



moving party has provided the Declaration of Apurva and Aarti A. Parmar to introduce evidence as a basis for Movant's contention that the debtor, Imani Wilson ("Debtor"), does not have an ownership interest in or a right to maintain possession of the Property. Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus, case number UD18001218.

Movant provided evidence that they are owners of the Property, and that they are leasing it to the Debtor. Dckt. 16 at ¶ 2; Exhibit A, Dckt. 17. Based upon the evidence submitted Debtor would be at best a tenant at sufferance, and therefore the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective rehabilitation. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at \*8-9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Apurva and Aarti A. Parmar, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3804 Warmerdam Lane, Modesto, California ("Property"), including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

### **Co-Debtor Stay**

In reviewing the supporting evidence provided by Movant, including the unlawful detainer complaint and rental agreement, the court notes that the debt here is an obligation owed by Debtor and Richard Garcia. Exhibit C, Dckt. 18. While Movant seeks relief from the automatic stay in this bankruptcy case, no request was made for relief from possible co-debtor stays. *See* 11 U.S.C. § 1301. Therefore, that relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an 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 Apurva and Aarti A. Parmar ("Movant") 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 Apurva and Aarti Parmar and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3804 Warmerdam Lane, Modesto, California.

No other or additional relief is granted.

2. [18-90883-E-7](#)  
[JCW-1](#)

**CHRISTY RAPOZO**  
Tyson Takeuchi

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
12-24-18 [\[11\]](#)

**FREEDOM MORTGAGE CORPORATION**  
**VS.**

**Final Ruling:** No appearance at the January 24, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 7 Trustee on December 24, 2018. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.**

Freedom Mortgage Corporation (“Movant”) seeks relief from the automatic stay with respect to Christy Lynne Rapozo’s (“Debtor”) real property commonly known as 8274 Mcatee Street, Valley Springs,

California (“Property”). Movant has provided the Declaration of Latoya Dawson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Latoya Dawson Declaration states that there is 1 post-petition default in the payments on the obligation secured by the Property, with a total of \$1,652.42 in post-petition payments past due. The Declaration also provides evidence that there are 17 pre-petition payments in default, with a pre-petition arrearage of \$27,445.43.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$263,980.55 consisting entirely of Movant’s first deed of trust, as stated in the Latoya Dawson Declaration and Schedule D. Dckt. 13. The value of the Property is determined to be \$250,000.00, as stated in Schedules A and D. Dckt. 1.

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an 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 Freedom Mortgage Corporation (“Movant”) 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 Freedom Mortgage Corporation, 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 that is recorded against the real property commonly known as 8274 Mcatee Street, Valley Springs, California, (“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 to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.