

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

May 21, 2015 at 10:00 a.m.

1. [15-90207](#)-E-7 BOOTA BASI
OLG-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-8-15 [[17](#)]

JASJEET SINGH 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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and State Litigation Attorney for Debtor on April 8, 2015. By the court's calculation, 43 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. 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 denied
without prejudice.**

May 21, 2015 at 10:00 a.m.

- Page 1 of 36 -

Boota Singh Basi ("Debtor") commenced this bankruptcy case on March 2, 2015. Jasjeet Singh ("Movant") seeks relief from the automatic stay with respect to pursue their pending state court litigation in Santa Clara County Superior Court (the "Action"). The moving party has provided the Declaration of Ray D. Hacke to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Debtor filed an opposition on May 5, 2015. Dckt. 38. The Movant filed a reply on May 14, 2015. Dckt. 39.

However, the Movant has failed to comply with Fed. R. Bankr. P. 9013 and state with particularity the grounds for relief in the Motion.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Movant moves this court for an order modifying the automatic stay to allow Movant to continue Movant's state court proceeding against Debtor in the Santa Clara County superior Court, Case No. 1-13-CV-255938, to determine the amount of general, special, and punitive damages, attorney's fees, and costs of suit owed to Movant in the underlying matter and to proceed to judgment against Debtor and Debtor's bankruptcy estate.
- B. This motion is brought on the ground that the subject proceedings against Debtor were pending before Debtor's bankruptcy proceeding was commenced and relief from stay is necessary to liquidate the amount of Movant's damages against the Debtor and the bankruptcy estate.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that there is an underlying state court case without any reference to the grounds to justify the relief sought. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual

matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order

sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

REVIEW OF POINTS AND AUTHORITIES

The court notes that Movant has filed an extensive Points and Authorities. Dckt. 19. If the court were to consider this Points and Authorities part of the Motion (creating a mash-up "Mothorities") Woven through the citations, quotations, arguments, and speculation may well be facts and allegations which could be the grounds upon which Movant would state (subject to Fed. R. Bankr. P. 9011) in support of the Motion. Some may well not be such "grounds," but mere argument which Movant may assert that there is no Rule 9011 certification.

From what the court can glean from the Mothorities, little has been accomplished in the state court action, with Movant wanting to seek a motion to compel discovery. In the Mothorities there is a statement that a "trial had been scheduled in the State Court for May, 2015," but it is not clear if there was a courtroom and judge dedicated to try the case that day, or whether the parties were to merely show up for "first call and continuance" due to the overloaded state court calendars of criminal, family law, and other matters. While this court appreciates Movant's judicial economy concern,

There is no need for Movant's libel claim to be heard in two courts. Moreover, the Bankruptcy Court does not need to concern itself with a case that does not fall within its specialized area of law when the Bankruptcy Court presumably has plenty of other cases that do fall within that area.

Points and Authorities, p. 9:17-20; handling civil matter claims and nondischargeability litigation is routine for this court. Congress has provided the parties in bankruptcy with civil law judges who are dedicated to the prompt adjudication of the civil law claims and nondischargeability of debts. As compared to their state trial court and district court brethren, bankruptcy judges are not swamped with misdemeanor and felony trials, arraignments, drunk driving trials, habeas corpus applications, molestation and abuse trials, or the myriad of endless dissolution and domestic relation litigation. Even considering the Mothorities, Movant has failed to show this

court that there will be any significant duplication of judicial efforts or that the state court action can actually be tried before a trial could be conducted in this court.

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 Boota Singh Basi ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. [15-90108-E-7](#) ROBERT/ROSEMARIE SAMANO
NLG-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-8-15 [[27](#)]

SETERUS, INC. VS.

Final Ruling: No appearance at the May 21, 2015 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, and Office of the United States Trustee on April 8, 2015. By the court's calculation, 43 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. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1125 Blue Heron Drive, Patterson, California (the "Property"). Movant has provided the Declaration of Rose Ngi to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The attached Motion for Relief Information Sheet states that there is 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,683.96 in post-petition payments past due. The Information Sheet also states that there are 17 pre-petition payments in default, with a pre-petition arrearage of \$28,627.32. FN.1.

FN.1. The court notes that neither the Ngi Declaration, nor the Motion state the post- and pre-petition payment amounts. While the Information Sheet does provide this information, it has not been authenticated nor sworn under penalty of perjury. The court does not accept this as "evidence" in support of the Motion.

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 \$281,936.71, as stated in the Ngi Declaration and Schedule D filed by Robert Mesquita Samano and Rosemarie Samano ("Debtor"). The value of the Property is determined to be \$233,007.00 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).

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.

Because Movant has established that there is no equity in the Property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Further, Movant does not direct the court to any contractual provision or statute upon which request would be based, nor does it provide the court with any evidence upon which the court can make a determination of a reasonable amount of attorneys' fees.

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., 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 1125 Blue Heron Drive, Patterson, 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.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

3. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
RBK-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-21-15 [[1240](#)]

TERRACOTTA SHANGRI-LA, LLC
VS.

Final Ruling: No appearance at the May 21, 2015 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 Debtors, Debtors' Attorney, Chapter creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 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.

Terracotta Shangri-La, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6978 Hillcrest Drive, Modesto, California (the "Property"). Movant has provided the Declaration of Robert B. Kaplan, Esq. to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Assignment of Judgment Debt: Movant provides that Creditor Terracotta Shangri-La, LLC purchased a judgment originally obtained by Bank of the West against Debtors in a Sacramento State Court action. The Kaplan Declaration asserts that before judgment was entered, Bank of the West recorded a Writ of Attachment in the Stanislaus County Recorder's Office against Debtors in September 2010 with respect to the Property. Dckt. 1245, Exhibit 3. After obtaining a judgment, Bank of the West recorded an Abstract of Judgment in the judgment amount of \$2,599,556.43 in Stanislaus County on October 19, 2011. Dckt. 1245, Exhibit 5. On July 27, 2012, Triunfo One Acquisition, LLC purchased Bank of the West's rights under various loan documents and the

May 21, 2015 at 10:00 a.m.

- Page 9 of 36 -

Judgment. On October 9, 2012, the Superior Court granted a motion to substitute party plaintiff, substituting Triunfo One Acquisition, LLC for Bank of the West. Dckt. 1245, Exhibit 6. On October 19, 2012, Triunfo assigned its rights under the Loan Documents and the Judgment to Movant. On December 24, 2014, the Superior Court entered an order granting a motion to substitute party plaintiff, substituting Movant for Triunfo One Acquisition, LLC. Dckt. 1245, Exhibit 7.

Proof of Claim: The Kaplan Declaration further provides that Bank of the West filed a proof of claim on April 30, 2012, amended on May 1, 2012. Proof of Claim No. 16. Proof of Claim No. 16 was transferred to Triunfo One Acquisition, LLC. Dckt. 1245, Exhibit 14. On October 14, 2015, Movant filed a Request for issuance of Notice of Transfer of Claim stating that Proof of Claim No. 16 was being transferred to Movant. Dckt. 1107

Instant Bankruptcy Case: The Kaplan Declaration provides the following procedural history in the instant bankruptcy case. On December 30, 2011, Debtors filed for Chapter 11 bankruptcy. On August 29, 2014, the court granted Chapter 11 Trustee's Motion to Abandon Property, which included the Property in the instant Motion. Dckt. 1031. On October 5, 2014, the Court entered a civil minute order converting the Chapter 11 bankruptcy case to a Chapter 7 bankruptcy case. Dckt. 1089. Movant provides that pursuant to the provisions of 11 U.S.C. § 362(c)(1), because the Property was ordered abandoned by the Court, there is no stay in effect against property of the Debtors' estate.

Movant requests relief from the automatic stay as to the Debtors pursuant to 11 U.S.C. § 362(a), however, as no order of discharge has yet been entered in the case discharging the Debtors. Therefore, Movant here seeks relief from the automatic stay with respect to Debtors under 11 U.S.C. §§ 362(d)(1) and (d)(2).

DISCUSSION

First, the Movant notes 11 U.S.C. § 362(c)(1) as an additional ground for the court to find that the automatic stay is not in effect as to the Property. 11 U.S.C. § 362(c)(1) provides that "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." In the instant case, the court issued an order abandoning the Property on August 29, 2014. Dckt. 1031. As such, the Property is no longer property of the estate and the stay is no longer in effect. See 11 U.S.C. §§ 362(c)(1) and 554.

Movant contends that relief is warranted under 11 U.S.C. § 362(d)(1) based on: (1) Debtors have no equity in the Property; and (2) the Property has already been abandoned; and (3) the Property is not necessary for an effective reorganization because the case has been converted to a Chapter 7. The first and third grounds state for cause are merely the separate and independent grounds for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2). The court will not interpret the statute in a way to make 11 U.S.C. § 362(d)(2) superfluous, such grounds being "for cause" grounds under § 362(d)(1).

Movant therefore contends that "cause" exists for relief from the stay because the Trustee has abandoned the Property. The Motion fails to clearly state with particularity what the grounds are for this portion of the requested relief, with most of the motion relating to "preliminary matters," such as how

Movant is a party with standing to bring this Motion.

Other "grounds" stated in the Motion with could relate to the § 362(d)(1) requested relief include:

- a. Movant is enforcing a judgment against the Debtors;
- b. That judgment is secured by an abstract which creates a judgment lien on the Property;
- c. The Chapter 11 Trustee was appointed on October 18, 2012;
- d. On August 29, 2014, the court ordered that the Property was abandoned from the bankruptcy estate back to the Debtors;
- e. The case has been converted to one under Chapter 7; and
- f. Debtors have been stipulating with the Chapter 7 Trustee to extend the date for filing objections to discharge, which has the effect of delaying the entry of a discharge (and the termination of the automatic stay as to Debtors by operation of law).

Tying together these general allegations and the one specific allegation stated for 11 U.S.C. § 362(d)(1), the court determines that cause exists for terminating the automatic stay, including the Property having already been abandoned. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Debtors have been under the protection of the automatic stay since the December 30, 2011 filing of this case. After almost four and one-half years in bankruptcy, failure to confirm a plan, and now seven months in this Chapter 7 case, cause exists to terminate the stay to allow this creditor to exercise its lien rights.

11 U.S.C. § 362(d)(2) Grounds

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). Here, Movant fails to state with particularity any values for the property and liens, and fails to provide any evidence as to the equity or lack thereof in the Property. The Movant merely repeats the statute in the motion that there is no equity in the Property and that it is not necessary for a reorganization. These conclusory statements of law are not based on any grounds stated with particularity or evidence. Therefore, the request for relief pursuant to 11 U.S.C. § 362(d)(2) is denied. FN.1.

FN.1. The court notes that Movant has filed a fourteen page Points and Authorities. Quite possibly buried between the extensive citations, quotations, arguments, and speculation are "grounds" upon which Movant would have stated in the Motion if it had stated the grounds with particularity in the Motion. The court declines the opportunity to canvas the Points and Authorities and other pleadings to assemble the grounds the court believes Movant would have alleged, amend the motion, state the grounds, assemble the

evidence to support the grounds, advocate the Motion, and then rule on the Motion.

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). The Movant merely throws in as part of the prayer for the court to also waive the 14-day stay of enforcement. The court has no idea what grounds, if any, Movant believes is cause for this court overriding the fourteen-day stay of enforcement which the Supreme Court has provided for in Rule 4001(a)(3). Therefore, 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 Terracotta Shangri-La, 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 the automatic stay provisions of 11 U.S.C. § 362(a) are no longer in effect as to the bankruptcy estate as an operation of law pursuant to 11 U.S.C. § 362(c)(1) due to the real property commonly known as 6978 Hillcrest Drive, Modesto, California having previously been abandoned (Dckt. 1031)

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated as to the Debtors to allow Terracotta Shangri-La, LLC, 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 6978 Hillcrest Drive, 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 for cause shown by Movant.

No other or additional relief is granted.

4. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA MOTION FOR RELIEF FROM
SYC-1 AUTOMATIC STAY
4-21-15 [[1233](#)]

OAKWOOD OFFICE PARK PROPERTY
OWNERS ASSOCIATION 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 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 21, 2015. 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted to allow for the recording and perfection of the lien and denied as to other relief requested.

Oakwood Office Park Property Owners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1317 Oakdale Road, Suite 100, Modesto, California (the "Property"). Movant has

provided the Declaration of Bob Burge to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Burge Declaration states the Debtors are delinquent in payments as follows:

1. Post-conversion regular assessments of \$6,700.34
2. Pre-conversion special assessments of \$21,143.38
3. Post-conversion special assessments of \$10,571.69.

The Movant is an unsecured creditor and is seeking relief from the automatic stay so that it can proceed with recording a lien against the Property. Furthermore, the Movant is seeking leave of the court to file a Proof of Claim for the delinquencies due to the Movant allegedly not receiving notice of the Debtors bankruptcy until recently.

DEBTORS' OPPOSITION

Opposition has been filed by Aruna and Sawtantra Chopra ("Debtors") on May 7, 2015. Dckt. 1260. The Debtors assert that Movant has failed to provide sufficient evidence supporting "cause" for relief under 11 U.S.C. § 362(d)(1) or any lack of equity under 11 U.S.C. § 362(d)(2) and that this is not a single asset real estate case under 11 U.S.C. § 362(d)(3). Dckt. 1260.

Debtors argue that there is insufficient evidence to support relief from stay for "cause" or lack of equity because:

1. There is no evidence before the court regarding the value of the Property or the total amounts owed against the Property;
2. The only evidence before the Court is that Movant claims that it is owed about \$38,000; and
3. There is no evidence that the value of the Property is declining.
4. The bankruptcy case is not a single asset case and therefore relief under 11 U.S.C. § 362(d)(3) is not proper.

Debtors lastly argue that since there is no absolute right to file an untimely Proof of Claim, the request should be denied.

TRUSTEE'S OPPOSITION

Opposition has been filed by Gary Farrar, Chapter 7 Trustee, on May 7, 2015. Dckt. 1262. The Trustee does not oppose the Motion for Relief to record a delinquent assessment lien against the Property, to the extent Movant has not already done so. However, the Trustee urges the court to decline to grant Movant the right to enforce a future assessment lien through foreclosure or other means.

First, the Motion states repeatedly that it seeks relief to record an assessment lien, but the Motion concludes its "WHEREFORE" statement by

requesting “. . . an Order granting relief from the automatic Stay permitting Unsecured Creditor to enforce its remedies pursuant to applicable California laws . . .”. This language is over broad and troubling to the Trustee because the Motion analyzes the bases for Movant’s request that it be permitted to record an assessment lien, but not to enforce such a lien through foreclosure or other means. The Motion does not request, nor does it provide a basis for, the court to fix the amount of the Movant’s assessment, including with respect to attorney’s fees. The Trustee requests that the order on the Motion make clear that relief from stay was not requested, and is not granted, to enforce any lien or claim.

Second, the Trustee urges the court to decline to grant Movant the right to enforce a future assessment lien through foreclosure or other means because the Trustee and creditors should be given an opportunity to present evidence in opposition. If requested, the Trustee would oppose such relief at this time because: (1) the Trustee is actively seeking to administer the Property, and has engaged a real estate agent; (2) the sole consensual deed of trust encumbering the Property has been assigned to the estate of New Era Capital, LLC; and (3) the Trustee has negotiated a limited-duration carve out arrangement with the successor judgment creditor, TerraCotta Shangri-La, LLC., with an abstract of judgment encumbering the Property.

Third, the Trustee is troubled that Movant has requested and order granting leave to file a proof of claim reflecting both the pre-petition and the post-petition delinquency in the amount of \$38,415.41 and an order for attorney’s fees in the amount of \$5,713.18. The Trustee states that a motion for relief from the automatic stay to record an assessment lien is not the proper vehicle to seek the authorization to file a proof a claim or fix the amount of Movant’s claim. Additionally, the Trustee asserts that the Motion does not make clear whether it seeks an award of attorney’s fees and does not allege sufficient facts to support an analysis for the award of attorney’s fees.

MOVANTS’ REPLY

Movant filed identical replies to the oppositions filed by Debtors and the Trustee. Dckts. 1267 and 1269. The replies state that Movant seeks an order granting it relief from the automatic stay to permit Movant to take all steps necessary to proceed with recording a lien against the Property.

Movant argues that relief from stay to record a lien against the Property is appropriate by stating that:

1. The Property lacks adequate protection because the Debtors made zero post-conversion assessment payments to Movant as evidenced in the Burge declaration and supporting exhibits to the Motion;
2. Recording a delinquent assessment lien against the Property does not prejudice Debtors; and
3. The trustee does not oppose the Motion to the extent that it seeks relief to record a delinquent assessment lien.

Additionally, Movant contends that Movant was unaware of Debtors’ Chapter 11 petition because Movant was not listed in the petition and was not given notice of the filing until recently. The Movant also states that the Motion is

not based on 11 U.S.C. § 362(d)(3). However, a review of the Motion does state that one of the grounds is 11 U.S.C. § 362(d)(3). Dckt. 1233, pg. 2, line 1.

DISCUSSION

The Movant is seeking relief from the automatic stay to allow it to record a lien against the Property for Debtors' failure to pay the assessments on the Property. The Movant also seeks leave of the court to file a proof of claim.

To first address the request for leave to file a proof of claim, the Trustee is correct in that a Motion for Relief is not the proper means to seek such relief. The Movant is attempting to combine two separate reliefs which is in violation of Fed. R. Civ. P. 18. As such, the request for leave to file a proof of claim is denied without prejudice.

As to the grounds for relief from the automatic stay, the court finds that there is cause to grant the Movant's request. With respect to recording its lien. The Trustee has no opposition to such relief for this property of the estate. Implicit in Debtors' opposition is that there is value in the property, so Movant should not be worried about being paid for these expenses it is incurring for this property.

The Trustee has, and is continuing to hold, this property. In his Opposition Trustee states the he opposes the relief,

"[b]ecause: 1) the Trustee is actively seeking to administer the Property, and has engaged a real estate agent; 2) the lone consensual deed of trust encumbering the Property has been assigned to the estate by New Era Capital, LLC ("NEC"); and 3) the Trustee has negotiated a limited-duration carve out arrangement with the successor judgment creditor with an abstract of judgment encumbering the Property, TerraCotta Shangri-La, LLC ("TerraCotta")."

Opposition, Dckt. 1262. The Trustee does not advise the court what is the "limited duration" period or the amount of the carve out arrangement. The Trustee does not disclose who, if anyone is using or occupying this property. For the last monthly operating report filed in this case (Dckt. 962 for the month of July 2013) it is reported that this property was generating gross rents of \$4,416.00 a month. No explanation is given for how the estate is generating rent monies and the creditor is claiming a lien on the rent monies when this necessary expense for generating those monies is going unpaid. These facts also mitigate to the granting of the Motion to allow for the recording of the lien.

For cause, the court grants the Motion to allow the Movant to record a lien against the Property for the delinquent assessments. However, the court does not authorize relief from the automatic stay to enforce their rights through foreclosure or to enforce the lien in any other way.

As to the request for relief under 11 U.S.C. § 362(d)(2), the Movant fails to plead lack of equity in the Property. 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). Nowhere in the Motion nor Declaration does the Movant plead the value of the Property nor the total of liens encumbering the Property for the court to determine whether any equity remains in the Property. Therefore, this request is denied.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to secure and record a lien for the delinquent assessments pursuant to applicable nonbankruptcy law and their contractual rights.

The court also waives the 14-day stay of enforcement required under Rule 4001(a)(3) for cause - the failure of the estate to pay the assessments relating to this property which has been generating income for the estate and additional collateral for the creditor whose claim is secured by 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 Oakwood Office Park Property Owners Association ("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 Oakwood Office Park Property Owners Association, its agents, representatives, and successors, to secure and record a lien for the delinquent assessments pursuant to applicable nonbankruptcy law and their contractual rights on the real property commonly known as 1317 Oakdale Road, Suite 100, 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 waived for cause shown by Movant.

No other or additional relief is granted.

5. 15-90313-E-7 CHAD PAIS AND JACY
APN-1 BOLTON-PAIS

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-17-15 [[17](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the May 21, 2015 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*), the Chapter 7 Trustee, and the Office of the United States Trustee on April 17, 2015. 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.

Chad R. Pais and Jacy Bolton-Pais ("Debtor") commenced this bankruptcy case on March 31, 2015. SANTANDER CONSUMER USA INC. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Dodge Durango, VIN ending in 5921 (the "Vehicle"). The moving party has provided the Declaration of Marianne Favours to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Favours Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$381.64 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,029.39.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$12,783.90, as stated in the Favours Declaration, while the value of the Vehicle is determined to be \$9,800.00, as stated in Schedules B and D filed by Debtor.

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

May 21, 2015 at 10:00 a.m.

- Page 18 of 36 -

valuation attached, value of the Vehicle is \$9,200.00.

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).

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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow SANTANDER CONSUMER USA INC., 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 SANTANDER CONSUMER USA 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 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 2007 Dodge Durango, VIN ending in 5921 ("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.

May 21, 2015 at 10:00 a.m.

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.

6. [15-90225-E-7](#) DANIEL/PRIMAVERA CHAVEZ MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
4-15-15 [[10](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the May 21, 2015 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 15, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

Daniel T. Chavez and Primavera M. Chavez ("Debtors") commenced this bankruptcy case on March 6, 2015. Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Buick Regal, VIN ending in 5084 (the "Vehicle"). The moving party has provided the Declaration of Carina Olivares to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Olivares Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$615.25 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments

May 21, 2015 at 10:00 a.m.

- Page 20 of 36 -

in default, with a pre-petition arrearage of \$3,230.05.

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 \$24,615.14, as stated in the Olivares Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The NADA Valuation Report values the Vehicle at \$16,825.00.

A review of the Debtors' Schedule B does not list the Vehicle nor does the Debtors' Schedule D list the Creditor as holding a secured claim in the Vehicle. However, the Movant provides a copy of the Purchase Agreement which lists the Debtors as the purchaser as well as the Vehicle as the asset being purchased. Dckt. 13, Exhibit A. The court does not know why the Debtors have failed to list the Creditor and the Vehicle on their schedules.

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 pre- and post-petition payments. 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, 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 Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED 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 2012 Buick Regal, VIN ending in 5084 ("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.

7. [15-90142-E-7](#) JAIME RINCON
SCF-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-6-15 [[21](#)]

VALLEY FIRST CREDIT UNION
VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 6, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing, -----

The Motion for Relief From the Automatic Stay is granted.

Jaime Delgado Rincon ("Debtor") commenced this bankruptcy case on February 17, 2015. VALLEY FIRST CREDIT UNION ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Toyota Camry, VIN ending in 2750 (the "Vehicle"). The moving party has provided the Declaration of Yvonne Jubilado to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jubilado Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$461.17 in post-petition payments past due.

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 \$21,780.86, as stated in the Jubilado Declaration, while the value of the Vehicle is determined to be \$18,000.00, 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).

11 U.S.C. § 362(d) Grounds

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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow VALLEY FIRST CREDIT UNION, 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). While the Movant states in the Jubilado Declaration as well as the Motion that the Debtor has indicated he wishes to surrender the Vehicle, a review of the Debtor's Statement of Intention indicates that he seeks to reaffirm the debt. Dckt. 1. The Movant has offered no evidence from the Debtor regarding this change in intention nor has the Debtor filed amendments to his Statement of Intention. Therefore, 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 VALLEY FIRST 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 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 2013 Toyota Camry, VIN ending in 2750 ("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.

8. [15-90044-E-7](#) MARY WIGGS
MET-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-24-15 [[14](#)]

BANK OF THE WEST 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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on February 24, 2015. By the court's calculation, 86 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 as to the Debtor as moot, the discharge having been granted, and granted as to the Bankruptcy Estate.

Bank of the West ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6904 Prelude Lane, Hughson, California (the "Property"). Movant has provided the Declaration of Teri Moran to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Moran Declaration states that there are 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$567.79 in post-petition payments past due. The Declaration also provides evidence that there are 11 pre-petition payments in default, with a pre-petition arrearage of \$6,245.69.

May 21, 2015 at 10:00 a.m.

- Page 26 of 36 -

ORDER CONTINUING THE HEARING

On March 12, 2015, the court issued an order approving the stipulation of the parties and continued the hearing for the instant Motion to 10:00 a.m. on May 21, 2015. Dckt. 24.

No new papers have been filed in connection with the instant Motion.

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 \$256,441.13 (including \$76,964.13 secured by Movant's second deed of trust), as stated in the Moran Declaration and Schedule D filed by Mary Wiggs ("Debtor"). The value of the Property is determined to be \$316,422.00, as stated in Schedules A and D filed by Debtor.

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 provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Debtor was granted a discharge in this case on May 8, 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. However, the Motion is granted as to the Estate.

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 Bank of the West ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated as to the Debtors to allow Bank of the West, 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 6904 Prelude Lane, Hughson, California .

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Mary Wiggs ("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.

9. [15-90347-E-7](#) MICHAEL/MELANIE DODGE
VVF-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-20-15 [[12](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

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 20, 2015. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion for Relief From the Automatic Stay is granted.

Michael Stanley Dodge and Melanie Marlene Dodge ("Debtor") commenced this bankruptcy case on April 08, 2015. American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Honda TRX420FMD Rancher, VIN ending in 07592 (the "Vehicle"). The moving party has provided the Declaration of Rodolfo Ramirez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ramirez Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$149.85 in post-petition payments past due. The Declaration also provides evidence that there are 10 pre-petition payments in default, with a pre-petition arrearage of \$1,489.50.

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 \$6,717.85, as stated in the Ramirez Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The NADA Valuation Report values the Vehicle at \$16,825.00.

A review of the Debtors' petition shows that the Debtors have failed to report both the Vehicle and the Creditor in their schedules. The Movant has provided a copy of the Retail Installment Sale Contract which lists the buyer as Debtor Melanie Dodge (under her maiden name Melanie Woods) and the Vehicle as the asset. The court does not know why the Debtors have failed to list this asset on their schedules which raises concerns over what other assets or debts the Debtors may be failing to disclose.

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).

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 equity in the Vehicle for the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, the Motion is denied as to the 11 U.S.C. § 362(d)(2) grounds.

The court shall issue an order terminating and vacating the automatic stay to allow American Honda Finance Corporation, 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 pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3). The Movant indicates that it is currently in possession of the Vehicle. In light of the fact that the Debtors do not currently possess the Vehicle, this part of the requested relief is granted for cause.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Honda TRX420FMD Rancher, VIN ending in 07592 ("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 waived for cause.

No other or additional relief is granted.

10. [15-90148-E-7](#) RUDY/IRMA ROSALES
TJS-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-16-15 [[12](#)]

PENNYMAC HOLDINGS, LLC VS.

Final Ruling: No appearance at the May 21, 2015 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, parties requesting special notice, and Office of the United States Trustee on April 16, 2015. 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.

Pennymac Holdings, LLC fka Pennymac Mortgage Investment Trust Holdings I, LLC, its successors and/or assigns, by its servicing agent, Pennymac Loan Services, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4172 Piccadilly Lane, Turlock, California (the "Property"). Movant has provided the Declaration of Rita Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Garcia Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,629.24 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 \$355,034.00 (including \$297,830.00 secured by Movant's first deed of trust), as stated in the Garcia Declaration. The value of the Property is determined to be \$290,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a

May 21, 2015 at 10:00 a.m.

- Page 31 of 36 -

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).

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 Pennymac Holdings, LLC fka Pennymac Mortgage Investment Trust Holdings I, LLC, its successors and/or assigns, by its servicing agent, Pennymac Loan Services, 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 the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Pennymac Holdings, LLC fka Pennymac Mortgage Investment Trust Holdings I, LLC, its successors and/or assigns, by its servicing agent, Pennymac Loan Services, LLC, 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 4172 Piccadilly Lane, 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 for cause shown by Movant.

No other or additional relief is granted.

11. [14-91565](#)-E-11 RICHARD SINCLAIR
KVD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-1-15 [[137](#)]

CALIFORNIA EQUITY MANAGEMENT
GROUP, INC. VS.
WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 21, 2015 hearing is required.

The Movant having filed a Withdrawal of the Motion for Relief from the Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice by Movant, and the matter is removed from the calendar.**

12. 15-90279-E-7 DAVID/NICOLE PADILLA
SCF-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-6-15 [15]

VALLEY FIRST CREDIT UNION
VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

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 May 6, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing May 21, 2015 -----.

The Motion for Relief From the Automatic Stay is granted.

David and Nicole Padilla ("Debtor") commenced this bankruptcy case on March 23, 2015. VALLEY FIRST CREDIT UNION ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Infinity G35, VIN ending in 4498 (the "Vehicle"). The moving party has provided the Declaration of Yvonne Jubilado to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jubilado Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$853.96 in post-petition payments past due.

May 21, 2015 at 10:00 a.m.

- Page 34 of 36 -

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$12,492.54, as stated in the Jubilado Declaration, while the value of the Vehicle is determined to be \$11,593.00, 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).

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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow VALLEY FIRST CREDIT UNION, 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 pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3). As indicated by the Debtor on Schedule B and D, the Debtor has transferred possession of the Vehicle to a third-party. Dckt. 1. The Debtor no longer in possession of the Vehicle, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is no longer necessary to protect the Debtor's interest in the Vehicle. Therefore, this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by VALLEY FIRST 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 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 2007 Infinity G35, VIN ending in 4498 ("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 waived for cause.

No other or additional relief is granted.