

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 18, 2019 at 10:00 a.m.

1. [18-90606-E-7](#) ANGELO/JUDITH JIMENEZ MOTION FOR RELIEF FROM
[APN-1](#) Brian Haddix AUTOMATIC STAY
3-11-19 [60]

TOYOTA MOTOR CREDIT
CORPORATION VS.

Final Ruling: No appearance at the April 18, 2019 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's, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 11, 2019. By the court's calculation, 38 days' notice was provided. ^{FN.1.} 28 days' notice is required.

FN.1. The Notice of Hearing states the courtroom address is "1201 I street." The correct address is 1200 I street, Modesto, California. Here, Debtor is represented by experienced bankruptcy counsel and will not likely be prejudiced by this minor clerical error.

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.

Toyota Motor Credit Corporation, servicing agent for Toyota Lease Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Camry, VIN ending in 1482 (“Vehicle”). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Angelo Delmarco Jimenez and Judith Ann Jimenez (“Debtor’s”).

The Spooner Declaration provides testimony that Debtor is only leasing the Vehicle, and that Debtor has surrendered the Vehicle to Movant. Declaration, Dckt. 62 at p. 2:11.5-20.5.

DISCUSSION

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).

Here, Debtor is only leasing the Vehicle and does not have an interest therein. Furthermore, Debtor has voluntarily surrendered the Vehicle. Therefore, cause exists to grant relief from stay.

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 Toyota Motor Credit Corporation, servicing agent for Toyota 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 2016 Toyota Camry VIN

ending in 1482 (“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.

2. [18-90924-E-7](#) **MOSES/TONYA SMITH** **MOTION FOR RELIEF FROM**
[RAS-1](#) **Pro Se** **AUTOMATIC STAY**
U.S. BANK, N.A. VS. **3-13-19 [16]**

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 Debtors, Chapter 7 Trustee, and Office of the United States Trustee on March 13, 2019. By the court’s calculation, 36 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.

U.S. Bank National Association, successor in interest to Bank of America, National Association, successor by merger to LaSalle National Association as trustee for GSAMP Trust 2007-NC1 Mortgage Pass-Through Certificates, Series 2007-NC1 (“Movant”) seeks relief from the automatic stay with respect to Moses Smith and Tonya Smith’s (“Debtor”) real property commonly known as 5628 Baume Way, Salida, California (“Property”). Movant has provided the Declaration of Marilyn Solivan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Solivan Declaration states that there are 6 missed payments on the obligation secured by the Property that have come due between September 1, 2018 and February 1, 2019, with a total of \$9,503.24 in delinquency. Declaration ¶ 11, Dckt. 19. While such is not stated explicitly, the aforementioned testimony indicates Debtor is delinquent 4 pre-petition and 2 post petition payments. The Solivan Declaration states further that the remaining principal balance due is \$319,262.82.

Movant asserts the value of the Property is \$370,000.00. Movant filed as Exhibit “4” the Declaration of Lynetta Cornelius and a Broker Price Opinion for the Property. Exhibit 4, Dckt. 18. No evidence was presented to authenticate or explain the contents of Exhibit 4.

DEBTOR’S SCHEDULES

On Debtor’s Schedule A, Debtor lists the Property with a value as of the petition date of \$363,808.00. On Schedule D, Debtor lists Ocwen Mortgage Company (the loan servicer for Movant(See Declaration ¶ 5, Dckt. 19)) as holding a claim of \$322,223.00 secured by the Property.

MOTION TO CONVERT CASE TO CHAPTER 7

On April 9, 2019, a substitution of attorney was filed by which Brian Haddix, Esq. is substituting in as counsel for the Debtors who have been prosecuting this case in *pro se*.

On April 9, 2019, Counsel filed a one sentence Motion stating that on April 8, 2019, this case was converted to one under Chapter 7 at the election of Debtors. Dckt. 25.

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 \$319,262.82, as stated in the Solivan Declaration. The value of the Property is determined to be \$363,808.00, as stated in Schedule A. Therefore, Debtor has \$44,545.18 in equity in the Property.

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).

Here, Debtor has missed 2 payments since filing the bankruptcy case on December 11, 2019. Further, Debtor has not filed any response to the present Motion. Even though Debtor has equity in the

Property, the evidence demonstrates Debtor's intent is to not make payments going forward. Therefore, cause exists to grant relief from the stay.

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 Attorneys' Fees

Movant also makes a request for \$1,031.00 in attorney's fees in connection with this Motion. Movant states the loan documents executed by Debtor and Movant provide for costs and expenses in enforcing its interests to the extent not prohibited by applicable law.

However, no evidence is presented as to fees and expenses in this Contested Matter. The court is both unable to determine what fees were incurred (nothing having been presented) and unable to determine whether any fees are reasonable here.

No relief is granted on the request for attorney's fees, this being without prejudice to Movant seeking fees by post-judgment motion.

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 that the fourteen day automatic stay be lifted because "once the stay is terminated, the Debtors will have minimal motivation to insure, preserve, or protect the collateral . . ." Motion, Dckt. 16.

Here, Debtor has over \$40,000.00 in equity in the Property. Failing to cooperate and preserve the collateral would increase the likelihood that Debtor's equity will be extinguished by the cost of sale. Therefore, Movant does in fact have an interest in protecting the Property.

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 U.S. Bank National Association, successor in interest to Bank of America, National Association, successor by merger to LaSalle National Association as trustee for GSAMP Trust

2007-NC1 Mortgage Pass-Through Certificates, Series 2007-NC1 (“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 Movant, 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 5628 Baume Way, Salida, 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.

IT IS FURTHER ORDERED Movant’s request for attorney’s fees is denied.

No other or additional relief is granted.

3. [19-90137-E-7](#)
[AP-1](#)

LUCERO MARTINEZ
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-12-19 [24]

WELLS FARGO BANK, N.A. VS.

DEBTOR DISMISSED: 3/18/2019

Final Ruling: No appearance at the March 18, 2019 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 (*pro se*), Chapter 7 Trustee, John Glen Mehl, Catherine Cahill Mehl, and Office of the United States Trustee on March 12, 2019. By the court's calculation, 37 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, which includes relief pursuant to 11 U.S.C. § 362(d)(4).

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3104 Crest Haven Drive, Sacramento, California ("Property") pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4).

The debtor, Lucero Martinez's ("Debtor"), asserts a 10 percent interest in the Property under tenancy in common. Schedule A, Dckt. 17.

Movant has provided the Declaration of Jessica Rudynski to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Rudynski Declaration provides information detailing a scheme by John Glen Mehl and Catherine Cahill Mehl, the actual owners of the Property and borrowers on Movant's claim (collectively and severally "Borrowers"), to hinder Movant from recovering on its claim.

Borrowers have missed 99 payments under the loan terms, totaling \$173,867.54. Declaration ¶ 43, Dckt. 27.

Almost two weeks after Debtor filed this bankruptcy case, the Borrowers recorded a 10 percent transfer of their Property interest to Debtor as a gift. *Id.*, ¶ 40. This transfer is purported to have occurred on February 13, 2019, two days before the case was filed. *Id.*

Borrowers have filed several bankruptcy cases of their own, listed as follows:

Filing Party	Case Number	Chapter	Date Filed	Date Discharged/ Dismissed	Case Result
John Glen Mehl and Catherine Cahill Mehl	10-53158	7	12/20/2010	4/4/2011	Borrower received a discharge in a no distribution case. Order, Case No. 10-53158, Dckt. 23.
John G. Mehl	13-35728	13	12/16/2013	12/27/2013	Dismissed for failure to timely file documents. Order, Case No. 13-35728, Dckt. 11.
John G. Mehl	17-20699	13	2/2/2017	4/27/2017	Dismissed for failure to file credit counseling certificate and delinquency in plan payments. Order, Case No. 17-20699, Dckt. 42.

John Mehl	18-26553	13	10/17/2018	11/15/2018	Dismissed for failure to timely file documents. Order, Case No. 18-26553, Dckt. 29.
John Glen Mehl	18-27727	13	12/13/2018	3/5/2019	Dismissed in conjunction with Motion To Confirm Plan for reasons stated on oral record in open court. Order, Case No. 18-27727, Dckt. 90.

In the Borrowers’ most recent bankruptcy filing, Movant filed a motion for relief from the automatic stay as to the Property. Motion, Case No. 18-27727, Dckt. 17. At the hearing, the court found that the case was filed in bad faith for several reasons, including Borrowers repeated undervaluation of the Property and failure to disclose \$3,000,000.00 in assets. Civil Minutes, Case No. 18-27727, Dckt. 57. However, the court also found that the bad faith there was “akin to an uninformed or futile tactic rather than a fraudulent scheme,” and therefore denied relief pursuant to 11 U.S.C. § 362(d)(4) (though granting relief from stay for cause). *Id.*

On February 8, 2019, Borrowers filed a Notice of Appeal to the District Court for California’s Eastern District. *Id.*, Dckt. 73.

Dismissal of Debtor’s Bankruptcy Case

The instant case was dismissed on March 18, 2019, for failure to timely file documents. Dckt. 31. Debtor failed to file:

1. Statement of Monthly Income, Form 122A-1
2. Schedules A-J;
3. Statement of Financial Affairs; and
4. Summary of Assets and Liabilities.

DISCUSSION

Determination that No Stay is in Effect

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c)(emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of March 18, 2019, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on March 18, 2019.

Prospective Relief from Future Stays

In the bankruptcy context the determination of whether a matter arising in or related to a bankruptcy case becomes moot on the dismissal of the bankruptcy hinges on the question of how closely the issue in the case is connected to the underlying bankruptcy. *In re Universal Farming Indus.*, 873 F.2d 1334, 1335 (9th Cir. 1989). When the issue being litigated directly involves the debtor's reorganization, the case is mooted by the dismissal of the bankruptcy. *Id.* If the issue is ancillary to the bankruptcy, the dismissal of the petition does not necessarily cause the case to become moot. The Ninth Circuit has ruled that after dismissal the bankruptcy court has ancillary jurisdiction to “interpret” and “effectuate” its orders. *In re Aheong*, 276 B.R. 233, 240 (B.A.P. 9th Cir. 2002).

Congress provides in 11 U.S.C. § 349 the effect of a dismissal of a bankruptcy case. The dismissal of a bankruptcy case does not “close” the case or otherwise conclude the matter *In re Income Property Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1982), “An order dismissing a bankruptcy case accomplishes a completely different result than an order closing it would and is not an order closing.”

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a 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 the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor’s inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

Here, the court must find that: (1) the filing of the current bankruptcy case was part of a scheme to delay, hinder, or defraud creditors which (2) involved a transfer of all or part ownership of the property. The Debtor and now the Debtor in Possession have not asserted any interest in the purported Souza Properties Inc. Deed of Trust. While the court concludes that the Debtor was not part of a scheme utilizing the filing of the bankruptcy case, the evidence shows that third-parties have used the filing of the bankruptcy case as part of a requisite scheme. Further, as shown by the fax filed as Exhibit 8, this scheme is to both

delay and to hinder Movant in exercising its rights as creditor. Until the issuance of this ruling and order thereon, it was asserted (by the fax transmission) that Movant was a creditor and that the Debtor's bankruptcy case stayed foreclosure. Thus, when this Motion was filed, Movant still wore the mantle of a putative "creditor" with standing to seek relief pursuant to 11 U.S.C. § 362(d)(4).

Unlike prior cases, which showed uninformed action, the present case demonstrates a calculated plan. Debtor filed the present case two days after Borrowers purportedly gifted an interest in the Property to him. Declaration ¶ 40, Dckt. 27. The present case was also filed (and Property interest purportedly transferred) while Borrowers had a bankruptcy case pending. Therefore, the court grants relief pursuant to 11 U.S.C. § 362(d)(4), which prevents the automatic stay from going into effect in a subsequent bankruptcy case for a two year period, subject to further order from the bankruptcy judge in any such future case.

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 Wells Fargo Bank, N.A. ("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 request for relief from automatic stay in this case is denied without prejudice as moot, this bankruptcy case having been dismissed on March 18, 2019 (prior to the hearing on this Motion) and the stay terminated by operation of law. The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Lucero Martinez ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 3104 Crest Haven Drive, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the March 18, 2019 dismissal of this bankruptcy case.

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) 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 that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

No additional or further relief is granted.

RT FINANCIAL, INC. VS.

Final Ruling: No appearance at the April 18, 2019 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 (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 12, 2019. By the court’s calculation, 41 days’ notice was provided. 37 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.

RT Financial, Inc. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 250 Rue De Yoe, Modesto, California (“Property”). The moving party has provided the Declaration of James D. Struck, Movant’s counsel (“Movant’s Counsel”), to introduce evidence as a basis for Movant’s contention that Anna L. Jaimes Gonzales (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property.

Movant’s Counsel testifies in his Declaration as follows:

1. Movant’s Counsel is admitted to practice as an attorney and makes statements in the Declaration on information and belief. Declaration ¶ 1, Dckt. 21.
2. Movant’s Counsel was hired to pursue an unlawful detainer action against Debtor. *Id.*, ¶ 2. Default was entered against Debtor in the unlawful detainer action on February 13, 2019. *Id.*, ¶ 3.
3. Movant’s Counsel filed a Request to Enter Default, which was granted on February 23, 2019. *Id.*

4. Movant's only remedy here is concluding the unlawful detainer. *Id.*, ¶ 5. Movant suffers lost rent income of \$40.00 daily and continues to incur legal expenses. *Id.*, ¶ 6. Movant's Counsel is also advised there is a proposed sale on the Property. *Id.*

Movant also filed as Exhibits A through D, Movant's Complaint for unlawful detainer in state court, a proof of service in that case, a request to enter default, and a "Judgment."^{FN.1.}

FN.1. As Movant concedes, the "Judgment" was obtained while the automatic stay in this case was in effect. Violations of the automatic stay are void, and not merely voidable. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

Movant presents evidence that there is litigation pending in state court to determine Debtor's interest in the Property, if any.^{FN.2.} Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus. Exhibit A, Dckt. 20. Debtor failed to appear, and a default was entered. Declaration ¶ 3, Dckt. 21.

FN.2. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on June 6, 2013. Despite asserting an ownership interest in the Property, Movant does not present evidence to support this claim.

Movant's Counsel chose to provide his own declaration, rather than that of his client whom is the purported owner of the Property. In this instance, Movant's Counsel having personal knowledge of the unlawful detainer commenced against Debtor, the court can permit the state court action to proceed for the purpose of determining respective rights of the parties.

Movant has presented a colorable claim for title to and possession of the 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 RT Financial, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 250 Rue De Yoe, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791-92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by RT Financial, Inc. and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted RT Financial, Inc. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 RT Financial, Inc. (“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 Movant, and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 250 Rue De Yoe, Modesto, California.

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.

BMO HARRIS BANK, N.A. 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's, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 1, 2019. By the court's calculation, 17 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 Chapter 7 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, -----

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The Motion for Relief from the Automatic Stay is granted.

BMO Harris Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Peterbilt 340 Series Truck, VIN ending in 5072 with 2016 McLellan 3600 Gallon tank, Serial number 15W035 ("Vehicle"). The moving party has provided the Declaration of Kimberly Mundt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Earnest N. Gunter ("Debtor").

The Mundt Declaration provides testimony that \$106,025.67 is owing under the terms of the Agreement between Debtor and Movant. Declaration ¶ 9, Dckt. 24. Two pre-petition payments were missed by Debtor. *Id.*

The Mundt Declaration also notes has not presented evidence the Vehicle is currently insured. *Id.*, ¶ 10.

Additionally, Debtor has not listed the Vehicle on his Schedules A/B, and indicated on Debtor's Statement of Intention that the Vehicle was already repossessed. Dckt. 15.

Movant does not assert the value of the Vehicle. On Debtor's Statement of Intention, Debtor states the value of the Vehicle is \$30,000.00. Dckt. 15. However, it is unclear whether this includes the "2016 McLellan 3600 Gallon tank" which Movant couples together with 2016 Peterbilt 340 Series Truck.

DISCUSSION

Request for Confirmation No Stay is in Effect

In the Motion, Movant states with particularity (FED. R. BANKR. P. 9013) the following grounds in support of its claim that no stay is in effect:

1. Furthermore, Debtors did not list the Truck in their Schedules and Statement of Intention. As such, the automatic stay automatically terminated with respect to the Truck on March 21, 2019.

Motion, Dckt. 20 at 3:12-16. However, a review of Debtor's Statement of Intention shows Debtor lists a "2016 Peterbilt Water Truck." This appears to be the Vehicle.

Thus, the provisions of 11 U.S.C. § 362(h) did not automatically terminate the stay.

Request for Relief From Automatic Stay For Cause

Movant states good cause for relief exists because Movant is in possession of the Vehicle, is not paying for the Vehicle, and has not presented evidence the Vehicle is insured.

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 Debtor's demonstrated intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1).

Request for Relief From Automatic Stay For Lack of Equity

Movant also states the Debtor has no Vehicle in the Vehicle.

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).

Here, no value is presented as to the Vehicle by the Movant. Further, it is unclear whether the Debtor in providing a value of on his Statement of Intention included the “2016 McLellan 3600 Gallon tank” which Movant couples together with 2016 Peterbilt 340 Series Truck.

Without any evidence presented as to value of the Vehicle, the court cannot determine whether Debtor lacks equity.

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 in the Motion, 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.

In reviewing Movant’s Memorandum of Points and Authorities filed in support of the Motion, Movant argues that waiver of the 14 day stay is appropriate in light of Debtor failing to list the Vehicle on the Schedules and Statement of Intention, and failure to provide evidence the Vehicle is insured.

First, Movant is required to state the grounds for relief within the Motion. FED. R. BANKR. P. 9013. While it may be that Movant believes the Memo is “really” the Motion, this does not meet the pleading standard clearly expressed by congress.

Additionally, the court has already discussed above that Debtor appears to have listed the Vehicle, and Movant has not provided authority to show Debtor is required to file evidence of insurance for vehicles in a Chapter 7 case.

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.

Ruling

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 BMO Harris Bank, N.A. (“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 modified 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 2016 Peterbilt 340 Series Truck with a 2016 McLellan 3600 Gallon tank (“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 not waived for cause.

No other or additional relief is granted.

6. [19-90191-E-7](#)
[VVF-1](#)

JULIUS AMIRFAR
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
4-4-19 [13]

**AMERICAN HONDA FINANCE
CORPORATION 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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 4, 2018. By the court's calculation, 14 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 Chapter 7 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, -----

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The Motion for Relief from the Automatic Stay is granted.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a **2018 Honda Accord**, VIN ending in 3451 ("Vehicle"). The moving party has provided the Declaration of Diana Rodriguez Alvarado to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Julius Amirfar ("Debtor").

The Rodriguez Alvarado Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$465.73 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$465.73.

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).

On Debtor's Statement of Intention, Debtor indicates an intent to surrender the Vehicle.

DISCUSSION

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 \$26,398.28, as stated in the Rodriguez Alvarado Declaration (Declaration ¶ 5, Dckt. 17), while the value of the Vehicle is determined to be \$15,000.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on 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 and Debtor's expressed intent to surrender the Vehicle. 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 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 Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle 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 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.

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, that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant states waiver is warranted here given the nature of the Vehicle as a rapidly depreciating asset, there being

no indication Debtor will cure delinquency, no equity appearing in the Vehicle, the Vehicle not being necessary for an effective reorganization, and Debtor's expressed intent to surrender the Vehicle.

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 American Honda Finance 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 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 2018 Honda Accord VIN ending in 3451 ("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.

7. [19-90097-E-7](#)
[JHW-1](#)

JORGE NEGRETE CEBALLOS
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
3-8-19 [18]

TD AUTO FINANCE, LLC 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on March 11, 2019. FN.1. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

FN.1. Movant filed an Amended Notice on March 13, 2019 to provide the correct hearing time. Dckt. 26.

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.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Chrysler 200, VIN ending in 4046 ("Vehicle"). The moving party has provided the Declaration of Doris Pope-Reyes and Nancy G. Waters to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jorge Negrete Ceballos ("Debtor").

The Pope-Reyes Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$298.15 in post-petition payments past due. Declaration ¶ 5, Dckt. 22. The

Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$1,192.60. *Id.*

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).

On Debtor's Statement of Intention, Debtor expressed an intent to enter into a reaffirmation agreement. Dckt. 17.

DISCUSSION

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 \$15,176.00, as stated in the Doris Pope-Reyes Declaration, while the value of the Vehicle is determined to be \$13,350.00, as stated on the NADA Valuation Report, which is slightly lower than the value stated in Schedules B and D filed by Debtor.

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 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 Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle 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 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.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant asserts waiver is warranted here due to Debtor being 5 payments in default, and the Vehicle being a depreciating asset.

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 TD Auto Finance 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 2016 Chrysler 200 VIN ending in 4046 (“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.