

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

February 24, 2015 at 1:30 P.M.

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1. [14-31788](#)-C-13 JACQUELINE GIPSON MOTION FOR RELIEF FROM  
EJS-1 Peter Macaluso AUTOMATIC STAY  
1-26-15 [[26](#)]  
CIC NATOMAS, LP VS.

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**Final Ruling:** No appearance at the February 24, 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, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2015. 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.**

CIC Natomas, L.P. seeks relief from the automatic stay with respect to the real property commonly known as 1675 Scarlet Ash Avenue, #140, Sacramento, California.

Movant is the owner of the real property and Debtor is the renter of the property. On July 16, 2014, Movant commenced proceedings to recover possession of the property and filed a Summons and Complaint for unlawful detainer with the Sacramento County Superior Court, Case No. 14UD05378. Movant received a Default Judgment on DATE.

Debtor did not vacate the property, but filed a Chapter 13 bankruptcy petition on August 12, 2014 (14-28178). The case was dismissed on November

21, 2014 because Debtor did not make plan payments.

The instant case was filed on December 2, 2014. The automatic stay was extended pursuant to court order under 11 U.S.C. § 362(c) (3) (B).

Movant argues that Debtor is a renter and retains no interest in the property. Debtor's continued possession is not necessary for her to reorganize and Debtor has made no arrangement in her plan to include the arrear rent owed to the Movant.

### **Chapter 13 Trustee**

On February 11, 2015, the Chapter 13 Trustee filed a statement of non-opposition to the court granting the requested relief.

### **Discussion**

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 CIC Natomas, L.P., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1675 Scarlet Ash Avenue, #140, Sacramento, 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 CIC Natomas, L.P.,

its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1675 Scarlet Ash Avenue, #140, 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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