UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 23, 2017, at 10:00 a.m.

1.	**13-92200-E-7** **HCS-3**	**WILLIAM CAVANAGH** **Amanda Billyard**	**COUNTER MOTION FOR RELIEF FOR VIOLATIONS OF THE AUTOMATIC STAY** **3-9-17 [66]**

Tentative Ruling: 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.

Local Rule 9014-1(i)—Countermotion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice was required because Movant was required to file the Countermotion no later than the time opposition to the original motion was due.

The Countermotion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(I). 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.

The Countermotion for Sanctions for Violation of the Automatic Stay is denied.

The present Countermotion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Gary Farrar ("Movant"). The claims are asserted against American National Property and Casualty Company, Aerospace Insurance Mangers, Inc., and Aerospace Insurance Services ("Respondents").

LEGAL STANDARD

A request for an order of contempt by the debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020.

A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF COUNTERMOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. On January 20, 2011, William Cavanagh ("Debtor") filed *Cavanagh v. Coulter*, San Joaquin County Superior Court Case No. 39-2011-00256914-CU-PO-STK, asserting personal injury and product liability claims arising out of injuries from a helicopter crash and seeking damages for personal injuries.

B. On December 20, 2013, Debtor filed this bankruptcy case, but did not disclose the lawsuit.

C. On February 21, 2014, Movant filed a report of no distribution.

D. On April 1, 2014, the bankruptcy case was closed.

E. Movant learned of Debtor's lawsuit, and after a motion, this case was reopened on July 8, 2014 (Movant was reappointed as trustee on July 10, 2014).

F. On August 14, 2014, judgment was entered in favor of Debtor in his personal injury lawsuit in the amount of $1,458,085.00, but no part of the judgment was paid.

G. On July 29, 2015, Debtor filed *Cavanagh v. American National Property and Casualty Company*, United States District Court for the Eastern District of California Case No. 1:15-CV-01177-TLN-SKO, alleging that the insurance carriers that provided insurance to defendants in Debtor's personal injury case are liable to Debtor under various theories, including claims under Insurance Code § 11580, breach of contract, and breach of the implied covenant of good faith and fair dealing.

H. When Movant learned of the Eastern District lawsuit, filed motions to employ his general counsel and special counsel to litigate.

I. In December 2016, Respondents asked Movant's special counsel to stipulate to allow Respondents to file a third-party complaint in which they intended to allege that, due to a scrivener's error, the insurance policy at issue did not reflect the parties' true intentions and be reformed.

J. Movant's special counsel agreed to the stipulation, which was signed by all parties on December 21, 2016, and approved by the district court.

K. On January 20, 2017, Respondents deposed the person most knowledgeable of the insurance brokerage that involved in issuing the policy to Bill Coulter.

L. On January 27, 2017, Movant's special counsel informed Movant of the third-party complaint.

M. On February 7, 2017, Movant's general counsel e-mailed Respondents' counsel stating that the third-party complaint, and its prosecution, violated the automatic stay.

N. On February 8, 2017, Movant's special counsel served a written objection to the upcoming deposition of Mr. Coulter.

O. On February 8, 2017, Respondents' counsel wrote that Respondents would "dismiss the third-party complaint as to" Debtor.

P. On February 9, 2017, Respondents' counsel wrote that Respondents would not dismiss the third-party complaint, they would file a motion for relief from the automatic stay, and they would proceed with deposing Mr. Coulter.

Q. On February 9, 2017, Movant's general counsel e-mailed Respondents and stated again that the third-party complaint and the upcoming deposition violate the automatic stay.

R. On February 9, 2017, Movant's special counsel e-mailed Respondents with additional objections regarding the deposition violating the stay and notifying Respondents that counsel would not attend the deposition so as not to give an impression that he waived the automatic stay.

S. Respondents deposed Mr. Coulter on February 10, 2017.

Movant has provided the Declarations of Gerard Mannion and Dana Suntag in support of the Countermotion. Dckts. 68 & 70. The Declarations establish that the Trustee's attorneys and Respondents' attorneys have exchanged a series of e-mails in which Movant asserts that Respondents have violated the stay and in which Respondents argue that their actions have been proper. The Declarations also establish that a third-party complaint has been stipulated to and filed, that depositions have occurred in connection with that third-party complaint, and that attorney Mannion refused to attend one of the depositions so as not to appear to be waiving the automatic stay. *Id.*

DISCUSSION

A review of the Eastern District case between Debtor and Respondents reveals some problems for the present Motion. First, the court notes that Movant was joined in the Eastern District case by stipulation, but he has not been listed as a named party in the Complaint. *See* Case No. 1:15-cv-01177-TLN-SKO, U.S. District Court for the Eastern District of California, Dckt. 31. That stipulation listed that the Trustee (and therefore the Estate) is represented by Gerard Mannion. *Id.*

Second, the December 2016 stipulation entered into by Debtor and Respondents does not include the Trustee. U.S. District Court for the Eastern District of California, Dckt. 36. Mr. Mannion signed the stipulation on behalf of Debtor as plaintiff in the case, but he did not sign it on behalf of the Trustee, who represents the interests of the Estate—the real party-in-interest once the bankruptcy case was filed.

Given the two problems in the District Court case that the court has identified, there does not appear to be a violation of the automatic stay for Movant to pursue the instant Motion. The third-party complaint only seeks to litigate the issues against the Debtor, who is not the judgment creditor or have the rights to assert—all of those being property of the bankruptcy estate under the control of the Trustee.

March 23, 2017 Hearing

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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 Sanctions for Violation of the Automatic Stay by Gary Farrar ("Movant"), the Trustee 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 Countermotion for Damages for violation of the automatic stay is denied.

2. **13-92200-E-7** **WILLIAM CAVANAGH** **MOTION FOR RELIEF FROM**
LBB-1 **Amanda Billyard** **AUTOMATIC STAY**
2-22-17 [53]

AMERICAN NATIONAL PROPERTY
AND CASUALTY COMPANY VS.

Tentative Ruling: 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 22, 2017. By the court's calculation, 29 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is denied.

American National Property and Casualty Company, Aerospace Insurance Managers, Inc., and Aerospace Insurance Services ("Movants") seek relief from the automatic stay to allow *Cavanagh v. American National Property*, Case No. 1:15-CV-0117-TLN-SKO, E.D. Cal. ("Federal Court Litigation")

to be concluded. FN.1. Movants have provided the Declaration of Rebecca Weinreich to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by William Cavanagh ("Debtor"). Dckt. 55.

FN.1. Movant filed the Motion and Memorandum of Points and Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

The Weinreich Declaration states that Movants are defendants and third-party plaintiffs in the Federal Court Litigation. Ms. Weinreich notes that Debtor filed a complaint against Movants on July 29, 2015, while this bankruptcy case was pending. Ms. Weinreich states that Movants and the Trustee's special counsel signed a stipulation on December 21, 2016, that allowed Movants to file a third-party complaint against Debtor and Bill Coulter dba Castle Aviation and Repair ("Coulter"), and that stipulation was approved by the District Court for the Eastern District of California on December 27, 2016. *See* Exhibit B, Dckt. 56.

The Declaration states that Movants notified the Trustee's special counsel on January 25, 2017, that a subpoena had been served on Coulter, which was ultimately set for February 10, 2017, in Dallas, Texas. *See* Exhibit F, Dckt. 56. Ms. Weinreich states that Movants did not receive any objection to deposition from the Trustee until February 7, 2017. Nevertheless, Movants conducted the deposition, bearing in mind that the non-expert discovery deadline is March 31, 2017. Dckt. 55.

Movants argue that the Trustee is judicially estopped from arguing that the automatic stay applies to the filing of the third-party complaint because the Trustee assented through the court-approved stipulation.

TRUSTEE'S OPPOSITION

Gary Farrar, the Chapter 7 filed an Opposition and Memorandum of Points and Authorities on March 9, 2017. Dckt. 59. FN.2.

FN.2. The Trustee filed the Opposition and Memorandum of Points and Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other

supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

The Trustee asserts that the Motion should be denied because there is no cause to grant it. The Trustee argues that Movants knowingly violated the automatic stay by filing the third-party complaint and continuing to prosecute it after the Trustee's counsel advised them that the litigation violated the stay and Movants conceded that it did.

The Trustee claims that the third-party complaint violates the automatic stay because it seeks "to deprive the bankruptcy estate of its rights as to property of the estate: the estate's claims under the insurance policy." Dckt. 59, p. 6: 15–17. Regarding cases cited by Movants, the Trustee argues that they rely upon cases that analyzed relief from the stay as to a debtor, not as to property of the estate, which the Trustee argues is an important distinction because this case involves property of the estate.

Additionally, the Trustee argues that there has been no waiver of the automatic stay. The Trustee cites *In re Geisenheimer* for the following definition of "waiver":

> Waiver is the intentional relinquishment of a known right after knowledge of the facts. The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right. The party asserting waiver must make a "clear showing" that the party against whom waiver is asserted intended to give up that right.

530 B.R. 747, 748 (Bankr. E.D. Cal. 2015). Furthermore, the Trustee asserts that Movants bear the burden of proving any waiver by "clear and convincing evidence that does not leave the matter to speculation." *Van Curen v. Great Am. Ins. Co. (In re Hat)*, 363 B.R. 123, 139 (Bankr. E.D. Cal. 2007).

The court notes that the Trustee has filed a Counter Motion for Violation of the Automatic Stay. Dckt. 65.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the

automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)).

The basis for relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The claim being asserted against the insurance company is property of the estate under 11 U.S.C. § 541, and any action taken against them without the court granting relief from the automatic stay is a violation.

Here, relief from the automatic stay is requested by Movant to pursue a third-party complaint that has been filed naming only the bankruptcy debtor and the judgment debtor. Movant does not seek the automatic stay with respect to a third-party complaint that seeks to adjudicate any issues with the Trustee, the only person who has the judgment and the claim against the insurance company based on the failure to pay the obligation on the judgment. These assets are property of the bankruptcy estate that are under the control of and must be prosecuted by the Trustee unless this court has issued an order granting such right to enforce and administer property of the estate in another person.

The Motion for Relief from the Automatic Stay is denied.

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 American National Property and Casualty Company, Aerospace Insurance Managers, Inc., and Aerospace Insurance Services ("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 Motion for relief from the automatic stay is denied.

3.	**16-91126-E-7** **VVF-1**	**FRANCISCO RIVERA CARDENAS AND JESSICA MOLINA** **Muoi Chea**	**MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** **3-8-17 [17]**

HONDA LEASE TRUST VS.

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 8, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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). 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 offer 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. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

Francisco Cardenas and Jessica Molina ("Debtor") commenced this bankruptcy case on December 21, 2016. Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Honda Civic, VIN ending in 1781 ("Vehicle"). The moving party has provided the Declaration of Kathleen Parks to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Parks Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $203.37 in post-petition payments past due. Additionally, she states that the Vehicle was surrendered on March 6, 2017. Dckt. 20, ¶ 8.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $12,733.91, as stated in the Parks Declaration, while the value of the Vehicle is determined to be $10,075.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value of $10,575.00 stated in the NADA Valuation Report.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 reorganization. 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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the 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).

Movant pleads that Debtor has surrendered the Vehicle already. Dckt. 17. Debtor's Statement of Intention lists that Debtor would retain the Vehicle and enter into a reaffirmation agreement, however. Dckt. 1, p. 48. Movant attached the lease agreement as an exhibit, and the agreement shows that the final payment on the three-year lease agreement would be due on March 14, 2017. Exhibit 2, Dckt. 21. Movant has provided evidence that the Vehicle was surrendered on March 6, 2017. Dckt. 20, ¶ 8. Therefore, Movant is entitled to the requested relief because Debtor has surrendered the Vehicle.

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 Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from 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 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 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 Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Honda Civic, VIN ending in 1781 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

4. **16-91133-E-7** **BARRY/SHANA PETERSON** **AMENDED MOTION FOR RELIEF**
JHW-1 **Charles Hastings** **FROM AUTOMATIC STAY**
2-28-17 [25]

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC VS.

Final Ruling: No appearance at the February 23, 2017 hearing is required.

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, Chapter 7 Trustee, and Office of the United States Trustee on February 9, 2017. By the court's calculation, 42 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.

Barry Peterson and Shana Peterson ("Debtor") commenced this bankruptcy case on December 23, 2016. Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Mercedes Benz M2PV144, VIN ending in 2070 ("Vehicle"). The moving party has provided the Declaration of Elizabeth Lugo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

FEBRUARY 23, 2017 HEARING

At the hearing, the court waived perceived notice insufficiencies and considered and granted the Motion. Dckt. 21.

ORDER VACATING COURT'S CIVIL MINUTES

On February 28, 2017, the court entered an Order Vacating Minutes and Restoring Hearing to March 23, 2017 Calendar. Dckt. 23. The court noted that a clerical error caused the Motion to be set for

hearing on February 23, 2017, instead of on March 23, 2017. The court had not issued an order from the hearing yet, and so, the court vacated the civil minutes (Dckt. 21) and restored the Motion to be heard on March 23, 2017.

AMENDED MOTION FOR RELIEF

Movant amended the Motion on February 28, 2017, to remove its requests for waiver of the fourteen-day stay and an order that relief be binding and effective upon any conversion of this bankruptcy case. Dckt. 25.

EVIDENCE PROVIDED WITH MOTION FOR RELIEF

The Lugo Declaration provides testimony that Debtor has not made one post-petition payment, with a total of $1,182.94 in post-petition payments past due. The Declaration also provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of $4,191.98.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $39,801.26, as stated in the Lugo Declaration, while the value of the Vehicle is determined to be $38,000.00, as stated in Schedules B and D filed by Debtor, which is more than the retail value of $33,825.00 stated in the NADA Valuation Report.

DISCUSSION

The court maintains the right to grant relief from stay for cause when a 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 because the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 reorganization. 11 U.S.C. § 362(g)(2); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the 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 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 Vehicle, to

repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 Mercedes-Benz Financial Services USA LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Mercedes Benz M2PV144, VIN ending in 2070 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> No other or additional relief is granted.