

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

January 13, 2015 at 1:30 P.M.

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1. [14-31815](#)-C-13 DAVID SEARS MOTION FOR RELIEF FROM  
SC-1 Pro Se AUTOMATIC STAY  
12-11-14 [[11](#)]  
  
PARKVIEW EDGE PROPERTIES,  
LLC VS.

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**Final Ruling:** No appearance at the January 13, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 11, 2014. Twenty-eight days' notice is required. That requirement was met.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

Parkview Edge Properties, LLC seeks relief from the automatic stay with respect to the real property commonly known as 1830 Hidden Hills Drive, Roseville, California. The moving party has provided the Declaration of Olivia Reyes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Reyes Declaration states that Movant acquired the property through a foreclosure sale and recorded the Trustee's Deed Upon Sale. Exh. 1, ECF 16. On September 8, 2014, Movant served a three-day notice to quit on Debtor. Exh. 2, ECF 17. An unlawful detainer complaint was filed on September 16, 2014 (Case No. MVC0062193). The state court set trial for

December 5, 2014; however, trial was stayed when Debtor filed for bankruptcy relief on December 4, 2014.

Movant requests relief from the automatic stay to continue with the unlawful detainer action. The Chapter 13 Trustee filed a statement indicating he has no opposition to the motion on December 22, 2014.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the unlawful detainer complaint. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay. Fed. R. Bankr. P. 9014.

The court shall issue an order terminating and vacating the automatic stay to allow Parkview Edge Properties, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1830 Hidden Hills Drive, Roseville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Parkview Edge Properties, LLC, its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1830 Hidden Hills Drive, Roseville, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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2. [13-28817](#)-C-13 ADRIAN ROBERTS  
DBR-1 Steele Lanphier

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-22-14 [[78](#)]

PAUL AND ANITA GREENFIELD  
VS.

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**Tentative Ruling:** The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 22, 2014. Fourteen days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion for Relief From the Automatic Stay is denied.**

Paul Greenfield seeks relief from the automatic stay with respect to the real property commonly known as 7726 Quinby Way, Sacramento, California. The moving party has provided the Declaration of Paul Greenfield to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Greenfield Declaration states that the Debtor has not made 0 post-petition payments, with a total of \$0.00 in post-petition payments past due. Debtor has not made 14 pre-petition payments with a total of \$25,005.99 in pre-petition payments due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$269,592 (including \$203,354 secured by movant's first trust deed), as stated in the Greenfield Declaration, while

the value of the property is determined to be \$136,000, as stated in Schedules A and D filed by Debtor.

Movant submitted the Declaration of Kristina Parson, detailing Movant's understanding of the status of Debtor's case. The Parson Declaration states that on December 15, 2014, Movant was informed that Debtor was not current in plan payments, with the November payment being outstanding. Parson also references a statement of the Debtor's account obtained from the Chapter 13 Trustee's website indicating that Debtor's last payment was made on November 18, 2014.

Movant argues that post-petition, Debtor has not paid three installment payments due to the Sacramento County Tax Collector for real property taxes owing on the property, resulting in a tax lien believed to exceed \$4,471.30. Movant argues that non payment of taxes is a default under the Note and Deed of Trust and constitutes cause to terminate the automatic stay under 11 U.S.C. § 362(d) (1).

### **Chapter 13 Trustee Response**

On December 23, 2014, the Chapter 13 Trustee filed a response informing the court that Debtor is current under the plan and has paid a total of \$38,760 to date, with the last receipt of \$2,320 posting on December 18, 2014. Creditors filed claim 5 on March 10, 2014, late filed, indicating a secured claim of \$189,698 with arrearage of \$14,700. No objections were filed to the late claim. Trustee disbursed the monthly contract installment to California Home Loans, per the schedules and plan filed with the court. After the claim was filed, Trustee changed the payee to Home Loan Service Corporation. On November 24, 2014, creditor amended claim 5 to reflect the name and address of the payee to Paul Greenfield, 2597 Flagstone Drive, San Jose, California.

Trustee states he is paying Sacramento County Tax Collector in the amount of \$31,237.65 and has disbursed \$6,000 in principal and \$6,796.56 in interest on the claim, as of November 2014.

### **Creditor's Response**

Creditor notes that Debtor is current on plan payments and that this resolves one of their grounds for the court to grant relief from stay.

Creditor states; however, that it remains outstanding whether Debtor has been making post-petition real property tax payments to the County of Sacramento. Creditor argues that Debtor has not remained current on property taxes and this constitutes a default under the note and deed of trust, sufficient for the court to terminate the stay under 11 U.S.C. § 362(d) (1).

### **Discussion**

Movant requests the court grant it relief from stay on the basis that Debtor is not making payments to the Sacramento County Tax Collector and this represents a default under the Note and Deed of Trust that amounts to "cause" under 11 U.S.C. § 362(d) (1).

In the Trustee's response, the court is made aware that the Sacramento County Tax Collector is being paid through the bankruptcy process. There appear to have been some communication issues between the

Trustee's office and Movant. The Trustee's assurance that the Tax Collector is being paid indicates to the court that there is not cause to grant relief from the stay. The motion will be denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from Stay is denied without prejudice.

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3. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION FOR RELIEF FROM  
JCW-1 IRMA CAMPOS AUTOMATIC STAY  
Peter Cianchetta 12-8-14 [[35](#)]  
BANK OF NEW YORK MELLON VS.

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**Final Ruling:** No appearance at the January 13, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 8, 2014. Twenty-eight days' notice is required. That requirement was met.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

The Bank of New York Mellon seeks relief from the automatic stay with respect to the real property commonly known as 1305 Hobson Avenue, West Sacramento, California. The moving party has provided the Declaration of Ayn Bartlett to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bartlett Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$2,859 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$239,390 (including \$239,390 secured by movant's first trust deed), as stated in the Bartlett Declaration, while the value of the property is determined to be \$120,000, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue a minute order terminating and vacating the

automatic stay to allow The Bank of New York Mellon, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow The Bank of New York Mellon, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1305 Hobson Avenue, West Sacramento, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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4. [14-28291](#)-C-13 ANDRE WILLIAMS  
KO-2 Scott Sagaria

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-10-14 [[61](#)]

ONE SHOT MINING COMPANY, LLC  
VS.

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**Tentative Ruling:** The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2014. Twenty-eight days' notice is required. That requirement was met.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

One Shot Mining Co., LLC and Sara Lynne Wilder seek relief from the automatic stay with respect to the real property commonly known as 14530 Lakeshore Drive, Clearlake, California. The moving party has provided the Declaration of Jeff Wilder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant is the holder of the first and second deeds of trust on the subject property. The first deed of trust was executed in 1996 and is represented by Claim 1, with a total claim amount of \$229,240, with \$125,000 secured and \$104,240 unsecured. The second deed of trust was executed in 2001 and is represented by Claim 2, with a total claim amount of \$113,141, all secured.

The Wilder Declaration states that Jeff Wilder visited the Lake County Tax Collector on December 5, 2014 and obtained a copy of the tax record for the subject property and obtained a delinquent secured tax roll that shows a payment amount due for delinquent taxes, penalties, fees, and costs of \$34,334.24 for fiscal year July 1, 2014 through June 30, 2015. Jeff Wilder also obtained a Secured Tax Roll for fiscal year July 1, 2014 through June 30, 2015 reflecting amounts due of \$2,911.50.

Movant argues that Debtor has not paid property taxes for the period of 2006-2010 and for 2013, for a total amount owing of \$32,946.03 as of September 2, 2014, and this is sufficient cause for the court to grant relief under 11 U.S.C. § 362(d) (1).

Movant also argues that relief should be granted under 11 U.S.C. § 362(d) (2) because Debtor has no equity in the property and the property is not necessary for an effective reorganization. The property is valued at \$125,000 (per Sch. A) and has total combined encumbrances of \$342,382, leaving no equity.

Movant argues that Debtor has not shown that the property is essential for an effective reorganization. First, Movant argues that Debtor received below-market rent at the property. There are three storefronts at the real property and Debtor testified at his 341 meeting that only one is rented and generating income totaling \$1,000 per month. Debtor further testified that he could potentially receive \$1,500 to \$2,000 per month in rent from a different tenant.

Second, Debtor cannot propose a feasible plan. Debtor filed a prior case on February 7, 2014, which was dismissed on July 14, 2014. In that case, the claims filed were similar to the claims filed in the instant case; however, Debtor, in his original plan and schedules in the current case has continued to provide for the first deed of trust on the property.

In the instant case, objections to confirmation of the plan were sustained on November 18, 2014. Debtor indicated that he would timely file an amended Chapter 13 plan with motion to confirm, but neither have been filed to date.

Movant argues that the totality of this circumstance demonstrates that Debtor cannot reorganize and that the property is; therefore, not necessary for an effective reorganization.

### **Chapter 13 Trustee Response**

Trustee confirms that Debtor does not have a pending plan before the court. Debtor has paid a total of \$3,000 to date, which has been disbursed by the Trustee to the claim in this matter.

### **Debtor's Objection**

Debtor asserts that he has prepared a first amended Chapter 13 plan and motion to confirm that includes the first deed of trust at issue (1996 loan). Debtor argues that the second deed of trust held by Movant was forgiven and is uncollectible. Debtor assert that Claim 2 for the second deed of trust lacks evidence that the claim is secured and Debtor is currently determining if the filing of an objection to the claim is appropriate.

Debtor asserts that the County Tax Assessor has yet to file a claim substantiating the amount of the pre-petition tax debt referenced by movant.

Debtor asserts that the property is essential to his reorganization was much of the income from the property is used to pay the Trustee.

### **Movant's Reply**

Movant responds to Debtor's adequate protection objection and argues that the adequate protection issue relates to Debtor's failure to pay the property taxes for the subject property. This continuing default continues to erode the value of Movant's interest in the property. Further, as of January 5, 2014, Debtor has yet to file the amended plan.

Movant argues that Debtor has not substantiated his argument that the second deed of trust is unsecured. The debt is a judgment lien associated with a foreclosure judgment and is a debt the Debtor formerly provided for as a Class 2 claim in his original Chapter 13 plan. In support of its secured status, Movant filed with the claim the Short Form Deed of Trust and Assignment of Rents and an Assignment of the Deed of Trust to Movant.

Movant states that it does not know, and Debtor has not documented, whether he has the means or income to make plan payments. Debtor does not explain how his income is generated, how much is from operation of the property versus operation of his business. Debtor has not met his burden in demonstrating that the property is necessary for an effective reorganization.

### **Discussion**

Movant has established that Debtor has no equity in the subject property. Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Further, Debtor has not submitted sufficient evidence concerning income on the subject property. The property is not Debtor's residence and Debtor did not indicate that the other two store fronts are currently being rented out. The court cannot determine that the property is necessary to an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow One Shot Mining Co., LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow One Shot Mining Co., LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 14530 Lakeshore Drive, Clearlake, California.

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5. [14-28199](#)-C-13 WENDY GILLESPIE  
JCW-1 Michael Hays

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-24-14 [[26](#)]

THE BANK OF NEW YORK MELLON  
VS.

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**Final Ruling:** No appearance at the January 13, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 24, 2014. Twenty-eight days' notice is required. That requirement was met.

The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

The Bank of New York Mellon seeks relief from the automatic stay with respect to the real property commonly known as 537 Auburn Street, Modesto, California.

Movant argues that Debtor's petition was used as part of a scheme to delay, hinder, and defraud creditors that involved the transfer of all or part ownership of the subject property without the consent of Movant or court approval and the filing of multiple bankruptcies that affected the property. 11 U.S.C. § 362(d)(4).

The Original Borrowers on the note were Joseph and Belinda Martinez. Mr. & Mrs. Martinez filed a bankruptcy on January 9, 2012 (Case No. 12-20409). The case was closed on April 27, 2012.

On February 10, 2014, The Original Borrowers transferred all interest to a related debtor, Roberto Robles, without the knowledge or consent of Movant, in violation of the terms of the Deed of Trust. See Exh. 4, Dkt. 30. Shortly after the transfer, Roberto Robles filed bankruptcy in the Eastern District (Case No. 14-11518). The case is pending before the court. Movant received an order in that case granting it relief from the stay pursuant to 11 U.S.C. § 354(d)(4) on August 11, 2014.

On July 14, 2014, the Original Borrowers again transferred the

interest in the property to the instant Debtor without the knowledge or consent of Movant, in violation of the terms of the Deed of Trust. The instant bankruptcy was filed prior to the recordation of the *in rem* order from the Robles case and; therefore, Movant can assert relief under the *in rem* order and must move again for relief.

A review of the docket in this case confirms the history detailed by Movant. 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute order terminating and vacating the automatic stay to allow The Bank of New York Mellon, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow The Bank of New York Mellon, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 537 Auburn Street,

Modesto, California.

**IT IS FURTHER ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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