

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

June 9, 2015 at 1:30 p.m.

1. [13-22028](#)-E-13 FAITH EVANS
[14-2105](#)
EVANS V. MOULTON ET AL

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR TURNOVER OF
PROPERTY OF THE ESTATE AND FOR
VIOLATION OF THE AUTOMATIC STAY
4-16-14 [[1](#)]

Plaintiff's Atty: Patricia Wilson
Defendant's Atty: Pro Se

Adv. Filed: 4/16/14
Answer: 5/14/14

Nature of Action:
Recovery of money/property - turnover of property
Recovery of money/property - other

Notes:

Continued from 5/5/15. On or before 5/19/15, Daniel Moulton, the Defendant, shall deliver to counsel for Plaintiff payment in full of the \$805.00 in sanctions previously ordered by the court. The payment shall be in the form of a cashier's check or other certified funds issued by a federally insured financial institution which has physical branches in California. Conditioned first upon timely payment of the sanctions, any motions for relief from the Pre-Trial Scheduling Order in this Adversary Proceeding shall be filed and served by the Defendant on or before 5/22/15.

2. [12-34737](#)-E-13 TERESA NABER
PD-1 Mary Ellen Terranella

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-2-15 [[120](#)]

GOLDEN 1 CREDIT UNION VS.

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2015. By the court's calculation, 33 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 dismissed without prejudice.

Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 100 Cobble Ridge Drive, Folsom, California (the "Property"). Movant has provided the Declaration of Wes Motschman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motschman Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,823.90 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments in default, with a pre-petition arrearage of \$5,588.35.

The confirmed Chapter 13 Plan in this case requires that Golden 1 Credit Union be paid its current payment of \$1,143.00 and an arrearage payment of \$43.52 a month through the Chapter 13 Plan. Plan, Dckt. 5; Order Confirming, Dckt. 40.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 20, 2015. Dckt. 128.

The Trustee states that the Debtor is current under the confirmed plan

with a plan payment of \$1,401.00 for 60 months. Debtor has paid a total of \$44,430.00 to date with \$43,431.00 having become due. Debtor's confirmed Plan provides for Golden 1 Credit Union, with payments disbursed to Dovenmuehle Mortgage, Inc., per Creditor's Proof of Claim (Court Claim 12), as a Class 1 Claim. Debtor's mortgage payment has adjusted periodically due to mortgage adjustments, with the current payment being \$1,309.73 per creditor's Notice of Mortgage Payment Change filed January 5, 2015 and effective March 2015. Mortgage arrears to be paid through the Plan at \$43.52 per month are \$9,820.12 pursuant to creditor's proof of claim.

To date, the Trustee has disbursed a total of \$38,011.74 to this creditor. The Trustee has disbursed \$32,239.04 in ongoing mortgage payments to the Movant with a principal due of \$3,487.88, while a total of \$5,772.70 has disbursed in mortgage arrears with a principal due of \$43.52.

Debtor's case was dismissed on June 3, 2014 (Dckt.60) for feasibility issues, (the Plan runs 76 months, Dckt. 58), with the dismissal vacated on July 28, 2014 (Dckt. 101.) Debtor filed a modified plan on June 17, 2014 to address the feasibility issue which was subsequently denied December 11, 2014 (Dckt. 114). To date, no modified Plan has been approved and the feasibility issue remains unresolved.

The court notes there is a pending Motion to Dismiss, filed by David Cusick, Chapter 13 Trustee (Dckt. 116), which specifically addresses the failure of the Plan to complete in 60 months. Trustee states the Plan as is, will complete in 77 months, rendering the Plan noncompliant with 11 U.S.C. § 1322(d).

The Trustee further notes that the Trustee made an error that allowed the Trustee's system to overpay the mortgage arrears after the Debtor's proposed modified plan was denied. The Trustee place a disbursement limit on the mortgage payment so no more than one payment would disburse monthly in order to avoid disabusing the mortgage payment Debtor paid outside and was now proposing to add to Class 4 under the proposed plan. The confirmed plan calls for monthly minimum payments of \$43.52 to mortgage arrears, which would indicate through March 2015 the amount required toward the arrears by the plan is \$1,349.12. The Trustee has actually disbursed \$5,772.70, which is an overpayment in the amount of \$4,423.58, which more than offsets the mortgage delinquency.

The Trustee ends by stating that the Movant is aware of the Trustee's error in over-disbursing funds based on a conversation he had via email on March 19, 2015. While the Trustee could seek to retrieve the over-disbursed funds from the creditor for the mortgage arrears so as to then pay those funds on the mortgage payment, commencing an adversary proceeding if necessary, the Trustee prefers to reach a mutually agreed solution.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on April 21, 2015. Dckt. 133. The Debtor states that the plan provides for Movant as a Class 1 creditor, with on-going payments being made through the plan, as well as an amount to pay the pre-petition arrears. Debtor argues that she is current with the plan payments.

MAY 5, 2015 HEARING

The Parties explained at the hearing that though the Trustee disbursed monies sufficient to pay the current monthly installments and arrearage payments, some of the installment payment amounts were misidentified as arrearage payments. This led to Creditor asserting that there was a post-petition default.

The Parties requested the continuance so that they can reconcile the payments and dismiss the motion.

In light of the request of the Parties, the court continued the hearing to 1:30 p.m. on June 9, 2015.

STIPULATION

On May 29, 2015, the Parties filed a stipulation in which the parties stipulated to the following:

1. Movant will apply \$3,487.88 from payments received by the Trustee for pre-petition arrears to the post-petition balance on its claims.
2. Debtor will amend her plan to provide for a cure of the pre-petition listed in Movant's Proof of Claim No. 12-1 in the amount of \$9,820.12, as well as for ongoing post-petition payments subject to the terms of the loan.
3. Creditor withdraws the Motion for Relief from the Automatic Stay, without prejudice.

Dckt. 139.

DISCUSSION

The Parties having filed a stipulation in which the Movant has agreed to withdraw the pending Motion, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal" 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, and good cause appearing, **the court dismisses without prejudice the Movant's Motion for Relief from the Automatic Stay.**

3. 15-23662-E-13 JUAN FLORES
PP-1 Marc A. Caraska

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-26-15 [[18](#)]

TRAVANCORE PACIFIC, 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 26, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

Travancore Pacific, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California (the "Property"). The moving party has provided the Declaration of Ramakrishna Hari Pillai to introduce evidence as a basis for Movant's contention that Juan Flores ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento,

but Debtor filed this case before the hearing scheduled May 4, 2015. Exhibit 1, Dckt. 23.

The Pillai Declaration further states that there is one post-petition default in the payments, with a total of \$4,825.17 in post-petition payments past due. The Declaration also provides evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$21,335.37.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion.

Movant has provided a properly authenticated copy of the unlawful detainer complaint in the Superior Court for Sacramento County. 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).

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 Travancore Pacific, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Furthermore, the court shall issue an order that the automatic stay provisions of 11 U.S.C. § 362(a) are further modified to allow the Movant to obtain from the state court a determination of the damages, if any, arising from the breach of the lease. Any determinations of damages by the state court are without prejudice as to objections to such lease breach damages that may be proper under the Bankruptcy Code.

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 Travancore Pacific, 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 vacated to allow Travancore Pacific, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California.

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are further modified to allow the Movant to obtain from the state court a determination of the damages, if any, arising from the breach of the lease. Any determinations of damages by the state court are without prejudice as to objections to such lease breach damages that may be proper under the Bankruptcy Code.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

4. [12-33369](#)-E-13 CHARLES/LINDA MEARS
DVW-1 C. Anthony Hughes

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY AND/OR
MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY AS TO
CO-DEBTOR
5-26-15 [[78](#)]

JOINT DEBTOR DISMISSED:
09/16/2012

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 26, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

21st Mortgage Corporation ("Movant") seeks confirmation that the automatic stay is not effect as to the Debtor and Co-Debtor. Movant's lien encumbers the real property commonly known as 4734 Broome Place, El Dorado Hills, California

("Property"). Movant has provided the Declaration of Shawn Cupp to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Cupp Declaration states that there are 20 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$53,655.90 in post-petition payments past due.

A modified plan was confirmed on August 26, 2013, which listed Movant as a Class 4 claimant. Dckt. 66. Under the confirmed plan, Section 2.11 states:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.

Dckt. 66.

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).

Under the terms of the confirmed plan, the automatic stay was modified to allow the Movant to exercise its rights against its collateral and any nondebtor in the event of a default. The Debtor's failure to make post-petition payments on the mortgage triggered this modification to allow the Movant to seek to enforce its rights against the Debtor as well as the co-debtor.

Therefore, under the terms of the modified plan, the automatic stay has been terminated as to both the Debtor and Co-Debtor due to the Debtor's default.

The court shall issue an order confirming that the automatic stay is not in effect as to Charles Mears and co-debtor Linda Mears 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 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 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 21st Mortgage Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are not in effect under the confirmed plan as to Debtor Charles Mears and Co-Debtor Linda Mears to allow 21st Mortgage Corporation, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4734 Broome Place, El Dorado Hills, California, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

5. [15-23674-E-13](#) RALPH CROSBY
NBL-1 Michael O'Dowd Hays

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-7-15 [[10](#)]

GEORGE BOEGER VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 7, 2015. By the court's calculation, 33 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.

George Boeger ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 720 W. 8th Street, Chico, California (the "Property"). Movant has provided the Declaration of Movant to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Movant states that he, through a predecessor-in-interest, obtained a judgment for foreclosure and order for sale on October 22, 2010. The Movant asserts that since September 26, 2011, the Debtor and the debtor's son have filed six separate bankruptcy petition, each petition claiming 100% ownership in the Property. Each of these cases were dismissed. The Movant states that he

has attempted three times to enforce the foreclosure judgment but the repeated filings of the Debtor and Debtor's son have made it impossible.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the Motion on May 26, 2015. Dckt. 27. The Trustee states that the Debtor has not made a payment which was due on May 25, 2015. The First Meeting of Creditors is scheduled for June 11, 2015.

DEBTOR'S RESPONSE

The Debtor filed a response on May 26, 2015 which stated that the Debtor has no grounds to oppose the relief requested. Dckt. 30. The Debtor consents to the relief from stay being granted.

DISCUSSION

The court has compile the following chart of the bankruptcy cases filed by the Debtor since September 2011:

<u>Case No.</u>	<u>Date filed</u>	<u>Date of Dismissal</u>	<u>Reason of Dismissal</u>
11-43126	September 26, 2011	January 1, 2012	Failed to make timely payments. Dckt. 34
12-30633	June 4, 2012	September 14, 2012	Failed to cure delinquency. Dckt. 49
14-26204	June 12, 2014	Case closed on October 14, 2015	Case closed without discharge. Dckt. 42.
14-32393	December 29, 2014	February 26, 2015	Failed to make filing fees. Dckt. 33.

The Movant also discusses two previous cases filed by the Debtor's son, Scott Crosby which were also dismissed. As stated by the Movant, Scott Crosby listed the Property on his schedules and claimed ownership in the Property. See Case Nos. 12-41899 and 13-27623.

The Movant argues that the Debtor and Debtor's son have used the bankruptcy system as a means to hinder, delay, and defraud the Movant, namely through the representation that each are 100% ownership of the Property.

The Debtor's response consents to the request in the Motion, appearing to agree that the Debtor's actions falls squarely within 11 U.S.C. § 362(d)(4).

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

The court finds that proper grounds exist for issuing an order pursuant

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

The court shall issue a minute order terminating and vacating the automatic stay to allow George Boeger, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party 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).

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow George Boeger, 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 720 W. 8th Street, Chico, California.

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

IT IS FURTHER ORDERED that 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.

6. [10-23787](#)-E-13 RICHARD RUYBALID MOTION FOR RELIEF FROM
MDE-1 Scott A. CoBen AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-29-15 [[153](#)]

NATIONSTAR MORTGAGE LLC VS.

Final Ruling: No appearance at the June 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Co-Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 40 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.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3846 45th Street, Sacramento, California (the "Property"). The Movant is also seeking relief from the co-debtor stay of Pamela Rock, who is one of the owners of record of the Property and also liable under the Note and Deed of Trust. Movant has provided the Declaration of Raquel Bryan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the

Property.

The Bryan Declaration states that there are 10 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$7,721.25 in post-petition payments past due.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on May 20, 2015.

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 \$93,018.08, as stated in the Bryan Declaration. The Debtor failed to list the Property on Schedule A nor has the Debtor listed the Movant on Schedule D.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

While the court notes that the Debtor has failed to list the Movant or the Property in his petition and schedules, the Movant has provided evidence that Pamela Rock is a co-debtor on the Note and Deed of Trust. Dckt. 158, Exhibits A and B. Movant requests relief from the co-debtor stay. Therefore, the court shall also issue an order terminating and vacating the co-debtor automatic stay of 11 U.S.C. § 1301 as to Pamela Rock 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

Nationstar Mortgage 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 Nationstar Mortgage 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 3846 45th Street, Sacramento, California.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of 11 U.S.C. § 1301 as to Pamela Rock is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated, to allow Nationstar Mortgage 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 3846 45th Street, Sacramento, California.

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

No other or additional relief is granted.