

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

November 2, 2016 at 10:00 a.m.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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1.	16-26017-D-7	NICOLE BURTON	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-7-16 [20]
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Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

2.	16-25719-D-7	SOMBOUN SAYASANE	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-27-16 [13]
	APN-1		
	GATEWAY ONE LENDING &		
	FINANCE VS.		

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a) (3) by minute order. There will be no further relief afforded. No appearance is necessary.

3. 14-25820-D-11 INTERNATIONAL STATUS CONFERENCE RE: CHAPTER  
MANUFACTURING GROUP, INC. 11 VOLUNTARY PETITION  
5-30-14 [1]

**Final ruling:**

**This status conference was continued to November 16, 2016 at 10:00 a.m. No appearance is necessary.**

4. 14-25820-D-11 INTERNATIONAL MOTION TO COMPROMISE  
DMC-27 MANUFACTURING GROUP, INC. CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JOHN XEPOLEAS  
AND XEPCO, INC. AND/OR MOTION  
FOR COMPENSATION BY THE LAW  
OFFICE OF DIAMOND MCCARTHY LLP  
FOR CHRISTOPHER D. SULLIVAN,  
SPECIAL COUNSEL(S)  
10-4-16 [930]

5. 14-25820-D-11 INTERNATIONAL MOTION TO DISMISS ADVERSARY  
16-2090 MANUFACTURING GROUP, INC. WT-2PROCEEDING/NOTICE OF REMOVAL  
MCFARLAND V. CALIFORNIA BANK & AND/OR MOTION TO TRANSFER  
TRUST ET AL CASE/PROCEEDING TO ANOTHER  
DISTRICT  
10-5-16 [104]

**Final ruling:**

**The hearing on this motion is continued to November 10, 2016 at 10:00 a.m. No appearance is necessary on November 2, 2016.**

6. 16-23223-D-11 SKYHIGH PROPERTY LLC MOTION FOR RELIEF FROM  
TF-1 AUTOMATIC STAY  
DCR MORTGAGE VI SUB I, LLC 10-5-16 [47]  
VS.

7. 06-22225-D-7 BETSEY LEBBOS MOTION TO SELL FREE AND CLEAR  
MPD-18 OF LIENS  
10-5-16 [631]

8. 16-24628-D-7 GERALD/ROBERTA WION MOTION FOR RELIEF FROM  
AP-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 9-27-16 [18]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

9. 16-23638-D-7 MICHAEL NICHOLS MOTION FOR COMPENSATION FOR  
DMW-3 EXCEL REALTY, INC., REALTOR  
10-5-16 [27]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for compensation for Excel Realty, Inc. is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

10. 16-25239-D-7 DIVINDER HUNDAL CONTINUED MOTION TO COMPEL  
DAO-2 ABANDONMENT  
9-21-16 [21]

11. 16-24754-D-7 DARRYL MATHIS  
AP-1  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-23-16 [12]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 16-25556-D-11 AK BUILDERS AND  
COATINGS, INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
8-23-16 [1]

13. 10-50658-D-7 ABRAHAN/NORMA RAMOS  
RLC-2

MOTION TO AVOID LIEN OF LEAF  
FINANCIAL CORPORATION  
9-29-16 [18]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Leaf Financial Corporation ("Leaf") against two real properties the debtors owned when they filed their petition commencing this case. The motion will be denied for the following reasons. First, the moving parties failed to serve Leaf in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Leaf (1) by certified mail to the attention of the office of the president; (2) by certified mail to its agent for service of process; and (3) through the attorney who obtained its abstract of judgment. The first and second methods were insufficient because Leaf is not an FDIC-insured institution, and thus, was required to be served by first-class mail. Compare Fed. R. Bankr. P. 7004(b)(6) and preamble to Rule 7004(b) with Rule 7004(h). The third method was insufficient because there is no evidence the attorney is authorized to receive service of process on behalf of Leaf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Second, the moving parties have failed to submit evidence demonstrating they are entitled to the relief requested, as required by LBR 9014-1(d)(7). The debtors have filed as an exhibit a purported copy of the schedule of exemptions filed in their case; however, the copy is not a true copy of the schedule of exemptions as filed. In the copy, the debtors purport to claim an exemption in the two real properties which are the subject of the motion. However, (1) the copy is filed as an exhibit; it has not been actually filed in the case; and (2) the copy bears no indication of signature of the debtors verifying the schedule, as required by Fed. R. Bankr. P. 1008. In short, the debtors have not claimed any exemption in the property; thus, they have not satisfied the second test for avoidance of a judicial

lien - that they have claimed an interest in the property as exempt. See Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

As a result of these service and evidentiary defects, the motion will be denied by minute order. No appearance is necessary.

14.	15-27561-D-7	SIMONAE BARRY	MOTION FOR ENTRY OF DEFAULT
	15-2244	TJP-5	JUDGMENT
	GATEWAY ONE LENDING & FINANCE		10-5-16 [62]
	V. BARRY		

**Tentative ruling:**

This is the plaintiff's motion for entry of default judgment. The motion will be denied because there is no evidence of service on file. The plaintiff originally filed a virtually identical motion, with notice of motion and supporting declarations and exhibits, on September 16, 2016, as Docket Control No. TJP-4. There was a proof of service filed with those moving papers. Although the proof of service did not include a docket control number, as was required by LBR 9014-1(c) (1) and (e) (3), the court assumes the documents served were those filed as Docket Control No. TJP-4 as that was the only motion for entry of default judgment on file at that time. Although the notice of motion purported to require the filing of written opposition 14 days prior to the hearing date, none of the moving papers included a hearing date.

On October 5, 2016, the plaintiff filed a motion virtually identical to the one filed September 16, 2016, and a notice of motion and supporting declarations and exhibits, except that these moving parties included a hearing date and time of November 2, 2016, at 10:00 a.m. The moving papers filed October 5, 2016 bore Docket Control No. TJP-5. There is no proof of service on file for the moving papers comprising DC No. TJP-5.

As a result of this service defect, the motion will be denied by minute order. Alternatively, if the moving party files a proof of service before the hearing showing proper service, the court will consider the motion. No appearance is necessary.

15.	14-20064-D-7	GLENN GREGO	MOTION FOR RELIEF FROM
	KAZ-1		AUTOMATIC STAY
	DEUTSCHE BANK NATIONAL TRUST		10-3-16 [665]
	VS.		

**Final ruling:**

This matter is resolved without oral argument. This is Deutsche Bank National Trust's motion for relief from automatic stay. The court records indicate that the Chapter 7 trustee filed a statement of non-opposition and no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

**Tentative ruling:**

This is the debtor's motion for an order requiring Scott Sagaria and/or the Sagaria Law Firm to disgorge fees paid for services that allegedly were not rendered. Sagaria Law, a professional corporation ("Sagaria"), has filed opposition. For the following reasons, the motion will be granted in part.

This is the debtor's second motion for the same relief. Sagaria relies heavily on the court's ruling denying the first motion, DN 606, in which the court highlighted various procedural defects with the motion. Based on that ruling and on the debtor's alleged pattern of violating LBR 9014-1, Sagaria asks that the motion be denied with prejudice. The court denies the request. The original motion was denied for a variety of procedural defects, some of which are repeated here. However, the court's principal concern was that Sagaria had not been served with the motion when it was filed; instead, Sagaria was not served until ten days before the scheduled hearing, when it was served with an amended notice which itself was defective for failure to apprise Sagaria of whether and when written opposition would be required. It was significant on that first motion that Sagaria filed no opposition.

This time, however, Sagaria has filed opposition. In fact, it was given plenty of time - over 50 days' notice of the hearing, and it does not complain that it has not had sufficient time. The court finds that Sagaria was not prejudiced in any way by the procedural defects in the present motion. Therefore, the court will address the merits. Citing § 329 of the Bankruptcy Code and Fed. R. Bankr. P. 2017(b), the debtor asks the court to require Sagaria to disgorge all but \$500 of the \$9,300 the debtor says he paid Sagaria. He states the only service Sagaria provided was to appear at a single session of the meeting of creditors, at which time, according to the debtor, attorney Scott Sagaria was ill-prepared and had not turned over the documents the trustee had requested, although the debtor had provided them to Sagaria.

Sagaria, on the other hand, seeks to retain the entire \$9,550 it claims it received from the debtor.<sup>1</sup> Sagaria substituted into this case as the debtor's counsel in March of 2015 (over a year into the case) and filed its motion to withdraw two and one-half months later. Sagaria contends that during the time it represented the debtor, it reviewed the extensive docket entries in the case (these amounted to 339 entries by the time Sagaria filed its motion to withdraw), and discovered the case had been handled "casually" by the debtor and his original counsel, who had "muddled" the case by filing "countless" amendments to the schedules and statements. Sagaria's Opp., DN 680, at 6:18-19. Sagaria states that before appearing at the continued meeting of creditors, it made calls to and emailed the debtor, had a telephone conference with the trustee, conducted a "thorough review of the pending issues, and other substantive matters" (*id.* at 5:12-13), and produced documents to the trustee. After the meeting of creditors, Sagaria "attempted to work with the Debtor" (*id.* at 7:25) on obtaining information requested by the trustee.

In support of its opposition, Sagaria has submitted a declaration of an employee, Garrett Lenox, who testifies one of his major responsibilities is to provide documents to bankruptcy trustees after cases have been filed. (According to

Sagaria's website, Mr. Lenox is a senior paralegal with Sagaria.) Mr. Lenox authenticates a copy of a letter from the trustee requesting a variety of documents and information and testifies that on particular dates, he (1) emailed the debtor with a copy of the letter and request for the documents; (2) received an email from the debtor's former counsel with two insurance policies that had been requested; (3) emailed the debtor's bank statements and Mariner's Inn inventory list to the trustee; (4) emailed mortgage statements to the trustee; and (5) emailed the debtor a Substitution of Attorney form he had requested.

Sagaria complains that its efforts to represent the debtor were hampered by constant interference from the debtor's former counsel, Mr. Ramey, and by the debtor's "unilateral decision to file documents with the bankruptcy court on his own behalf." Opp. at 9:14-15. The court has no trouble accepting the proposition that the debtor's original counsel caused confusion: the same day the substitution of attorneys was filed to substitute Sagaria in place of Mr. Ramey, Mr. Ramey filed, ostensibly as counsel for the debtor, a motion to disqualify the judge in the case, and the next day, he filed, again as counsel for the debtor, amended notices of hearing on eight different claim objections. Mr. Ramey continued to file documents as attorney for the debtor throughout the time Sagaria was counsel of record for the debtor. In addition, the debtor filed several documents in "pro se."

Nevertheless, what is far more important for the purposes of this motion is the very limited scope of the evidence submitted by Sagaria and the absence of any reference to services provided by its attorneys other than the single appearance at the meeting of creditors. It is significant that Sagaria chose to limit its evidence to the testimony of its senior paralegal testifying to five email exchanges and a single exhibit - a copy of the trustee's letter requesting documents. With the exception of that evidence, there is no evidence of any specific services at all. Sagaria simply relies on its conclusions that (1) "attorney services for chapter 7 debtors does not require court approval" (Opp. at 8:3) and (2) "the billing in this case is more than reasonable given the complex position of the case, the voluminous record that preceded Sagaria Law's entry into the case, and the potential for an individual asset case given the Trust." Id. at 8:4-6. The second of these is unsupported by the evidence and the first disregards applicable law.

Pursuant to Fed. R. Bankr. P. 2017(b), the court may determine the amount of any excessive fees paid by the debtor post-petition, and pursuant to § 329(b), the court may order the disgorgement of compensation that exceeds the reasonable value of the services provided. Given the evidence submitted by the parties, the court would have significant difficulty finding that the sum of \$9,550, or any amount even close to it, represents the reasonable value of the services rendered by Sagaria. Instead, the court finds that \$1,400 represents the reasonable value of the services rendered, comprised of \$500 for attorney time for the appearance at the meeting of creditors, which the debtor agrees should be allowed, and six hours of paralegal time, at \$150 per hour, or \$900, for reviewing the docket, emailing and speaking by phone with the trustee, emailing the debtor and his former counsel, and producing documents to the trustee. The court would add that it finds these amounts to be generous, based on the evidence. The balance of the \$9,550 received by Sagaria, \$8,150, will be ordered to be disgorged by Sagaria to the debtor within 15 days from the date of the order on this motion.

The court will hear the matter.

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1 The amount of the payments Sagaria actually received is in question. The

debtor states he paid \$9,300. According to Sagaria's opposition, it received payments of \$2,300, \$1,000, \$750, \$1,000, \$2,000, and \$2,500 over a two-month span of time. These amounts total \$9,550. In contrast, in its Rule 2016(b) statement, filed long after it had withdrawn as the debtor's counsel, Sagaria stated it had received \$9,250. Because it is the more precise, the court accepts the \$9,550 figure Sagaria now claims to have received.

17. 14-27267-D-7 SARAD/USHA CHAND MOTION TO EXTEND TIME  
16-2138 HSM-1 10-4-16 [8]  
EDMONDS V. SARAD
  
18. 12-27473-D-7 MICHAEL P. ALLEN GENERAL MOTION TO APPROVE STIPULATION  
FLG-1 CONTRACTORS, INC. FOR RELIEF FROM THE AUTOMATIC  
GOLD MINERS INN, LLC VS. STAY  
9-23-16 [77]
  
19. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM  
CSR-2 AUTOMATIC STAY  
GATEWAY ACCEPTANCE COMPANY 9-23-16 [1291]  
VS.



**Final ruling:**

This is the debtor's motion to redeem collateral, a 2012 GMC Sierra, from the lien of Ally Financial. The motion will be denied for the following reasons. First, the moving party has failed to demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(7). Pursuant to § 722 of the Bankruptcy Code, a debtor may redeem personal property intended for personal, family, or household use from a lien securing a dischargeable consumer debt if the property is exempted or has been abandoned. The motion states incorrectly that "[t]he interest of the Debtor(s) in such property is exempt or has been abandoned by the estate . . . ." The vehicle has not been abandoned. Although the trustee has filed a report of no distribution, that does not qualify as abandonment. In re Perez, 2011 Bankr. LEXIS 4795, \*9 (9th Cir. BAP 2011), citing In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991). Nor has the debtor claimed the vehicle as exempt. Although she listed the vehicle on her Schedule C, she listed the value of her claimed exemption as \$0.00.

Second, pursuant to § 722, a debtor may redeem collateral by paying the creditor the amount of its allowed secured claim, whereas here, the debtor proposes to pay Ally Financial less than that amount. To determine the amount of the creditor's "allowed secured claim" for purposes of § 722, the court is to look to § 506(a). In re Labostrie, 2012 Bankr. LEXIS 5786, \*7 (9th Cir. BAP 2012). Where, as here, the debtor is an individual in a chapter 7 case and the property to be valued is personal property acquired for personal, family, or household purposes, the court is to determine its replacement value, defined as "the price a retail merchant would charge for property of that kind" considering its age and condition. § 506(a)(2). In contrast, here, the price the debtor proposes to pay to redeem the vehicle is the edmunds.com "dealer trade-in" value. The edmunds.com printout shows a "dealer retail" value of \$21,294. The court notes that on her Schedule B, the debtor stated the vehicle was in "very good condition" and she listed its KBB private party value as \$29,754. The debtor is not necessarily bound by the latter value for purposes of the court determining its replacement value (or by the edmunds.com "dealer retail" value). The schedule is, however, further indication that the dealer trade-in value, as determined by edmunds.com, does not represent the value a retail merchant would charge for a similar vehicle considering its age and condition.

Third, the motion was not served as the court would have directed, as required by Fed. R. Bankr. P. 6008. The debtor served Ally Financial at two different addresses, both of them different from the address she provided for Ally Financial on her Schedule D and master address list. For notices required by Fed. R. Bankr. P. 2002, the rule requires that where a creditor has not filed a proof of claim or request for notice, notices must be mailed to the address on the schedules or master address list, whichever is filed later. Rule 2002(g)(2). Although motions to redeem are not governed by Rule 2002, the court finds the same principle should apply; that is, a creditor that has not filed a proof of claim or request for notice (as Ally Financial in this case) should be served at the address at which it was listed on the debtor's schedules or master address list. Thus, pursuant to Fed. R. Bankr. P. 6008, the court directs that any subsequent motion shall be mailed to Ally Financial at the address shown on the debtor's Schedule D and master address list (or, if Ally Financial files a proof of claim or request for notice in the interim, at the address on that document).

Finally, the proof of service states it was executed on September 27, 2016 but service was made on September 28, 2016. If those dates are accurate, the

declaration was signed before service was made and the declaration was not accurate when signed.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

21. 16-26403-D-7 SAVUN PHON MOTION FOR RELIEF FROM  
SC-1 AUTOMATIC STAY  
DUKE PARTNERS, LLC VS. 10-12-16 [20]

**DEBTOR DISMISSED: 10/17/2016**

22. 16-26605-D-7 WER4U ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-17-16 [12]

**Final ruling:**

**This case was dismissed on October 21, 2016. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.**

23. 16-26115-D-7 CRAIG HEITZ MOTION TO COMPEL ABANDONMENT  
CAH-1 10-18-16 [10]

24. 16-20916-D-7 DENISE CORDOVA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-11-16 [35]

25. 14-25820-D-11 INTERNATIONAL CONTINUED MOTION TO DISMISS  
16-2090 MANUFACTURING GROUP, INC. ADVERSARY PROCEEDING  
MCFARLAND V. CALIFORNIA BANK & 9-21-16 [81]  
TRUST ET AL OMM-1

**Final ruling:**

The hearing on this motion is continued to November 10, 2016 at 10:00 a.m. No appearance is necessary on November 2, 2016.

26. 16-24321-D-12 PAUL SCHMIDT CONTINUED MOTION TO EXTEND  
DBL-3 DEADLINE TO FILE SCHEDULES OR  
PROVIDE REQUIRED INFORMATION  
10-5-16 [15]

27. 16-24259-D-7 ROBERT MANRIQUEZ MOTION TO AVOID LIEN OF FIA  
MKJ-3 CARD SERVICES, N.A.  
10-8-16 [33]

**Tentative ruling:**

This is the debtor's second motion to avoid a judicial lien held by FIA Card Services, N.A. ("FIA"). The first was denied for two reasons: (1) the moving party had failed to serve FIA or its successor in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b); and (2) the proof of service was not signed under oath as to the facts of service, as required by 28 U.S.C. § 1746, but only as to the declarant's age and citizenship. With this new motion, the moving party has cured the first defect but ignored the second. If an amended proof of service has been filed and is on the court's docket by the time of the hearing, the court will entertain opposition, if any, at the hearing. If an amended proof of service is not on the docket, the motion will be denied. The court will hear the matter.

28. 16-24259-D-7 ROBERT MANRIQUEZ MOTION TO AVOID LIEN OF FIA  
MKJ-4 CARD SERVICES, N.A.  
10-13-16 [38]

**Tentative ruling:**

This is the debtor's second motion to avoid a judicial lien held by FIA Card Services, N.A. ("FIA"). The first was denied for two reasons: (1) the moving party had failed to serve FIA or its successor in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b); and (2) the proof of service was not signed under oath as to the facts of service, as required by 28 U.S.C. § 1746, but only as to the declarant's age and citizenship. With this new motion, the moving party has cured the first defect but ignored the second. If an amended proof of service has been filed and is on the court's docket by the time of the hearing, the court will entertain opposition, if any, at the hearing. If an amended proof of service is not on the docket, the motion will be denied. The court will hear the matter.

29. 16-24259-D-7 ROBERT MANRIQUEZ  
MKJ-4

MOTION TO AVOID LIEN OF FIA  
CARD SERVICES, N.A.  
10-13-16 [43]

**Final ruling:**

This motion, which appears at DN 43 of the court's docket, is an exact duplicate of the motion at DN 38. The moving party filed all of the moving papers - the motion, notice of hearing, declaration, exhibits, and proof of service, twice. The documents at DNs 43 through 47 will be ordered stricken from the record as duplicates and this matter is removed from calendar.

30. 16-26783-D-7 MAREK/OLGA KOWALSKI  
EJS-1  
YEHUDA SABAG VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-19-16 [10]