statements beg the question of why the debtor has not maintained bookkeeping, even after the filing of this case. This case has been pending for approximately one year, since November 24, 2015. And only now — one year into the case – the debtor is starting to keep records.

If not fraud, at best this is evidence of bad faith and gross mismanagement of the debtor.

Other problematic statements follow. The response admits that the debtor has just discovered "boxes stored at its Hood, California property" containing "receipts, paper invoices, and bank statements," which will be provided to Ag. Docket 418 at 7.

The response also states that the debtor will be providing or has provided the following documents to Ag: "Scott Chau Promissory Note," "Receipt for Interest Payment to Scott Chau," "Thiel Note," "Saini Note," and "River City Bank Statements, May to August 2014." Docket 418 at 7-8.

At its "Hood, California property location," the debtor further admits to "locat[ing] about 4 more boxes containing cash receipts, payment receipts, and assorted invoices related to P & M Samra and will provide one collective PDF of content via e-mail on November 7, 2016." Docket 418 at 8.

The debtor does not say when it discovered the above documents, but it must have been after the October 17 hearing on this motion, as the documents were not mentioned prior to that date. Nevertheless, there is no explanation as to why the debtor did not look for these documents earlier. The court's March 23, 2016 document production order was entered nearly eight months ago. The question is why it has taken eight months of time consuming and expensive litigation to motivate the debtor to locate and produce these documents.

The debtor also does not say who located the new documents. This is important because there is no evidence of Paul Samra or Mr. Knight having personal knowledge as to the discovery of the documents.

The response also lists "DOCUMENTS NOT IN CONTROL OF DEBTOR WHICH CAN BE OBTAINED AND PRODUCED," including "Communications between Debtor and All Financial Institutions," "2015 and 2016 River City Bank Statements," and "2015 Bank Statements from Bank of Feather River."

But, the debtor does not say why it did not promptly obtain the above-mentioned documents.

In summary, the debtor's statements in the response (Docket 418) are unhelpful, ambiguous and lacking in crucial detail. The statements do not change the fact that the debtor's failure to immediately search for, identify, and produce the requested documents has caused approximately eight months of time-consuming and expensive litigation, not to mention violation of court order.

The debtor's statements in the response, even if true, demonstrate that the debtor has had many of the requested documents in its possession or control and that they should have been promptly located and produced to Ag. Nonetheless, the debtor ignored its responsibility to locate and produce these documents on multiple occasions, despite multiple motions for sanctions and orders of this court.

The court already issued coercive sanctions of $300 per day from and after August 18, 2016, but many of those court ordered documents were not produced by the initial October 17 hearing on this motion. See Dockets 246 & 247. The "discovery" of the documents in Hood makes this abundantly clear. See Docket 418.

Ag has requested sanctions related to attorney and court reporter time spent in obtaining the documents in addition to coercive sanctions of $8,400 plus $300 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 continued failure of the debtor to produce documents requested by Ag's March 22 subpoena and lack of disclosure of basic information about the debtor's operations by Paul Samra at the July 15 and August 29 examinations made the filing of this motion necessary. The debtor's further response to this motion demonstrates that the debtor has been engaging in willful misconduct by not locating and producing the documents required by the court's March 23 order. This is bad faith.

The court will award the requested sanctions in the amount of $21,679.90 as follows:

(1) $18,000 (representing $300 of coercive sanctions per day from August 18, 2016 through October 17, 2016), solely against the debtor;

(2) $2,695 for 6 hours of work performed by Ag' counsel at an hourly rate of $350 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, against the debtor; and

(3) $984.90 for work performed by the court reporter at an hourly rate of $235 at the aforementioned examinations, jointly and severally against the debtor.

The $18,000 in sanctions shall be paid to the court by a cashier check, made payable to the United States Treasury, within seven days of entry of the order on this motion. The other $3,679.90 ($2,695 + $984.90) in sanctions shall be paid by a cashier check directly to Ag' counsel, Mark Serlin, within seven days of entry of the order on this motion.

The debtor shall be prohibited from utilizing any documents not produced by the November 14 hearing date on this motion, for any claim, defense or assertion in this bankruptcy proceeding.

The above sanctions are awarded to coerce the debtor's compliance with the court's orders and compensate Ag for having to enforce its right to the documents.

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).

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.

The debtor's initial opposition/response to this motion lacks merit and is non-responsive. It does not deny that the debtor has failed to produced documents requested by Ag' 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 the debtor having the documents requested by Ag's subpoena and still not received by Ag. It does nothing to explain the violations of the June 13 order.

6.	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 court continued the hearing on this motion from October 17, 2016 to November 14, in order to permit the debtor to file additional papers concerning its production of documents to creditor Ag-Seeds. The court then continued the hearing once again to November 28 at the request of the debtor. As the record on this motion has closed, the ruling from November 14 follows below.

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 opposition to confirmation of the plan:

- 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) This case is not being prosecuted in good faith and the plan is not

proposed in good faith because the debtor has 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. The court incorporates by reference its ruling on Ag's latest motion for sanctions, also being heard on this calendar, DCN MAS-8.

(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. The failure to identify an approximate amount of the contributions precludes the court from analyzing the likelihood that such contributions will be made.

(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.