UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 2, 2016 at 10:00 a.m.

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1. **12-93049-E-11** **MARK/ANGELA GARCIA**
AP-1 **Mark J. Hannon**

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-15 [684]

DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS, INC., ET AL. VS.

CONTINUED: 4/28/16

Final Ruling: No appearance at the June 2, 2016 hearing is required.

The court having reset the hearing for due to court inadvertently issuing a final order at the April 28, 2016 hearing, the Movant having filed a Status Report stating that it wishes to withdraw the Motion in light of the plan being confirmed (Dckt. 787), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Relief From Automatic Stay, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion for Relief From Automatic Stay**.

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.
>
> A Motion for Relief from the Automatic Stay having been filed by the Creditor, the Creditor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from Automatic Stay is dismissed without prejudice.

2. 16-90149-E-7 JULIAN/DOLORES CASTANO **MOTION FOR RELIEF FROM**
EAT-1 Christian J. Younger **AUTOMATIC STAY**
5-4-16 [16]

DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final Ruling: No appearance at the June 2, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 4, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust, Mortgages Loan Pass-Through Certificates, Series ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4604 Endicott Drive, Salida, California 95368(the "Property"). Movant has provided the Declaration of Javier Rivera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rivera Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of $3,536.44 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of $5,304.66.

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

$453,647.51, as stated in the Rivera Declaration and Schedule D filed by Julian Castano and Dolores Granados Castano ("Debtor"). The value of the Property is determined to be $260,000, 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.

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 Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series ("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 Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust, Mortgage Loan Pass-Through Certificates, Series 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 4604 Endiscott Drive, Salida, California 95368.

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

3. 15-90555-E-11 SUSAN ALLEN — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
JPB-1 Brian S. Haddix
4-13-16 [114]
TROJAN CAPITAL INVESTMENTS, LLC VS.
CONTINUED: 5/12/16

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

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

Below is the court's tentative ruling.

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

Adequate Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, parties requesting special notice, and Office of the United States Trustee on April 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

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

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

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

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

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

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

DEBTOR IN POSSESSION'S OPPOSITION

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

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

MAY 12, 2016 HEARING

At the hearing, the court continued the hearing to afford the Movant

the opportunity to complete service on the creditors holding the 20 largest general unsecured creditors. Dckt. 128.

NOTICE OF CONTINUED HEARING

The Movant filed a Notice of Continued Hearing and an accompanying Proof of Service. Dckt. 126 and 127.

DEBTOR IN POSSESSION'S SUPPLEMENTAL OPPOSITION

On May 26, 2016, the Debtor in Possession filed supplemental opposition to the instant Motion. Dckt. 129. The Debtor in Possession concedes that she cannot carry the burden that the Property is necessary for an effective reorganization.

The Debtor in Possession explains that the lack of support income coming in following the Debtor in Possession's divorce has left her unable to stay current on the house. The Debtor in Possession reiterates that she believes the Property is necessary because it is her "home."

The Debtor in Possession requests that the court not waive Fed. R. Bankr. P. 4001(a)(3) because the Movant failed to plead facts to justify cause.

OVERVIEW OF CHAPTER 11 AND PRIOR CHAPTER 13 CASES

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

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

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

SERVICE OF PROCESS ISSUES

Unfortunately, while the Movant served the instant Motion and papers on the 20 largest unsecured creditors, the Movant failed to properly serve these parties. The Movant improperly served certain creditors at P.O. Boxes rather than actual addresses. The Movant failed to serve certain federally insured

institutions by certified mail and attention officer as required by Federal Rule of Bankruptcy Procedure 7004(h) and 9014. The Movant failed to properly serve all necessary addresses for the Internal Revenue Service.

Federal Rule of Bankruptcy Procedure 4001(a)(1) requires that in a Chapter 11 case the movant ***serve*** the motion on the creditors committee or creditors holding the twenty largest general unsecured claims, if no committee has been appointed. ***Service*** of pleadings is properly made in the manner prescribed in Federal Rule of Civil Procedure 7004, as one would ***serve*** a summons and complaint. See Fed. R. Bank. P. 9014(b), requiring that service of a motion be completed in the same manner as service of a summons and complaint.

While there has been some shortcomings with the service on creditors holding general unsecured claims, it appears that there has been substantial compliance based on the facts of this case. Further, in light of the Debtor in Possession's response and review of the instant case, the court concludes that sufficient service of the instant Motion was given. The Movant, however, should note that the court will not waive such incomplete service in the future.

RULING

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 in Possession 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).

The Debtor in Possession fails to show that the Property is necessary for an effective reorganization. While the Debtor in Possession's supplemental replies provide factual background, the reply states plainly that the Debtor in Possession cannot show that the Property is necessary for a reorganization. The Debtor in Possession admits to be delinquent in payments, admits to there being a lack of equity, and admits that the Motion should be granted. The Debtor in Possession implores ethos in order to construct a basis for relief. Unfortunately, the Debtor in Possession failed to make the requisite showing that the Property is necessary for an effective reorganization. The concerns are only further enhanced by the fact that the Debtor missed four plan payments in the prior Chapter 13 case before the Trustee brought a Motion to Dismiss. The Debtor in Possession cannot expect to live in the Property, rent and mortgage free, indefinitely because the home is necessary for her. Based upon the evidence submitted to the court, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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

This is not to say that the present facts do not make a difficult case. Not difficult in the violin, tugging at the heartstrings statements and the vitriolic comments about the evil creditor who will not be soon forgotten by this Debtor. Rather, difficult in the sense that much of the Debtor's troubles have been created over time, and a now disbarred ex-husband.

While Movant's claim is slightly undersecured (based on Debtor's valuation of the Property), it appears to be easily secured to the tune of around $160,000.00 (net after costs of foreclosure and sale), a substantial sum for Debtor to have to figure out how to pay through an plan of reorganization.

After a year in bankruptcy, Debtor does not show any substantial income to address the secured claims which exhaust the value of the home. See March 2016 Monthly Operating Report, showing average monthly income of $5,500.00 a month and expenses (not including payments on the debt secured by the senior deed of trust or Movant's debt) of ($4,500). There is little room left shown by Debtor to address this debt to try and save the underwater house.

Debtor in Possession's Response in Light of Multiple Prior Bankruptcy Filings

While Debtor in Possession's final shot across the bow in her May 26, 2016 Response (Dckt. 129) may provide a temporary feeling of having "stuck it to the man," it indicates a failure of coming to grips with the economic reality of the situation. The mirage of a reorganization built upon, after more than a year of litigation, recovering a large lump sum payment from Debtor's ex-husband or large monthly support payments, in light of her ex-husband being suspended from the practice of law and being able to earn money plying the trade for which he was trained, appears to be of little substance.

The court has reviewed the State Bar website relating to the suspension of her husband's ability to practice law. It is not merely a suspension for refusal to pay child support. Rather, the ruling is based on three different client matters and multiple acts of conduct by the ex-husband. http://members.calbar.ca.gov/fal/Member/Detail/238195. It appears that the challenges in obtaining support and recovery of monies is not a short-lived situation.

The general tone of the Response is that this Debtor believes that her ex-husband, who is ability to practice law has been suspended, gave her bad advice in their 2008 bankruptcy case, and therefore it is unfair to her that creditors be able to assert their legal rights. Because she was given bad advice by her ex-husband, suspended attorney, the rights of her creditors should also be suspended or altered. It does not appear that her ex-husband, Justin T. Allen, was unfamiliar with bankruptcy law. The court's files show that the first bankruptcy debtor he represented was in 2005 - a successful Chapter 13 case. As a party, Debtor and her ex-husband filed a Chapter 13 bankruptcy case in 2008. Bankr. E.D. Cal. No. 08-92398. In that case, they were represented by a well known Central Valley attorney. That case was dismissed on June 25, 2010, Debtor and her ex-husband having defaulted in the plan payments. *Id.*; Order and Notice of Default, Dckts. 73 and 69.

In 2010 Debtor and her ex-husband filed a second Chapter 13 case. Bankr. E.D. Cal. No. 10-92666. This case was dismissed on May 10, 2011.

Again, the case was dismissed due to the default in plan payments. *Id.*; Order and Notice of Default, Dckts. 51 and 33.

Debtor's ex-husband, Justin T. Allen, filed his own Chapter 7 bankruptcy case on May 22, 2011, and was granted a Chapter 7 discharge on September 6, 2011. Bankr. E.D. Cal. No. 11-91919. Debtor was not a party to Justin T. Allen's Chapter 7 case.

Debtor did file a separate Chapter 7 case in 2008, in which she was not represented by her ex-husband but another well known bankruptcy attorney in the Central Valley. Bankr. E.D. Cal. 08-90961. That case is not linked to the current case because the Social Security Number stated for Debtor in the 2008 case is one digit different from that in the current case. (It appears that the difference is that in one number there is a "3" and the other an "8" for one of the digits.) This may be the reason why none of the Debtor's prior Chapter 13 cases are linked to the current bankruptcy case.

Though Debtor states that she believed, based on the advice of her ex-husband (who was not her attorney in the Chapter 7 case), in 2008 the secured claims was "discharged," the multiple subsequent Chapter 13 filings by Debtor are not consistent with that contention. In the 2010 Chapter 13 Case, Debtor and her ex-husband provided for the claim secured by the second deed of trust as a Class 2 Claim (valuing the secured portion of the debt at $0.00 pursuant to 11 U.S.C. § 506(a) and then "providing" for that $0.00 amount in full through the plan). 10-92666; Plan and Modified Plan, Dckts. 14 and 37. Debtor "clearly" knew there was a debt secured by the property. Unfortunately, Debtor and her ex-husband defaulted in the Plan payments and the 2010 case was dismissed.

In the 2008 Chapter 13 case filed by Debtor (after receiving her discharge in the 2008 Chapter 7 case) and her ex-husband provided for paying the claim secured by the second deed of trust in full as a Class 1 claim under the Chapter 13 Plan. 08-92398; Plan and Amended Plan, Dckts. 11 and 42. This included the curing of the arrearage on the claim secured by the second deed of trust. Again, this shows that Debtor "clearly" knew there was a debt secured by the second deed of trust which must be provided for, notwithstanding her having obtained a Chapter 7 discharge.

Thus, it does not appear that this secured claim is a "surprise" to the Debtor. Nor, has the creditor been hiding in the shadows, but Debtor has actively provided for this secured claim (whether by payment or valuing pursuant to 11 U.S.C. § 506(a)) in her prior bankruptcy cases.

SUFFICIENT GROUNDS NOT PROVIDED TO WAIVE FOURTEEN DAY STAY OF ENFORCEMENT

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.

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Trojan Capital Investments, 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 4633 McKenna Drive, Turlock, California.

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

No other or additional relief is granted.

4. 16-90261-E-7 DAVID WOLF **MOTION FOR RELIEF FROM**
SCF-1 Pro Se **AUTOMATIC STAY**
5-10-16 [10]

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, Creditors, and Office of the United States Trustee on May 10, 2016. By the court's calculation, 23 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.

David Wolf ("Debtor") commenced this bankruptcy case on March 24, 2016. Valley First Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Chevrolet Silverado, VIN ending in 7249 (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 $817.66 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition

payments in default, with a pre-petition arrearage of $817.66.

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 $29,092.33, as stated in the Jubilado Declaration,

Movant has also provided a copy of the Kelly 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). The Valuation report states the value of the Vehicle is $15,629.00.

The Jubilando Declaration also indicates that three days prior to the instant case being filed, the Movant repossessed the Debtor's Vehicle.

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 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 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 2008 Chevrolet Silverado ("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.

5. 16-90363-E-11 ERNEST ALTMANN **MOTION TO EXTEND AUTOMATIC STAY AND MOTION TO PRODUCE REQUESTED UP TO DATE DOCUMENTS**
Pro Se **5-9-16 [34]**

No Tentative Ruling: The Motion to Extend Automatic Stay and Motion to Produce Requested Up to Date Document were properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 11, 2016. By the court's calculation, 22 days' notice was provided.

The Motion to Extend the Automatic Stay and Motion to Produce Requested Up to Date Document were properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 to Extend the Automatic Stay and Motion to Produce Requested Up to Date Documents is ----------.

Ernest Altmann, the Debtor in Possession, filed the instant Motion on May 9, 2016. Dckt. 34. The Debtor-in-Possession failed to properly set the matter for hearing as required by the Local Bankruptcy Rules.

On May 11, 2016, the court issued the following order setting the matter for hearing:

IT IS ORDERED that a hearing will be conducted on the

> Debtor's in Possession Motion titled "(1) Motion for Automatic Stay until Chapter 11 Complete (2) Motion to Produce Requested Up to Date Documents, Section 2605(e) of Title 12 of U.S. Code," Dckt. 34, at 10:00 a.m. on June 2, 2016.
>
> **IT IS FURTHER ORDERED** that the Debtor in Possession shall serve a copy of this Order on all parties in interest, including the Office of the United States Trustee, on or before May 18, 2016. No written opposition to the Motion is required, and opposition may be presented orally at the hearing, with the Motion being treated as if it were filed pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Dckt. 38

INSTANT MOTION

On April 27, 2016, the Debtor in Possession, commenced this Chapter 11 bankruptcy case. He previously commenced a Chapter 13 case on December 24, 2015. Bankr. E.D. Cal. 15-91221. That case was dismissed on March 30, 2016. The Chapter 13 Trustee filed a Motion to Dismiss the Chapter 13 case. Id., Dckt. 30. The form Motion to Dismiss states the Trustee's conclusions that: (1) there is unreasonable delay, (2) there is some unstated amount of default in plan payments, (3) the Chapter 13 Plan is "incomprehensible," fails to list any creditors to be paid or percentage to creditors holding general unsecured claims, and (4) Debtor has failed to provide the Trustee with copies of his tax returns. Id.

Debtor filed another bankruptcy case in 2011, a Chapter 7 case in which he was granted a discharge. Bankr. E.D. Cal. 11-92381.

The present Motion is titled: "(1) Motion for Automatic Stay until Chapter 11 Complete (2) Motion to Produce Requested Up to Date Documents, Section 2605(e) of Title 12 of U.S. Code." On the Motion it states a hearing date of May 9, 2015, noon. Dckt. 34. There were no hearings conducted by the court at that time. Debtor in Possession also filed a pleading titled "Notice of Automatic Stay" on May 9, 2016. Dckt. 35.

In the present Motion, Debtor in Possession states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief requested:

a. See "9" Supporting Documents. Please, Please extend Court dates until Documents requested since 2/10/16 are produced."

b. "5/6/16 - Letter from Rushmore Loan Management Service refusing to provide up to date documents is violating Title 12 of the U.S. Code. The few documents produced in "2014" are incomplete and do not match the 2/10/16 requested list Stop playing games and produce the 2/10/6 [sic] requested list."

c. "5/9/16 - Please read response to 5/6/16 Letter and start responding to my faxes and phone calls Peter Van Zanht."

Motion, Dckt. 34.

The "Motion" fails to state any specific relief requested, nor does it state grounds from which the court can divine what possible relief may be sought. In looking at the attachments to the Motion, the court notes the following (page reference is to the page of the pleading, not to an internal page number for a specific document):

a. The first exhibit page is what appears to be a summary description of property located in Knights Ferry, California. Id., p. 2.

b. The next exhibit appears to be two pages of a six-page document titled "Settlement and Release" naming as the parties the Debtor in Possession and Rushmore Loan Management Services, LLC ("Rushmore). Id. p: 3-4.

c. The next exhibit appears to be two pages of a larger document of indeterminate number of pages titled (at the bottom of the page) a Loan Modification Agreement. Id. p: 5-6.

d. The next exhibit is a letter on what appears to be Rushmore letterhead addressed to the Debtor in Possession, dated March 18, 2015. Id., p. 7. The letter makes reference to a prior collection letter which was sent in error for a discharged debt.

e. The next exhibit is on the letterhead of JLC Law Offices and consists of two pages. It is signed by James L. Conkey (which the court recognizes as an attorney who has appeared in several cases in this District and represented consumer debtors on trying to obtain loan modifications). This letter includes a demand for the production of documents and information in fifteen different categories. It also demands that any foreclosure sale be postponed while the Debtor in Possession and his then counsel try to resolve the "issue." Id., p. 8-9.

f. The next exhibit is a letter on the letterhead of Rushmore, with a return correspondence appearing to have been written by the Debtor in Possession. It directs the Debtor in Possession to communicate with Rushmore's attorney in San Francisco, California. Id., p. 10.

REVIEW OF PETITION, SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS

On the Petition, Debtor in Possession states that his debts are primarily business debts, not consumer debts. Petition, Dckt. 1 at 6. On Schedule A/B, for real property Debtor in Possession owns property on Sonora Road in "KF CA." Further, that he owns only the land, and CBI (which is listed as a company he owns) owns the house. Id. at 11. On Schedule B Debtor in Possession states that he owns 100% of BSC Consulting, Inc. and Creative Builders, Inc. (the latter which the court construes to be the CBI referenced as owning the house). Id. at 15. The value of the ownership interests in these entities is listed at a combined $6,000.00.

On Schedule D Debtor in Possession lists no creditors having (or

asserting) any secured claims - whether contingent, unliquidated, or disputed. Id. at 23-24. Debtor in Possession lists no creditors having any unsecured priority claims. Id. at 26-27. On Schedule F Debtor in Possession lists three creditors having claims, all of which are listed as disputed and having been discharged in bankruptcy. The largest of these is a claim for $1,376,820.00 listed for Rushmore. Id. at 28.

On Schedule I Debtor in Possession states that his gross monthly income is $2,675.00, consisting of $2,177.00 in Social Security and $498.99 from rental of property or operating a business. Id. at 37. On Schedule J, Debtor in Possession states he has expenses of $2,653.00 a month, the major expenses being: (1) rent or mortgage of $1,250.00; (2) $0.00 for property taxes; (3) $0.00 for property insurance; (4) $250.00 for food and housekeeping supplies; (5) $250.00 for transportation (gas, maintenance, registration); and (6) $120.00 for clothing and laundry. At the end of the month, Debtor in Possession reports that he has only $22.00 of monthly net income.

On the Statement of Financial Affairs, Debtor in Possession states that his income in 2015 and 2014 was $26,124.00 from Social Security and $5,976.00 for each year. Since January 1, 2016, Debtor in Possession states that his income has been $8,708.00, only from Social Security, for the first four months of the year. Id. at 42-43.

The Debtor in Possession identifies two lawsuits he is prosecuting in response to Question 9 on the Statement of Financial Affairs is identified as being against Rushmore and Wells Fargo, and Trustee Corp. for Elder Abuse, Breach of Contract, Fraud. Id. at 46. That matter is identified as being on appeal before the Ninth Circuit Court of Appeals.

JUNE 2, 2016 HEARING

At the hearing, xxxxxx

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 to Extend the Automatic Stay and Motion to Produce Requested Up to Date Document filed by the Debtor 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 xxxxxxx

6. 16-90363-E-11 ERNEST ALTMANN **MOTION TO DISMISS FORECLOSURE**
Pro Se **5-16-16 [44]**

The court having previously issued an order recasting the instant pleading as an Opposition for the Motion for Relief From the Automatic Stay (Dckt. 45), the instant pleading (Dckt. 44) will be addressed in the civil minutes on the Motion for Relief From Automatic Stay (Dckt. 25).

7. 16-90363-E-11 ERNEST ALTMANN **AMENDED MOTION FOR RELIEF FROM**
LCR-2 **Pro Se** **AUTOMATIC STAY**
5-9-16 [25]

RUSHMORE LOAN MANAGEMENT SERVICES, LLC 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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. By the court's calculation, 23 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.

Rushmore Loan Management Services LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 15923 Sonora Road, Knights Ferry, California (the "Property"). Movant has provided the Declaration of Peter J. Van Zandt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Movant requests the following:

1. "Pursuant Section 362(d)(1) of the Bankruptcy Code, cause exists to grant Movant the requested relief because Debtor has commenced multiple bankruptcy proceedings to prevent Movant from exercising its contractual rights and remedies related to the Collateral."

2. "Pursuant to Section 362(d)(4)(B) of the Bankruptcy Code Movant is entitled to the relief requested because Debtor has filed multiple bankruptcies affecting real property."

3. "Pursuant to Section 362(d)(2) of the Bankruptcy Code, Movant is entitled to the relief requested because Debtor does not have equity in the Collateral and the Collateral is not necessary to an effective reorganization. Specifically, Debtor has no equity in the property given that Debtors states in his bankruptcy filing (Official Form 22C) that his currently monthly income is less than $3,000.00, but the Adjustable Rate Note for the Collateral states that initial monthly payments are $8,789.83. Moreover, Debtors is unable to make regular payments to Movant to protect his interest in the collateral."

Dckt. 25.

MOVANT'S SUPPORTING DECLARATION

A declaration has been provided in support of this Motion. As Movant and counsel know, testimony provided must be based on personal knowledge of the declarant/witness, except as permitted for expert witnesses. Fed. R. Evid. 601, 602, 701, 702. The declaration is provided by the attorney, Mr. Van Zandt, who is representing Movant in this Contested Matter. This attorney (who the California State Bar records show was first admitted to practice in 1991).

The Van Zandt Declaration fails to state how the Movant's counsel has personal knowledge of the facts asserted in the Declaration, including the Debtor's initial loan, the Debtor's alleged subsequent default, the various events in prior bankruptcy cases and district court cases, etc. The court is surprised at the presentation of declarations by otherwise experienced counsel, in which the attorney states under penalty of perjury that the testimony is based on personal knowledge, without providing a single foundational fact as to how the Movant's counsel, himself, has personal knowledge of the events between the Movant and Debtor.

The Van Zandt Declaration states that there are 25 pre-petition payments

in default. The Declaration states after defaulting on the loan in 2008, foreclosure proceedings were commenced. Three years later, on June 30, 2011, Debtor commenced a Chapter 7 bankruptcy. Case No. 11-92381. No basis for the attorney having personal knowledge of the Movant's business is shown.

The Van Zandt Declaration also states that the Debtor filed a complaint with the U.S. District Court for the Eastern District of California, Case No. 1:11-cv-01807 against Movant, which was dismissed. No basis for the attorney having personal knowledge of this litigation is provided as part of the testimony. In looking at the District Court file for this case, Mr. Van Zandt was not the attorney of record for Movant in that district court action.

The Declaration indicates that the Debtor entered into a loan modification with the Movant in October, 2012. Debtor allegedly defaulted again and a Notice of Default was recorded on April 8, 2015. Again, no testimony is provided as to why or how the declarant has any personal knowledge information about any foreclosure.

The Declaration states that the Debtor agains sued the Movant in the District Court, Case No. 1:15-cv-00880 in a nearly identical suit as before. The complaint was dismissed and the court awarded Fed. R. Civ. P. 11 snactions to Movant. The Movant attempted ot foreclose on the property again and scheduled a foreclosure sale of the property for December 28, 2015. The declarant does not provide any testimony as to how he has personal knowledge of this second District Court case. However, in the court reviewing the file, Mr. Van Zandt is identified as counsel of record for Movant and Wells Fargo Bank, N.A. in that action.

The Van Zandt Declaration asserts that the Debtor commenced a second bankruptcy on December 24, 2015, Case No. 15-92112. (The case number is transposed in the Declaration, with the correct case number being 15-91221.) The case was dismissed on March 30, 2016 on the Chapter 13 Trustee's Motion to Dismiss. The declaration does not provide any testimony as to how Mr. Van Zandt has any personal knowledge thereon. A review of the court's file shows that Mr. Van Zandt was not counsel of record for Movant in the prior bankruptcy case.

Mr. Van Zandt further testifies that Movant rescheduled its foreclosure sale for April 29, 2016. On April 27, 2016, Debtor filed the third and instant bankruptcy case. Again, the declarant provides no testimony of having any personal knowledge of this part of the foreclosure process.

The Declaration asserts that there are no meaningful unsecured creditors and there are no businesses to reorganize. The Debtor also appears to have insufficient cash flow. The Declaration asserts that there is no equity in the collateral

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on May 16, 2016. Dckt. 44. FN.1.

FN.1. The court previously issued an order recasting the Debtor's instant pleading as an Opposition for the Motion for Relief From the Automatic Stay.

Dckt. 45.

The Debtor state the following "grounds" in opposition:

1. "Not proper notice for 6/2/16 Motion from Rushmore Loan Management Service and Wells Fargo Bank"

2. "Rushmore Loan Management Services-Servicer not Mortgage Co. Wells Fargo Bank Mortgage Co not attempting or responding to foreclosure attempt - Wells Fargo not involved in the document forging, tampering, etc. Not legal transfer of null & void loan. No proof of PNC or National City Bank legal transfer or existing contract."

3. "5/16/16- Rushmore Loan Management Service still playing games only producing some documents see requested documents check list. Maybe the court needs to impose sanctions to get Rushmore Loan Management Services to produce all documents - please stop/cancel foreclosure"

4. "5/16/19 - Rushmore [illegible] documents attached (still missing 75% of documents) clearly show's [sic] that Rushmore L.M.S. is not mortgage company, has no rights to property, [illegible] attempts for loans not secured not founded, not valid foreclose, PNC Loan # not my property per PNC Letter (not a contract), PNC Letter not part of Loan documents, PNC per Letter not signed by all parties, PNC requested documents not produced, etc. Not valid transfer, etc."

5. "10/17/11 - Chapter 7 discharged all unsecured and personal loans, statute to dispute has expired."

Dckt. 44.

RULING

Relief From the Automatic Stay Granted

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 $1,517,917.09, as stated in the Van Zandt Declaration. The value of the Property is determined to be $875,000.00, as stated in Schedules A and D filed by Debtor. FN.2.

FN.2. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). Hamilton, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

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 the failure for the good faith prosecution of the instant case, the repetitious and improper pleadings filed by the Debtor, and the Debtor's failure to disclose the Movant on the Schedules as asserting a secured claim. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). While Debtor chose to unilaterally characterize the claim as an unsecured claim, it appears clear from not only the motion, but Debtor's various pleadings, that Debtor knows Movant asserts it holds a secured claim and is attempting to exercise rights to foreclose on 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). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

The Debtor's opposition does not appear to provide any substantive grounds as to why the Motion should not be granted. The Opposition appears to assert that the Movant has not provided the requested documents to the Debtor and, therefore, the Motion should be denied. Unfortunately, this is not a ground to deny a Motion for Relief. Rather than providing articulated and concise argument and opposition, the Debtor appears to write a list of grievances that may or may not be relevant to the instant Motion. However, to the Debtor, the apparent legal conclusions made by the Debtor are absolute and that the Motion should be denied because the Debtor says so.

Sufficient Grounds and Evidence
Not Provided for 11 U.S.C. § 362(d)(4) Relief

The Movant also requests relief pursuant to 11 U.S.C. § 362(d)(4). The Movant states the following with particularity as to why the Movant should be granted relief pursuant to 11 U.S.C. § 362(d)(4), as required by Fed. R. Bankr. P. 9013: "Pursuant to Section 362(d)(4)(B) of the Bankruptcy Code Movant is entitled to the relief requested because Debtor has filed multiple bankruptcies effecting real property." Dckt. 25.

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

Movant has failed to provide sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The Movant does not allege with particularity that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property the filing of multiple bankruptcy cases. The Movant just established that the Debtor has filed three bankruptcies in the past 5 years,

with only the instant and one prior Chapter 13 taking place in the past year.

The Movant's request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied without prejudice.

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 Rushmore Loan Management 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 Rushmore Loan Management 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 15923 Sonora Road, Knights Ferry, California.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.
>
> No other or additional relief is granted.

8. 16-90363-E-11 ERNEST ALTMANN MOTION TO DISMISS CASE
LCR-3 Pro Se 5-9-16 [30]

Tentative Ruling: The Motion to Convert the Bankruptcy Case 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*), creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

The Motion to Convert the Bankruptcy Case 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 to Dismiss the Chapter 11 Bankruptcy Case is granted and the case is dismissed.

This Motion to Dismiss the Chapter 11 bankruptcy case of Ernest George Altmann, "Debtor" has been filed by Rushmore Loan Management Services LLC, "Movant," the creditor. Movant asserts that the case should be dismissed based on the following grounds.

A. "Pursuant to Section 109(g)(1), this case should be dismissed because Debtor failed to make timely payments to the Chapter 13 Trustee and to produce tax returns, which constitutes a failure to abide by court orders or prosecute case under Section 109(g)

of the Bankruptcy Code."

B. "Movant is entitled to the relief requested because Debtor's serial bankruptcy filings amount to an abuse of the bankruptcy process, warranting dismissal of this case."

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

This ruling is foreshadowed, in part, in the court's ruling on the original motion to shorten time when Movant originally sought to file one motion seeking relief from the stay and dismissal of the case. Order, Dckt. 20. The court carefully reviewed the allegations in the prior motion and motion for order shortening time. The court noted that Movant hanging its hat on 11 U.S.C. § 109(g) based on the failure to make plan payments or turn over a tax return failed to cite the court to any specific order issued by the court which Debtor failed to comply with in the prior case.

However, the current Motion to Dismiss in the general allegations recites the prior case and allegations of the filing of bankruptcy cases solely for the purpose of delaying the foreclosure sales, not the prosecution of bankruptcy cases as permitted (and required) under the Bankruptcy Code. Additionally, the multiple ex-parte motions filed by Debtor seeking for the court to stay everything in this case until Rushmore provides the documents to the Debtor's satisfaction demonstrate there being no "reorganization" occurring in this Chapter 11 Case. See Motions, Dckts. 34, 39, 49; Memorandum Opinion and Order, Dckt. 42; and Orders, 45, 51.

Review of Schedules

The court has discussed the Schedules and Statement of Financial Affairs filed by the Debtor in this case in the court's prior rulings. Some significant points include:

A. Schedule A lists the Debtor owning the land for the Knights Ferry Property and that CBI (the corporation he owns and is

part of the bankruptcy estate) owns the house. Dckt. 1 at 11.

B. Debtor lists owning two corporations, BSC Consulting, Inc., with Debtor having 100% ownership and a value of $1,000.00, and Creative Builders, Inc. (which appears to be the "CBI" asserted to be the owner of the home on the Knights Ferry Property), with Debtor having 100% ownership and a value of $5,000.00. (This value appears inconsistent with the asserting that CBI owns a house on the Property.) Id. at 15.

C. On Schedule B Debtor lists having claims against third-parties totaling $2,875,895.82 (which includes a judgment for $875,895.82 against Justin Clark). Id. at 18.

D. No creditors are listed on Schedule D. Id. at 23-25.

E. No priority unsecured claims are listed on Schedule E. Id. at 26-27.

F. Rushmore is listed as having an unsecured claim, disputed, in the amount of $1,376,820.00, which was discharged in the Chapter 7 case. Id. at 28. The total general unsecured claims are stated to be $1,397,241 – all of which are disputed as having been discharged in the Chapter 7 case.

G. On Schedule J, Debtor Id. at 38-39, lists a total of $2,653.00 in expenses, which include:

1. $1,250.00 for rent or mortgage (with Debtor stating that he has no mortgage payment and no rental property is listed on Schedule G);

2. $0.00 for property insurance;

3. $0.00 for property taxes;

4. $0.00 for home maintenance;

5. $150.00 for electricity and heat;

6. $0.00 for water, sewer, garbage;

7. $125.00 for telephone, cable;

8. $250.00 for food and housekeeping supplies;

9. $120.00 for clothing and laundry;

10. $0.00 for personal care products;

11. $25.00 for medical and dental expenses;

12. $250.00 for transportation;

13. $195.00 for entertainment;

14. $143.00 for vehicle insurance; and

15. $145.00 for income taxes.

On the Statement of Financial Affairs Debtor includes the following information:

A. Debtor has no employment or business income in 2016, 2015, or 2014. Statement of Financial Affairs Question 4, Id. at 43.

B. Debtor reports having Social Security income (averaging $2,177 a month) in 2016, and both Social Security income and consulting income in 2015 and 2016 (with exactly the same amounts for Social Security income ($2,177 a month average) and the consulting income ($498 a month average) stated for 2015 and 2014). Question 5, Id.

C. Debtor lists two legal proceedings in response to Question 9 on the Statement of Financial Affairs: (1) *Altmann v. Rushmore et al* (on appeal to the Ninth Circuit Court of Appeals), and (2) *Altmann v. Stelma* (Stanislaus Superior Court). Id. at 46.

In his Status Report filed in May 26, 2016 (Dckt. 50), the Debtor-in-Possession states that he is waiting on Movant to provide the "missing documents" before he can determine how a plan would proceed and the value of assets. Further, that he believes the debts, if any, owed to Movant are unsecured based on having obtained a discharge in the 2011 Chapter 7 case and correspondence from Rushmore.

In his documents, the Debtor-in-Possession repeats an assertion that the documents relied upon by Movant are forged and that he is seeking to have that determined through the motions he is filing in this bankruptcy case.

Cause Exists to Dismiss the Chapter 11 Case

While the Movant's Motion asserts basis for dismissal based on the Debtor-in-Possession's acts, or lack thereof, in the prior Chapter 13 case, the review of the case's history in conjunction with the review of the Debtor-in-Possession's instant filings, cause exists to dismiss the case.

As discussed supra, the Debtor-in-Possession admits in the Status Report that there is currently no plan contemplation on how the case will continue. The Debtor-in-Possession does not state how or why a Chapter 11 case is appropriate or, since the dismissal of the Chapter 13 case, what circumstances have changed to ensure that the instant case will be filed in good faith.

The Debtor-in-Possession has facially failed to list certain assets and has plainly under or mis-valued certain assets. For instance, the Debtor-in-Possession asserts that he is the 100% owner of Creative Builders, Inc. The Debtor-in-Possession asserts that Creative Builders, Inc. owns to house located on the Knights Ferry Property. The Debtor-in-Possession values his interest in Creative Builders, Inc. at $5,000.00. This is inconsistent with the argument that the business owns a house but only has a value of $5,000.00. This along

with the other misstatements on the Debtor-in-Possession's schedules all raise serious concerns that the Debtor-in-Possession is not prosecuting the case in good faith.

The fact that the Debtor-in-Possession has filed previous bankruptcies does not in and of itself create cause to dismiss the case. However, when there are repetitious filings in which the debtor failed to timely and accurately perform the duties required under law, the repeated filings can be a consideration in determining whether dismissal is in the best interest of the debtor, estate, and creditors.

Here, it is abundantly clear from the nonsensical pleading papers filed by the Debtor-in-Possession in addition to the incomplete and inaccurate schedules that the Debtor-in-Possession is not intending to prosecute this case in good faith. In fact, the Debtor-in-Possession admits in his Status Report that the true intention for the instant filing is to acquire "missing documents." Unfortunately, this is not one of the legitimate purposes Congress created the bankruptcy scheme.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112. The motion is granted and the case is dismissed.

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 to Dismiss the Chapter 11 case filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

9. 16-90390-E-7 MARICELA RIOS
ADR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-4-16 [8]

JAMKE VS.
DISMISSED: 5/23/16

Final Ruling: No appearance at the June 2, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 4, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

JAMKE, a California General Partnership ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2307 Gilbert Road, Ceres, California (the "Property"). The moving party has provided the Declaration of Ken Elving to introduce evidence as a basis for Movant's contention that Marciela Rios ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on January 4, 2016. Based on the evidence presented, Debtor would be at best tenant at sufferance.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. 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).

11 U.S.C. § 362(c)(1) and (2) 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 March 23, 2016, 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.

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

The court shall issue an order terminating and vacating the automatic stay to allow JAMKE, a California General Partnership, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2307 Gilbert, Ceres, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by JAMKE, a California General Partnership (“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 JAMKE, a California General Partnership and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2307 Gilbert Road, Ceres, 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 for cause shown by Movant.
>
> No other or additional relief is granted.