

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 12, 2016 at 10:00 a.m.

1. [16-90104-E-7](#) CHARLES WILLIAMS MOTION FOR RELIEF FROM
WFM-1 Brian S. Haddix AUTOMATIC STAY
4-12-16 [[32](#)]
BANK OF AMERICA, N.A. VS.

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 30 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Charles Gartside Williams ("Debtor") commenced this bankruptcy case on February 11, 2016. Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Coachman 2490, VIN ending in 9044 (the "Vehicle"). The moving party has provided the Declaration of Asif Shah to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Shah Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$661.08 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 \$661.08.

May 12, 2016 at 10:00 a.m.

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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 \$\$53,458.47, as stated in the Shah Declaration, while the value of the Vehicle is determined to be \$30,000.00, as stated in Schedules B and D filed by Debtor.

RULING

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 since 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 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Bank of America, N.A., 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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 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 Bank of America, 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 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 2004 Coachman 2490 ("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 (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

2. [16-90309-E-7](#) MARK/JULIANNA RUNYON
ADR-1 Patrick B. Greenwell

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-7-16 [7]

KARMELLA ODISHO VS.

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 7, 2016. By the court's calculation, 35 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Karmella Odisho ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1129 Cedar Creek Drive Suite 2, Modesto, California (the "Property"). The moving party has provided the Declaration of Karmella Odisho to introduce evidence as a basis for Movant's contention that Mark John Runyon and Julianna Camille Runyon ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance.

Movant has provided the Declaration of Movant providing that the Movant served a Three Day Notice to Pay Rent or Quit. The Declaration declares that the Debtor did not pay for the months of February, March, or April, 2016 and did not vacate pursuant to the Three Day Notice. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). 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).

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

The court shall issue an order terminating and vacating the automatic stay to allow Karmella Odisho, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1129 Cedar Creek Drive Suite 2, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a) (3).

No other or additional relief is granted by the court.

The court shall issue 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 Karmella Odisho ("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 Karmella Odisho and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1129 Cedar Creek Drive Suite 2, Modesto, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a) (3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

3. [15-90211-E-7](#) SUKHPINDER BOYAL
BHT-1 David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-31-16 [[32](#)]

MATRIX FINANCIAL SERVICES
CORPORATION VS.
DISCHARGED: 7/2/15

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Community Business Bank, and Office of the United States Trustee on March 31, 2016. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Matrix Financial Services Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1840 Monica Court, Ceres, California (the "Property"). Movant has provided the Declaration of Vanessa M. Ellison to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ellison Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$9,531.14 in post-petition payments past due.

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 \$655,261.78 (including \$213,635.78 secured by Movant's first deed of trust), as stated in the Ellison Declaration and Schedule D filed by Sukhpinder Kaur Boyal ("Debtor"). The value of the Property is determined to be \$350,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). 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).]

Debtor was granted a discharge in this case on July 2, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 Matrix Financial Services Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Matrix Financial Services Corporation, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust

deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1840 Monica Court, Ceres, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Sukhpinder Kaur Boyal ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

4. [14-91629-E-7](#) JOHNATHAN/JOY PARKER
LMK-1 Patrick B. Greenwell

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-8-16 [[22](#)]

FREEDOM MORTGAGE CORPORATION
VS.
DISCHARGED: 4/13/15

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 8, 2016. By the court's calculation, 34 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1929 199th Street E, Spanaway, Washington (the "Property"). Movant has provided the Declaration of Maria McDevitt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The McDevitt Declaration states that there are 18 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$18,796.50 in post-petition payments past due.

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 \$206,188.05 (plus an estimated 8% Cost of Sale of \$16,800.00), as stated in the McDevitt Declaration and Schedule D filed by Johnathan Allen Parker and Joy Cae Anne Parker ("Debtor"). The value of the Property is determined to be \$210,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). 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).

Debtor was granted a discharge in this case on April 13, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Freedom Mortgage Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Freedom Mortgage Corporation, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to

exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1929 199th Street E, Spanaway, Washington.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Johnathan Allen Parker and Joy Cae Anne Parker ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

5. [15-90555-E-11](#) SUSAN ALLEN
JPB-1 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-13-16 [[114](#)]

TROJAN CAPITAL INVESTMENTS,
LLC VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 13, 2016. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

**The Motion for Relief From the Automatic Stay is denied
without prejudice.**

Trojan Capital Investments, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4633 McKenna Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Don A. Madden III to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Madden III Declaration states that there are 10 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$6,932.20 in post-petition payments past due. The Declaration also provides evidence that there are 88 pre-petition payments in default, with a pre-petition arrearage of \$59,287.36.

Movant computes its claim to total \$164,681.98. Relying on the value of the Property stated in the Schedules, Movant asserts that the Property has a value of \$370,000.00. Motion ¶ 10; Dckt. 114; Schedule A, Dckt. 11. Movant further asserts, that based on Schedule D filed by Debtor, the amount of claims secured by the Property is in excess of \$370,000.00. Motion ¶ 10, Dckt. 114. On Schedule D, Debtor lists the following claims to be secured by the Property:

Green Tree Mortgage, Deed of Trust	(\$188,782)
Trojan Capital Mortgage (Movant), Deed of Trust	(\$187,456)
Internal Revenue Service, Tax Lien	(\$31,352)
Internal Revenue Service, Tax Lien	(\$13,721)
Schedule A of Property	\$370,000

Net Equity/(Lack of Equity) for Estate	(\$51,311)

In the Motion, while asserting that Debtor has the burden for showing that the Property is necessary for an effective reorganization, Movant never affirmatively alleges that the Property is not necessary for an effective reorganization. This may be a drafting error, with Movant failing to comply with Federal Rule of Bankruptcy Procedure 9013, which requires that the grounds upon which relief is requested must be stated in the Motion, or it may be that Movant does not believe that it can so allege and comply with the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011.

DEBTOR'S OPPOSITION

Opposition has been filed by Susan A. Allen ("Debtor") on April 29, 2016. Dckt. 123. The Debtor asserts that the Property is the Debtor's primary residence and is necessary for an effective reorganization. Namely, the Debtor argues that the Property is necessary because Debtor requires a place to live while she works. Additionally, the Debtor asserts that the Movant failed to plead sufficient facts to waive the two-week stay.

In the Opposition, Debtor does not assert why this one house is so uniquely situated that this is the abode that Debtor must have if there is to be any effective reorganization in this bankruptcy case. In her Declaration, Debtor fails (or refuses) to provide any testimony so as to provide evidence to the court that it is this Property which must be her abode for there to be "an effective reorganization because it is where I live." Declaration ¶ 2, Dckt. 124.

Counsel for Debtor can address at the hearing the basis for this statement in the Opposition and Debtor's statement under penalty of perjury and how such statements are:

- A. Not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- B. Are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
- C. The contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery

See, Fed. R. Bankr. P. 9011.

OVERVIEW OF CHAPTER 11 CASE

Though Movant has not alleged that the Property is not necessary for an effective reorganization, nor asserted any grounds concerning the prosecution of this case, the court notes that it has been pending since June 4, 2016 - almost a full year. This was originally filed as a Chapter 13 case, which was facing dismissal, for which the Chapter 13 Trustee stated his legal conclusion that there was unreasonable delay by Debtor (but not stating upon what facts and evidence he reached such a conclusion) and that Debtor failed to provide the Class 1 Checklist. Motion to Dismiss, Dckt. 58.

Buried in the Declaration in support of the Motion to Dismiss, are what may be the possible grounds being asserted by the Chapter 13 Trustee. First, an employee of the Chapter 13 Trustee testifies that the Debtor failed to attend the First Meeting of Creditors. Second, that the Debtor had defaulted in the terms of a confirmed plan. (However, the court notes that there is no confirmed plan in this case, putting at issue the credibility of the witness and accuracy of the declaration.) Third, that Debtor may have defaulted in pre-confirmation payments. Fourth, that Debtor paid \$0.00 of plan payments as of the November 6, 2015 Declaration. Dckt. 60. The Chapter 13 bankruptcy case having been filed in June 2015, Debtor had missed four months of plan payments at the time the Trustee sought to dismiss the case.

Debtor has been represented by her current counsel since commencing this bankruptcy case in June 2015.

DEFECTIVE NOTICE

Unfortunately, the Movant failed to properly serve the instant Motion and papers on all necessary parties. For Motions for Relief from the automatic stay, Federal Rule of Bankruptcy Procedure 4001(a)(a) specifies the service of process required for a Motion for Relief in a Chapter 11 case. Local Bankruptcy Rule 4001-1(d) restates this requirement, providing:

(d) Certification of Service of Motions for Relief from Stay, for Use of Cash Collateral and to Approve Post-Petition Financing Agreements in Chapter 11 cases. In chapter 11 cases, the party seeking relief shall certify that the twenty (20) largest unsecured creditors as listed in the debtor's Schedule B-4 have been served with a copy of any Motions for Relief From Stay, For Use of Cash Collateral and to Approve a Post-Petition Financing Agreement, or if

a committee of unsecured creditors has been formed, that all committee members and committee counsel have been served. See Fed. R. Bankr. P. 4001(a)(1).

Here, the Movant failed to serve the 20 largest unsecured creditors. The List of Creditors was filed by Debtor on December 30, 2015. Dckt. 86. The Movant only served the Debtor-in-Possession, Debtor-in-Possession's counsel, the U.S. Trustee, and Allen C. Massey.

Movant having failed to provide proper service of the Motion, the Motion is denied without prejudice.

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 Trojan Capital Investments, 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 that Motion is denied without prejudice.

6. [15-90358](#)-E-11 LAWRENCE/JUDITH SOUZA
DJD-1 David M. Meegan

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-10-16 [[270](#)]

SETERUS, INC. VS.

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 11, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Seterus, Inc., as the authorized servicer for Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 201 West Syracuse Avenue, Turlock, California (the "Property"). Movant has provided the Declaration of Holley Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are 12 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$12,441.84 in post-petition payments past due. The Declaration also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$8,294.56.

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 \$132,183.88, as stated in the Caldwell Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). The value of the Property is determined to be \$75,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 Seterus, 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 immediately vacated to allow Seterus, Inc., as the authorized servicer for Federal National Mortgage Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain

possession of the real property commonly known as 201 West Syracuse Avenue, Turlock, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

7. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA
DJD-1 David M. Meegan

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-10-16 [[276](#)]

SETERUS, INC. VS.

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 11, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 235 West Syracuse Avenue, Turlock, California (the "Property"). Movant has provided the Declaration of Shannon Duron to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Duron Declaration states that there are 12 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$10,856.16 in post-petition payments past due. The Declaration also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$7,237.44.

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 \$121,221.35, as stated in the Duron Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). The value of the Property is determined to be \$149,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d) (1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 Seterus, 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 immediately vacated to allow Seterus, Inc., as the authorized servicer for Federal National Mortgage Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 235 West Syracuse Avenue, Turlock, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a) (3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

8. [15-90358](#)-E-11 LAWRENCE/JUDITH SOUZA
RDW-1 David M. Meegan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-5-15 [[169](#)]

PROVIDENT CREDIT UNION VS.
CONTINUED: 1/14/16

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 97 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,574.38 in post-petition payments past due.

OPPOSITION

Opposition has been filed by the Debtor in Possession, Lawrence James Souza and Judith Louise Souza ("ΔIP") on November 19, 2015. Dckt. 187.

The Debtor first notes that the ΔIP has entered into a contract to sell the Property to Halferty Development Corporation for \$250,000.00. The sale escrow had been opened and the ΔIP will seek court approval of the sale when it becomes clearer that Halferty will close on the adjacent property known as 87 W. Canal Drive.

The ΔIP notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the ΔIP argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The ΔIP argues that, using the sale price of \$250,000.00, there is substantial equity of \$170,000.00 after deducting the \$79,641.28 first priority secured claim of the Movant. The ΔIP additionally argues that even using the Movant's lower valuation of \$165,000.00, there is still sufficient equity to adequately protect the Movant.

Additionally, the ΔIP argues that the property taxes and payments for insurance on the Property are current. Lastly, the ΔIP argues that they have obtained a new tenant for the Property. While the ΔIP admits that the tenant is only being charged a nominal rent of \$1.00 per month, the tenant has agreed to pay the property taxes, insurance, and utilities for the Property moving forward. The ΔIP asserts that the occupancy by the tenant deters vandalism on the Property.

As to the 11 U.S.C. § 362(d)(2) ground, the ΔIP argues that the relief is not proper because the Property is necessary for the ΔIP's reorganization. The ΔIP is a Chapter 11 debtor and attempting to liquidate the ΔIP's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The ΔIP argues that allowing the ΔIP to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The ΔIP also notes that the Movant improperly states that there is a second deed of trust on the Property. The ΔIP states that the Movant and the Internal Revenue Service via a tax lien have an interest in the Property.

DECEMBER 3, 2015 HEARING

At the hearing, the court addressed with the parties the substance of the pending sale of the property, which the court initially believed to be a significant factor in denying the Motion. If the ΔIP are promptly moving in a commercially reasonable value to obtain the value of the property to provide for this and other claims, such conduct would be in the highest of ΔIP conduct in a Chapter 11 case.

However, at the hearing, Movant argued that the "sale" of the adjacent 87 Canal Drive property is not expected to close promptly. ΔIP confirmed that due to the contractual conditions, it is projected that the closing would not be before March 2016.

For the property that is the subject of the present Motion, the ΔIP has not yet filed a motion for order authorizing the sale, but it is to the same

person who has entered into a contract and an order approving such sale for the adjacent property at 87 W. Canal Drive has been entered by the court. This prompted the court to review that motion to sell and the contract thereon.

Motion to Sell 87 W. Canal Drive Property

On August 6, 2015, ΔIP filed the Motion for Authority to Sell the real property commonly known as 87 W. Canal Drive, Turlock California. Motion, Dckt. 96. The grounds stated with particularity upon which that relief is requested in that Motion include the following:

- A. The terms of the sale are summarized by ΔIP to be that "the Buyer is to pay the sum of \$250,000.00 cash for title to the Real Property, 'as is.'"
- B. A copy of the Sale Agreement is provided as Exhibit A in support of the Motion.
- C. Consent of other creditors holding liens will be obtained, or the court may order the sale free and clear of liens pursuant to 11 U.S.C. § 363(f) due to there being a bona fide dispute.

Id. In his declaration, ΔIP Souza testifies that he and his Co-ΔIP have entered into a contract to sell the property to Halferty Development Company, LLC for \$250,000. Declaration, Dckt. 98.

In the points and authorities the terms of the sale are stated to include a conditions that "The sale escrow is to close within thirty days after the end of a period for Buyer to obtain development approvals...." Points and Authorities, p. 6:1-2.; Dckt. 101. Such "period" of time is not otherwise stated. No opposition was raised in connection to the motion as to the "period" of time reference for Buyer to obtain development approvals.

In the court's posted tentative ruling and the final ruling as set forth in the Civil Minutes, the court notes that one of the conditions of closing included a period in which Buyer was to obtain development approvals. No additional information was provided the court, or objection raised, to the condition of obtaining development approvals.

The court has now gone back to review in detail the Purchase and Sale Agreement which the ΔIP has sought and obtained approval to enter into from the court. Exhibit A, Dckt. 99. While the purchase price is stated to be \$250,000.00, the good faith deposit from Buyer for purchasing this quarter of a million dollar property is:

- A. \$1,000.00 to be deposited within five days of the opening of escrow (which Buyer is to open within five days of the Agreement being fully executed).
- B. The \$1,000.00 is fully refundable at any time before the expiration of the site inspection period if the sale does not close for any reason.
- C. If Buyer wants to continue with the Development Approvals Period (an additional 120 days), at the expiration of the Site Investigation Period, Buyer is to deposit an additional

\$5,000.00 into escrow.

Id., ¶ 2.A.

The Site Investigation Period is stated to be for ninety days following the Opening of Escrow. *Id.*, ¶ 4.B. This is to allow the Buyer to have physical access to the property for inspection. This investigation is also defined to include Buyer obtaining final approval by a major tenant for development of a store on the property. Buyer may obtain refund of the Deposit by providing notice within five days after the expiration of the Site Investigation Period that Buyer has determined the property to not be suitable.

The Agreement further provides that Buyer will have an additional one hundred twenty days from the end of the Site Investigation Period to obtain zoning, building, or development approvals. *Id.*, ¶ 4.C. The agreement does not appear to provide for a refund of the deposit once the Site Inspection Period has expired (with notice given within five days thereafter). It is not clear if obtaining such zoning or permits is a condition of closing or merely that Buyer can delay closing for one hundred and twenty days while seeking those permits. However, the default provisions appear to state that in the event of a default by the Buyer, Seller's damages are limited to the deposit. *Id.*, ¶ 7.

The clock for this transaction appears to be running as follows:

Escrow Open No Later Than	July 29, 2015
\$1,000 Deposited No Later Than	August 3, 2015
Site Inspection Period (90 Days) Expires No Later Than	October 27, 2015
Development Approvals Period (120 Days) Expires No Later Than	February 24, 2016
Escrow Closes (30 Days after Development Approvals Period Expires) No Later Than	March 30, 2016

While in retrospect the dates may well appear to be effectively a extended option period for which at most \$6,000 was paid, these are the sale terms which were approved by the court. No parties in interest objected.

As addressed at the hearing, in light of such period, the court may well consider whether some other form of adequate protection might be provided. Even though Movant has the senior lien and based on value may be adequately protected in a gross sense, the bankruptcy case has been pending since April 10, 2015. Because of the sale structure by the ΔIP it will be almost a year with no payments (other than paying the property taxes) made for the secured claims while ΔIP and Buyer speculate on whether a sale will actually occur. If adequate protection payments were made to some creditor from the rents being generated by the ΔIP's use of the collateral, it would work to reduce the obligations which already over encumber the property.

The court continued the hearing, with the consent of Movant to afford the

ΔIP and Movant to consider alternatives, ΔIP to file additional pleadings, and the court to be provided additional information about the authorized sale and the representation that there is now a contract to sell the adjacent property.

SUPPLEMENTAL DECLARATION OF DEBTOR

The ΔIP filed a supplemental declaration on December 29, 2015. Dckt. 224. The ΔIP states that they are the owner of the Property. The ΔIP states that on December 11, 2015, the ΔIP signed documents tendered through a title company that confirmed the termination of the sale with Halferty for sale of the Property. The ΔIP state that they have retained a second broker to market and sell properties of the estate.

MOVANT'S RESPONSE

The Movant filed a response on January 7, 2016. Dckt. 233. The Movant states that the ΔIP has admitted that the sale of the Property has fallen through. The Movant argues that the ΔIP have not made a payment on the Property since the filing of the case.

JANUARY 14, 2016 HEARING

At the hearing, the court issued the following order:

IT IS ORDERED that:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.
- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not only Movant, but also the junior lien holder.
- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.
- F. On or before May 5, 2016, Movant shall file and

serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

Dckt. 239.

ΔIP'S SUPPLEMENTAL OPPOSITION

ΔIP filed a supplement to the opposition on April 26, 2016. Dckt. 292. The ΔIP states that the 97 W. Canal Property is a residential rental property. The Property is now being leased on a month-to-month bases for the nominal amount of \$1.00 per month, with the tenant also paying the cost of property insurance, real property tax installments, and utilities. As of April 1, 2016, the estate's segregated bank account for rents held the sum of \$915.18 specifically from 97 W. Canal.

Through the estate's court-approved broker, the ΔIP is marketing the Property at a asking price of \$225,000.00. At this time there are no pending offers or sale.

ΔIP Supplemental Supplemental Response

On May 10, 2016, the ΔIP filed a Supplemental Supplemental Response in which it is stated that now the estate is able to rent the property for \$700.00 a month. Declaration, Dckt. 307. The tenant is to pay rent and utilities, and maintain the yard, which the estate is responsible for costs of maintenance, insurance, and taxes. After payment of a property management fee of \$56.00, the estate generates gross rent monies of \$644.00 a month. ΔIP does not project the amortized property taxes and insurance for the property, but does seek to retain \$300.00 a month for "misc. maintenance exp.," which equates to \$3,600.00 (42% of the gross rent).

ΔIP does not include any proposed expense for payment of property taxes or insurance, and does not propose to make any payment to Movant.

MOVANT'S RESPONSE

The Movant filed a response on May 5, 2016. Dckt. 305. The Movant restates that the ΔIP acknowledges that there are tax liens junior to the Movant's lien on the Property and there is no equity in the Property.

ΔIP alleges that the sale of the Property would result in funds available to unsecured creditors given a pay-down of the Internal Revenue Service lien.

The Movant asserts that because the ΔIP are not making payments, there is no equity in the Property and they have currently been in this bankruptcy for over a year, Movant requests that the relief be granted.

DISCUSSION

Movant holds the senior lien on the Property, with ΔIP desiring to sell the property to not only pay Movant, but at least a portion of the debt of the Internal Revenue Service secured by a junior lien on the Property. This bankruptcy case was filed on April 10, 2015, with the ΔIP in control since that

time. As discussed above, the ΔIP obtained an order authorizing the sale of the property (which motion was not opposed by any other creditor). That "sale" fell through, and as the court noted upon closer review of the proposed "sale," it appeared to be little more than a speculative developer (not that there anything wrong in such avocation) attempting to tie up the property a little expense at its current value, change the zoning, and then acquire the property at what would then be a low price.

While ΔIP has consistently argued that the Property is worth \$250,000.00, in over a year now the ΔIP has been unable to sell the property. See Initial Opposition, Dckt. 187. ΔIP's inability to sell the property belies the contention that the value is \$250,000.00. When the ΔIP filed bankruptcy, the value of the property was originally listed at \$195,000.00. Schedule A; Dckt. 1 at 13.

ΔIP has relied on there being a significant equity cushion to protect Movant, an institutional lender (as opposed to the "widow who has invested her retirement monies in a can't lose second deed of trust scheme" creditor) who can bear the costs and expense of delay while the ΔIP attempts to maximize the value of the Property for the bankruptcy estate.

When this Motion was filed in November 2015, Movant computed its secured claim to be \$79,641.28. Motion, Dckt. 169. The monthly payment, not being paid is \$595.73, plus a late charge of \$29.79. Declaration, Dckt. 171. The interest rate on this debt is 6.5% per annum. Note, Exhibit 1; Dckt. 172. Using the unpaid principal balance of \$74,918.16 shown on Proof of Claim No. 7 filed by Movant to estimate interest accrual, at a 6.5% interest rate there is accruing interest (in addition to fees, costs, and expenses) of at least \$405.00 a month. In the past 12 months, this equates to at least \$4,860.00 of interest which has accrued and eroded the junior lien position.

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 \$78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least \$165,000.00, as stated by Movant. The liens on the Property are at least \$350,000.00 (rounded estimates of \$80,000.00 for Movant and \$270,000 for Internal Revenue Service) as shown on ΔIP's Schedules. Schedule D, Dckt. 1 at 21.

ΔIP assets that since the Internal Revenue Service lien goes to all real property, the additional value in this Property needs to be used to reduce the debt owed to the Internal Revenue Service, and thereby ultimately protect some equity in another property for Debtor. It appears, based on Schedule D, that such "equity" ultimately for Debtor is an illusion. On Schedule D Debtor lists having a negative equity of (\$840,682.00) in the real property. *Id.* at 23. For the Internal Revenue Service (which is purported to have a lien on all of Debtor's real property) in particular Schedule D states that the Internal Revenue Service secured claim is undersecured by (\$44,473.89). *Id.* at 21.

Thus, it appears that the ΔIP, as the fiduciary of the estate, is not being motivated by obtaining as much money as reasonably possible through the commercially reasonable sale, refinance, or reorganization of the property of the estate, but to delay such sales or reorganization, speculating (with all risk on creditors) that future increases in value will exceed the accruing

interest on the properties, including the Property which is the subject of this Motion.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim has been presented as the basis for not providing for payments claim during this past year. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

However, Movant has sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). The Movant does provide evidence that the Debtor is delinquent in post-petition payments. Here, while the existence of equity in the Property in correlation with the goal of the Debtor in the Chapter 11 has blocked Movant from obtaining relief from the stay to date, ΔIP has been unable to sell the property. It may well be that this is because ΔIP desires to sell it for \$250,000.00, which is 130% more than ΔIP stated as the value when the case was filed in April 2015. The ΔIP failing to market and sell this Property in a commercially reasonable manner for more than a year is cause to terminate the stay.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted and ΔIP's inability to sell this Property, the court determines that there is no realizable equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

For the second prong of the 11 U.S.C. § 362(d)(2) relief from stay standards, ΔIP's inability to sell this residential property for over a year demonstrates that it is not necessary for an *effective* reorganization. It may be worth more than the debt owed to Movant, but ΔIP has not recovered that value for the benefit of the estate or other creditors having liens. It appears that for the ΔIP, the estate is so far out of the money, that just holding Movant at bay, with no Chapter 11 Plan being advanced that requires the sale of the Property, allows ΔIP to speculate on future value increases in the Property, placing the risk of loss on other lienholders.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 Provident Credit Union ("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 immediately vacated to allow Provident Credit Union, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 97 W. Canal Drive, Turlock, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

9. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA
RDW-2 David M. Meegan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-5-15 [[176](#)]

PROVIDENT CREDIT UNION VS.
CONTINUED: 1/14/16

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

**The hearing on the Motion for Relief From the Automatic Stay
is continued to 10:00 a.m. on June 16, 2016.**

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 87 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of

\$3,229.26 in post-petition payments past due.

OPPOSITION

Opposition has been filed by Lawrence James Souza and Judith Louise Souza, the ΔIP on November 19, 2015. Dckt. 187.

The ΔIP first notes that the ΔIP has entered into a contract to sell the Property to Halferty Development Corporation for \$250,000.00. The sale escrow is open and the ΔIP has gotten court approval of the sale. Dckt. 156.

The ΔIP notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the ΔIP argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The ΔIP argues that, using the sale price of \$250,000.00, there is substantial equity of \$170,000.00 after deducting the \$72,045.55 first priority secured claim of the Movant. The ΔIP additionally argues that even using the Movant's lower valuation of \$145,000.00, there is still sufficient equity to adequately protect the Movant. Additionally, the ΔIP argues that the property taxes and payments for insurance on the Property are current.

As to the 11 U.S.C. § 362(d)(2) ground, the ΔIP argues that the relief is not proper because the Property is necessary for the ΔIP's reorganization. The ΔIP is a Chapter 11 debtor and attempting to liquidate the estate's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The ΔIP argues that allowing the ΔIP to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The ΔIP also notes that while the Movant is correct in saying that there are multiple liens on the Property, the ΔIP argues that because the Internal Revenue Service tax lien and the Curtis Family Trust lien are secured by additional property in excess of the Property. The ΔIP does state that there is a lack of equity when you total the three liens against the value of the Property. However, the ΔIP argues that because the multiple properties securing the lien, it would be improper to impute the entire amount on the single Property.

DECEMBER 3, 2015 HEARING

At the hearing, the court addressed with the parties the substance of the pending sale of the property, which the court initially believed to be a significant factor in denying the Motion. If the ΔIP is promptly moving in a commercially reasonable value to obtain the value of the property to provide for this and other claims, such conduct would be in the highest of ΔIP conduct in a Chapter 11 case.

However, at the hearing, Movant argued that the "sale" of the property is not expected to close promptly. ΔIP confirmed that due to the contractual conditions, it is projected that the closing would not be before March 2016. This prompted the court to review that motion to sell and the contract thereon.

Motion to Sell 87 W. Canal Drive Property

On August 6, 2015, ΔIP filed the Motion for Authority to Sell the real

property commonly known as 87 W. Canal Drive, Turlock California. Motion, Dckt. 96. The grounds stated with particularity upon which that relief is requested in that Motion include the following:

- A. The terms of the sale are summarized by ΔIP to be that "the Buyer is to pay the sum of \$250,000.00 cash for title to the Real Property, 'as is.'"
- B. A copy of the Sale Agreement is provided as Exhibit A in support of the Motion.
- C. Consent of other creditors holding liens will be obtained, or the court may order the sale free and clear of liens pursuant to 11 U.S.C. § 363(f) due to there being a bona fide dispute.

Id. In his declaration, ΔIP Lawrence Souza testifies that he and his Co-ΔIP have entered into a contract to sell the property to Halferty Development Company, LLC for \$250,000. Declaration, Dckt. 98.

In the points and authorities the terms of the sale are stated to include a conditions that "The sale escrow is to close within thirty days after the end of a period for Buyer to obtain development approvals...." Points and Authorities, p. 6:1-2.; Dckt. 101. Such "period" of time is not otherwise stated. No opposition was raised in connection to the motion as to the "period" of time reference for Buyer to obtain development approvals.

In the court's posted tentative ruling and the final ruling as set forth in the Civil Minutes, the court notes that one of the conditions of closing included a period in which Buyer was to obtain development approvals. No additional information was provided the court, or objection raised, to the condition of obtaining development approvals.

The court has now gone back to review in detail the Purchase and Sale Agreement which the ΔIP has sought and obtained approval to enter into from the court. Exhibit A, Dckt. 99. While the purchase price is stated to be \$250,000.00, the good faith deposit from Buyer for purchasing this quarter of a million dollar property is:

- A. \$1,000.00 to be deposited within five days of the opening of escrow (which Buyer is to open within five days of the Agreement being fully executed).
- B. The \$1,000.00 is fully refundable at any time before the expiration of the site inspection period if the sale does not close for any reason.
- C. If Buyer wants to continue with the Development Approvals Period (an additional 120 days), at the expiration of the Site Investigation Period, Buyer is to deposit an additional \$5,000.00 into escrow.

Id., ¶ 2.A.

The Site Investigation Period is stated to be for ninety days following the Opening of Escrow. *Id.*, ¶ 4.B. This is to allow the Buyer to have

physical access to the property for inspection. This investigation is also defined to include Buyer obtaining final approval by a major tenant for development of a store on the property. Buyer may obtain refund of the Deposit by providing notice within five days after the expiration of the Site Investigation Period that Buyer has determined the property to not be suitable.

The Agreement further provides that Buyer will have an additional one hundred twenty days from the end of the Site Investigation Period to obtain zoning, building, or development approvals. *Id.*, ¶ 4.C. The agreement does not appear to provide for a refund of the deposit once the Site Inspection Period has expired (with notice given within five days thereafter). It is not clear if obtaining such zoning or permits is a condition of closing or merely that Buyer can delay closing for one hundred and twenty days while seeking those permits. However, the default provisions appear to state that in the event of a default by the Buyer, Seller's damages are limited to the deposit. *Id.*, ¶ 7.

The clock for this transaction appears to be running as follows:

Escrow Open No Later Than	July 29, 2015
\$1,000 Deposited No Later Than	August 3, 2015
Site Inspection Period (90 Days) Expires No Later Than	October 27, 2015
Development Approvals Period (120 Days) Expires No Later Than	February 24, 2016
Escrow Closes (30 Days after Development Approvals Period Expires) No Later Than	March 30, 2016

While in retrospect the dates may well appear to be effectively a extended option period for which at most \$6,000 was paid, these are the sale terms which were approved by the court. No parties in interest objected.

As addressed at the hearing, in light of such period, the court may well consider whether some other form of adequate protection might be provided. Even though Movant has the senior lien and based on value may be adequately protected in a gross sense, the bankruptcy case has been pending since April 10, 2015. Because of the sale structure by the ΔIP it will be almost a year with no payments (other than paying the property taxes) made for the secured claims while ΔIP and Buyer speculate on whether a sale will actually occur. If adequate protection payments were made to some creditor from the rents being generated by the ΔIP's use of the collateral, it would work to reduce the obligations which already over encumber the property.

The court continued the hearing, with the consent of Movant to afford the ΔIP and Movant to consider alternatives, ΔIP to file additional pleadings, and the court to be provided additional information about the authorized sale.

SUPPLEMENTAL DECLARATION OF ΔIP

The ΔIP filed a supplemental declaration on December 29, 2015. Dckt.

224. The ΔIP states that they are the owner of the Property. The DIP states that on December 11, 2015, the ΔIP signed documents tendered through a title company that confirmed the termination of the sale with Halferty for sale of the Property. The ΔIP state that they have retained a second broker to market and sell properties of the estate.

MOVANT'S RESPONSE

The Movant filed a response on January 7, 2016. Dckt. 233. The Movant states that the ΔIP has admitted that the sale of the Property has fallen through. The Movant argues that the ΔIP have not made a payment on the Property since the filing of the case.

JANUARY 14, 2016 HEARING

At the hearing, the court issued the following order:

IT IS ORDERED that:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.
- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not only Movant, but also the junior lien holder.
- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.
- F. On or before May 5, 2016, Movant shall file and serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

Dckt. 240.

ΔIP'S SUPPLEMENT TO OPPOSITION

ΔIP filed a supplement to their opposition on April 26, 2016. Dckt. 289.

The 87 W. Canal property is a residential rental property. This Property is being leased on a month-to-month basis for the amount of \$875.00 per month. As of April 1, 2016, the estate's segregated bank account for rents held the sum of \$3,399.76 specifically from 87 W. Canal.

Through the estate's court-approved broker, the ΔIP have marketed the property for sale at a listing price of \$139,000.00. The ΔIP have entered a contract to sell 87 W. Canal for the sum of \$132,500.00. The escrow is open, contingencies have been removed by the buyer and the hearing on the Motion for Approval of the sale is set for 10:30 a.m. on April 28, 2016. In the event of the court approving the sale, the ΔIP plan to close escrow promptly after such approval is given and the order giving the ΔIP authority to sell the property is entered.

CONDITIONAL RESPONSE OF MOVANT

Movant filed a Conditional response on May 5, 2016. Dckt. 303.

Movant states that on May 4, 2016, the court granted the ΔIP's Motion to Sell. As the ΔIP have stated that escrow is open and contingencies have been removed, Movant requests that relief be granted effective 45 days from now to protect Movant in the event the Property is not sold and Creditor is not paid in full.

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 \$78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least \$132,500.00, which is the sale price for which authorization has been obtained by the ΔIP.

Rather than granting relief from the stay, automatically effective in the future, the court continues the hearing so as to be able to properly craft the relief, if necessary. The court notes that the ΔIP appears to have marketed this Property at a price which is close to the sales price. The court has discussed, in great detail, the ΔIP's conduct with respect to administering real property of the estate in connection with Movant's companion motion seeking relief from the automatic stay for the real property identified as 97 West Canal Dr., Turlock, California.

The court also notes that on Schedule A, the ΔIP stated that the property at 87 West Canal Dr. (the subject of this Motion) had a value of \$250,000.00. The ΔIP has obtained an order authorizing the sale for half that amount, \$132,500.00. It appears that the ΔIP, and its real estate agent, have listed, marketed, and found a buyer for the property at a reasonable value. It also puts into question the values asserted by the ΔIP when preparing Schedule A.

The hearing on the Motion is continued to 10:00 a.m. on June 16, 2016.

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 Provident Credit Union ("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 hearing on the Motion for Relief From the Automatic Stay is continued to 10:00 a.m. on June 16, 2016, to afford the Debtor in Possession the opportunity to complete the sale of the Property as previously authorized by the court.

10. [14-90476-E-7](#) MIGUEL/LETICIA HERNANDEZ MOTION FOR RELIEF FROM
AP-1 Scott D. Mitchell AUTOMATIC STAY
4-13-16 [[73](#)]

WELLS FARGO BANK, N.A. VS.
DISCHARGED: 4/26/16

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 13, 2016. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3360 Hollowell Drive, Ceres, California (the "Property"). Movant has provided the Declaration of Chantala Bobby Hansana to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Hansana Declaration states that there are 8 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$10,328.23 in post-petition payments past due.

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 \$356,225.71 (including \$279,195.83 secured by Movant's first deed of trust), as stated in the Hansana Declaration and Schedule D filed by Miguel Angel Hernandez and Leticia Hernandez ("Debtor"). The value of the Property is determined to be \$221,711.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). 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).

Debtor was granted a discharge in this case on April 26, 2016. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

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 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 automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3360 Hollowell Drive, Ceres, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Miguel Angel Hernandez and Leticia Hernandez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.

11. [15-90893-E-7](#) FRANCISCO SANCHEZ AND MOTION FOR RELIEF FROM
JCW-1 ALMA DOMINGUEZ AUTOMATIC STAY
4-1-16 [[54](#)]
WELLS FARGO BANK, N.A. VS.
DISCHARGED: 1/19/16

Final Ruling: No appearance at the May 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Tanya L. Strokes-Mack, Barry M. Mack, parties requesting special notice, and Office of the United States Trustee on April 1, 2016. By the court's calculation, 41 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Wells Fargo Bank, N.A. dba America's Servicing Company as servicing agent for Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ICIS Real Estate Capital Trust 2006-1, Mortgage Pass Through Certificates, Series 2006-1 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1020 West 60th Place, Los Angeles, California (the "Property"). Movant has provided the Declaration of Jamielle J. Davis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion provides the following grounds for cause:

1. Creditor holds a Promissory Note dated February 17, 2006 in the principal amount of \$364,000.00, which is secured by the Deed of Trust of the same date as signed by Marry M. Mack and Tanya L. Stokes-Mack ("Original Borrower")
2. The Original Borrower made several transfers of fractionalized interests in the Property.
3. Specifically, on or around December 11, 2015, Barry Mack, one of the Original Borrowers, transferred a fractionalized interest to Debtor Francisco Sanchez without knowledge or consent of the Movant in violation of the terms of the Deed of Trust Original Borrowers signed.
4. Debtors filed a petition under Chapter 7, case No. 15-90893 on September 17, 2015.
5. The beneficial interest in the Property were transferred to this Debtor post-petition on December 11, 2015.
6. Due to the above transfers of interest and multiple bankruptcy filings, Movant has been delayed from proceeding with foreclosure.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

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

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A. dba America's Servicing Company

as servicing agent for Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ICIS Real Estate Capital Trust 2006-1, Mortgage Pass Through Certificates, Series 2006-1, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A. dba America's Servicing Company as servicing agent for Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ICIS Real Estate Capital Trust 2006-1, Mortgage Pass Through Certificates, Series 2006-1, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1020 West 60th Place, Los Angeles, California.

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

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Francisco Sanchez and Alma Dominguez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.