UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

May 31, 2018, at 10:00 a.m.

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1. **18-90142-E-7** **JOHN RUIZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
TGM-1 **Byron Nelson** **4-30-18 [19]**

THE BANK OF NEW YORK MELLON
VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 30, 2018. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-13 ("Movant") seeks relief from the automatic stay with respect to John Ruiz's ("Debtor") real property commonly known as 4121 Dynasty Lane, Modesto, California ("Property"). Movant has provided the Declaration of Ami McKernan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.
Review of Motion

As discussed below, Federal Rule of Bankruptcy Procedure 9013 requires that the "motion" itself "shall" state with particularity the grounds upon which the requested relief is based and the relief requested. For the present "Motion," Movant states with particularity the following grounds:

> The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-13 ("Movant") will and hereby does move, pursuant to 11 U.S.C. § 362(d), and Rule 4001 of the Federal Rules of Bankruptcy Procedure, for an order terminating the automatic stay of 11 U.S.C. § 362(a) as it applies to Movant and the real property located at 4121 Dynasty Lane, Modesto, California 95356.
>
> This Motion is based on the Notice of Motion for Relief from Automatic Stay, Memorandum of Points and Authorities in Support of Motion for Relief from Automatic Stay, and Declaration in Support of Motion for Relief from Automatic Stay filed concurrently herewith, the pleadings and papers on file herein, an upon such oral and documentary evidence as may be presented by the parties at the hearing.

Pleading titled "Motion for Relief From the Automatic Stay," Dckt. 19.

In the pleading, Movant asks for an order terminating the automatic stay as it applies to "Movant" and the real property located at 4121 Dynasty Lane.

As for grounds, Movant directs/instructs/*orders* the court to assemble the "motion" by reading and researching:

A. The Motion (which does not state any grounds);

B. Memorandum of Points and Authorities in support of the Motion;

C. Declaration in Support of Motion;

D. All of the pleadings and papers filed in this bankruptcy case (or possibly all of the pleadings filed in every case filed in this District);

E. Such other oral evidence (which is not permitted for the scheduled hearing) as Movant directs/instructs/*orders* the court to consider at the hearing; and

F. Such other documentary evidence (which is not permitted for the scheduled hearing) as Movant directs/instructs/*orders* the court to consider at the hearing.

Except by reference to and instructions for the court to review and assemble the grounds for Movant, no grounds are stated in the Motion.

Review of Declaration

The McKernan Declaration states that there are two post-petition defaults in the payments on the obligation secured by the Property, with a total of $4,439.38 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payments in default, with a pre-petition arrearage of $2,219.69. The Declaration also notes that Debtor has indicated an intent to surrender the Property.

In his Declaration, McKernan states that he is a custodian of records for Specialized Loan Servicing, LLC. Declaration, Dckt. 22 at 2:1–8. His testimony in this section of the Declaration includes:

> I have access to the books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Specialized Loan Servicing LLC as servicer for Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Specialized Loan Servicing LLC as servicer for Movant's business at or about the time of the acts conditions or events to which they relate.

Id.

The court reads this testimony under penalty of perjury to be: (1) McKernan's testimony is based on the books and records of Specialized Loan Servicing, LLC; (2) the books and records of Specialized Loan Servicing, LLC were created at the time the events occurred to which the documents relate; and (3) the documents have been maintained by Specialized Loan Servicing, LLC since they were created.

His testimony under penalty of perjury includes the following, as the court understands it from the above statements under penalty of perjury concerning the books and records of Specialized Loan Servicing, LLC:

A. On or about June 15, 2006, Debtor made and delivered a promissory note to Specialized Loan Servicing. Declaration ¶ 3, Dckt. 22.

B. True and correct copies of the promissory note have been maintained in the books and records of Specialized Loan Servicing, LLC since June 15, 2006. A copy of the 2006 note and deed of trust securing the note are provided as Exhibits 1 and 2. *Id.*

C. A copy of a transfer of the beneficial interest in the deed of trust securing the 2006 note is provided as Exhibit 3. *Id.*

D. The books and records of Specialized Loan Servicing, LLC, maintained since 2006, show that the obligation of Debtor to Movant is $236,499.10. *Id.*, ¶ 4.

The note, which McKernan testifies has been maintained in the books and records of Specialized Loan Servicing, LLC since it was created in 2006, provided as Exhibit 1, Dckt. 23, includes the following information:

A. The "Lender" and payee stated in the note is "America's Wholesale Lender," not Specialized Loan Servicing, LLC.

B. The note is dated June 15, 2006.

C. On page 3 of the note, there is an endorsement in blank by Countrywide Home Loans, Inc., Doing Business as America's Wholesale Lender. The endorsement in blank is undated.

Exhibit 2 is stated to be a copy of the deed of trust that secures the note. *Id.* The deed of trust has a recording stamp with the date June 22, 2006. America's Wholesale Lender is listed as the "Lender," and MERS is identified as the "Nominee" for Lender, and it is MERS, not Lender, who is the "Beneficiary" granted interests and rights under the deed of trust. The deed of trust further states that MERS is the "Beneficiary" solely as the nominee of America's Wholesale Lender. However, the deed of trust is to secure repayment of the obligation to America's Wholesale Lender, not obligations owed to a nominee.

Exhibit 3 is identified as an Assignment of Deed of Trust, dated November 11, 2011, with recording date of November 15, 2011, which McKernan testifies has been in the books and records of Specialized Loan Servicing, LLC since it was created in 2011. *Id.* The Assignment of Deed of Trust is signed by MERS, assigning its nominee rights through the deed of trust to Bank of New York Mellon, as Trustee.

No declaration is provided by an employee of Bank of New York Mellon, as Trustee. That lack, or nonexistence, of anyone employed by Movant of the obligation alleged to be owed or the documents that McKernan testifies have been in the possession of Specialized Loan Servicing, LLC since 2006, concerns the court.

Movant has also provided a "Points and Authorities" in support of the Motion. One legal authority is cited, 11 U.S.C. § 362(d)(1), and argument of "facts" is provided in ten lines of the five-page document. Dckt. 27. The balance appears to be factual allegations of "grounds," which are required to be stated in the motion, and some argument. FN.1.

FN.1. In reality, this should be a simple, properly stated motion, which is brought by a loan servicer for its principal. But it appears that the loan servicer has sought to "cut the corner" and have the motion filed in the name of the creditor but could not get any testimony from the creditor. So, the loan servicer manufactured testimony.

McKernan, who does not purport to have any legal training or knowledge, relies on his legal statement that the information he relies on is from the books and records of Specialized Loan Servicing, LLC as an apparent exception to the hearsay rule under the Federal Rules of Evidence. FED. R. EVID. 801, 802.

The exception apparently relied on by McKernan and counsel (subject to FED. R. BANKR. P. 9011 certifications) provides:

> Rule 803. Exceptions to the Rule Against Hearsay
>
> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
> . . .
> (6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:
>
> > (A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;
> >
> > (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
> >
> > (C) making the record was a regular practice of that activity;
> >
> > (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
> >
> > (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

FED. R. EVID. 803(6).

It appears clear that Specialized Loan Servicing, LLC did not make or keep copies of the note, deed of trust, or MERS assignment of the deed of trust since they were created. Further, it is not shown that these documents or records were "made" by Specialized Loan Servicing, LLC as it practices.

Rather, it is the creditor who obtained, made, and received those records. Copies of the creditor's records were given to Specialized Loan Servicing, LLC when it came to the loan party at some later date. It is likely that Specialized Loan Servicing, LLC has created, maintained, and has some of its own records that it can have its employee properly testify from, but not the note and deed of trust.

This appears akin to a situation several years ago when counsel for a creditor (possibly Bank of New York Mellon) contended that the attorney hired to seek relief from the automatic stay could be the witness to authenticate the note, deed of trust, assignment, loan amount, transactions, payments, advances, and defaults "because my client gave me copies of the documents and a statement of payments and changes,

I stuck them in a file, so it's from my law firm's 'books and records,' I'm the witness!" Such manufactured "records" do not suffice for the hearsay exception and do not present credible, accurate, truthful testimony under penalty of perjury. See 5 Weinstein's Federal Evidence § 803.08 for discussion of this exception and the requirements for the business records exception to apply.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

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 of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed 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 the automatic stay, 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 to other parties in a bankruptcy case and to 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.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

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 pleading with particularity 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." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in 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 any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely requests for relief. Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

A. The Notice of Motion;
B. Memorandum of Points and Authorities;

C. Supporting Declaration; and
D. Whatever else is presented prior to or at the hearing.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

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 Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-13 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT STATES GROUNDS WITH PARTICULARITY IN THE 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 $236,499.10 secured by Movant's first deed of trust, as stated in the McKernan Declaration. The value of the Property is determined to be $325,000.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not

made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due and Debtor electing to surrender the Property. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. The only ground asserted for such relief is that there will be "no further delays in Movant taking possession or foreclosing." Dckt. 27 at 4.

Movant's asserted ground for relief is inadequate, but the court finds that adequate grounds exist because Debtor has indicated an intention to surrender the Property. *See* Dckt. 1.

The fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

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 The Bank of New York Mellon ("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 The Bank of New York Mellon, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession

of the real property commonly known as 4121 Dynasty Lane, Modesto, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

2. **18-90159-E-7** **VALERIE GREENLAW** **MOTION FOR RELIEF FROM**
JCW-1 **Pro Se** **AUTOMATIC STAY**
4-27-18 [27]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the May 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 7 Trustee on April 27, 2018. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Valerie Greenlaw's ("Debtor") real property commonly known as 4815 N Arcade Avenue, Fresno, California ("Property"). Movant has provided the Declaration of Tonya 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 the original borrower, Irene Tarrant, executed an unconsented-to grant deed to Irene Tarrant and Debtor as joint tenants on March 12, 2018, the petition filing date. Amended Schedule A does not include the Property. Dckt. 26.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the execution of the grant deed appears to be a hijacking of this bankruptcy case by a party who is not a debtor to obtain the protection of the automatic stay.

Prospective Relief from Future Stays

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

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 7 case in the Eastern District of California was part of a scheme by a non-filing debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing a grant deed for the Property so that it would appear in this case.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. Despite being mentioned only in the prayer of the Motion, the court notes that Movant has established that grounds exist for terminating the automatic stay due to a hijacking of this case. The court extends Movant's arguments to apply to the waiver of the fourteen-day stay as well—this time.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue 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 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 that 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 to obtain possession of the real property commonly known as 4815 N Arcade Avenue, Fresno, 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 two 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 the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

3. **18-90273-E-7** **TIN DINU** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
EAT-1 **Pro Se** **5-2-18 [23]**

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the May 31, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 2, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Tin Dinu ("Debtor") real property commonly known as 1233 Fawn Lily Drive, Patterson, California ("Property"). Movant has provided the Declaration of Jessica Rudynski to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on May 16, 2018, for failure to timely file documents. Dckt. 30.

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

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

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

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> > (A) the time the case is closed;
> >
> > (B) ***the time the case is dismissed***; or
> >
> > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

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

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> > (1) reinstates—
> >
> > > (A) any proceeding or custodianship superseded under section 543 of this title;
> > >
> > > (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
> > >
> > > (C) any lien voided under section 506(d) of this title;
> >
> > (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
> >
> > (3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of May 16, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on May 16, 2018.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on May 16, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Tin Dinu ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 1233 Fawn Lily Drive, Patterson, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the May 16, 2018 dismissal of this bankruptcy case.

4. **18-90177-E-7** **BENJAMIN/CELIA GALVAN** **MOTION FOR RELIEF FROM**
SW-1 **Pro Se** **AUTOMATIC STAY**
5-11-18 [15]

A-L FINANCIAL CORPORATION
VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 11, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

A-L Financial Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Hyundai Sonata, VIN ending in 7164 ("Vehicle"). The moving party has provided the Declaration of Duane Moses to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Benjamin Galvan and Celia Galvan ("Debtor").

The Moses Declaration provides testimony that insurance coverage on the Vehicle has been terminated or canceled, which is a default under the sale contract with Movant.

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

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,374.24, as stated in the Moses Declaration, while the value of the Vehicle is determined to be $15,033.00, as stated in the Kelley Blue Book Valuation Report.

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

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988) Based upon the evidence submitted, the court determines that there is equity in the Vehicle for Debtor and the Estate. 11 U.S.C. § 362(d)(2). Relief is not granted under 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant asserts that the ground for such relief is that the Vehicle is uninsured. The lack of insurance demonstrates that Movant's interests are at risk of loss until it can obtain possession of the Vehicle after the stay is modified.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by A-L Financial 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, pursuant to 11 U.S.C. § 362(d)(1), to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Hyundai Sonata ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.