UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

June 26, 2014 at 10:00 a.m.

---

1. 14-90715-E-7 ROBERT SARAGOZA — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
DVW-1 — **6-9-14 [9]**

21ST MORTGAGE CORPORATION
VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 17 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.

Robert Saragoza ("Debtor") commenced this bankruptcy case on May 16,

2014. Creditor 21st Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 1975 Harmony House manufactured home (mobile home), Serial Numbers S5533U and S5533X, Label Nos. MH109271 and MH109272, located at: 2621 Prescott Road, Sp. 205, Modesto, California (the "Vehicle"). FN.1. The moving party has provided the Declaration of Josh Williamson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

FN.1. The court notes that Debtor references the asset as a "double-wide 1973 mobile home."

The Williamson Declaration provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of $487.14.

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 $11,424.82, as stated in the Josh Williamson Declaration, while the value of the Vehicle is determined to be $8,500, as stated in Schedules B and D filed by Debtor.

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 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 21st Mortgage Corporation , and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Because Movant has established that there is no equity in the Vehicle for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 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** 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 1975 Harmony House manufactured home (mobile home), Serial Numbers S5533U and S5533X, Label Nos. MH109271 and MH109272, located at: 2621 Prescott Road, Sp. 205, Modesto, California ("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.
>
> No other or additional relief is granted.

2. 14-90519-E-7 GUILLERMO ANDRES — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
APN-1 Thomas O. Gillis — **5-29-14 [16]**

TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling: No appearance at the June 26, 2014 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, Chapter 7 Trustee, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Guillermo Andres ("Debtor") commenced this bankruptcy case on April 10, 2014. Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Toyota Tacoma, VIN ending in 34353 (the "Vehicle"). The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ibarra Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of $875.48 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 $2,227.44.

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 $22,906.62, with another $437.74 due on June 15, 2014, as stated in the Mary Ibarra Declaration.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle stating the value at $25,254.00. 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 Ibarra Declaration also states that pursuant to the Debtors Statement of Intention Debtor intends to surrender possession of the vehicle to Creditor and that Creditor is in possession of the vehicle at this time.

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

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

Movant has pleaded adequate facts and presented sufficient evidence to support the court waving 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 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 Toyota Motor Credit Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Toyota Tacoma, VIN ending in 34353 ("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.

3. 14-90523-E-7 VVF-1 | **ARNULFO RIOS AND EDITH CASTRO** | **Martha Lynn Passalaqua** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** | **5-21-14 [19]**

HONDA LEASE TRUST VS.

Final Ruling: No appearance at the June 26, 2014 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 21, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a

statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Arnulfo Rios and Edith Araiza Castro ("Debtor") commenced this bankruptcy case on April 10, 2014. Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Honda Accord, VIN ending in 201051 (the "Vehicle"). The moving party has provided the Declaration of Lakatheryn Shaw to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lakatheryn Shaw Declaration provides testimony that Debtor has not made 1 post-petition payment, with a total of $309.72 in post-petition payments past due. The Declaration also provides evidence that there are 1.6 pre-petition payments in default, with a pre-petition arrearage of $504.06.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt owed under the lease agreement is determined to be $18,589.63, while the trade-in value of the automobile is $13,900.00 as stated in the Lakatheryn Shaw Declaration.

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

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 Honda Lease Trust, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waving 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 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 Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Honda Accord, VIN ending in 201051 ("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.

4. 14-90746-E-7 STEVEN BELL
ADR-1 Robert D. Rodriguez

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-29-14 [9]

MARGARET VASCONCELLOS VS.

Final Ruling: No appearance at the June 24, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

5. 14-90548-E-7 KENNETH/TRACIE THORNE
MDP-1 David Foyil

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-23-14 [12]

MARIE CLIFFORD VS.

Final Ruling: No appearance at the June 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law*

Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Marie Clifford ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 31527 Burnham Way, Hayward, California (the "Property"). Movant has provided the Declaration of Marie Clifford to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Clifford Declaration states that there is 1 post-petition default in the payments on the obligation secured by the Property, with a total of $766.58 in post-petition payments past due. The Declaration also provides evidence that there is 1 pre-petition payment in default, with a pre-petition arrearage of $766.58.

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 $577,436.54 (including $172,678.85 secured by Movant's first deed of trust), as stated in the Marie Clifford Declaration and Schedule D filed by Kenneth W. and Tracie A. Thorne ("Debtor"). FN.1. The value of the Property is determined to be $400,000, as stated in Schedules A and D filed by Debtor.

FN.1. Creditor's Declaration states: "Debtors' Schedule D erroneously lists my secured claim as the second deed of trust on the Property. See Request For Judicial Notice – Schedule D, Sheet No. 1 of 2 Continuation Sheets." The court notes that a Motion for Relief from Stay does not determine the extent, validity or priority of a security interest. A request to determine the extent, validity, or priority of a security interest, or a request to avoid a lien, requires adversary proceeding. Fed. R. Bankr. P. 7001(2).

Movant also states that the Debtor's Statement of Intention indicates that the Debtors intend to surrender 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). 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 waving 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 Marie Clifford 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 Marie Clifford, 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 31527 Burnham Way, Hayward, California.
>
> No other or additional relief is granted.

6. 14-90548-E-7 KENNETH/TRACIE THORNE
RDW-1 David Foyil

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-28-14 [21]

CHEVRON FEDERAL CREDIT UNION
VS.

Final Ruling: No appearance at the June 26, 2014 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, Junior Lien Holder, and Office of the United States Trustee on May 28, 2014. 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.

Chevron Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 31527 Burnham Way, Hayward, California (the "Property"). Movant has provided the Declaration of Ester M. Carino to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ester M. Carino Declaration states that there is 1 post-petition default in the payments on the obligation secured by the Property, with a total of $1,866.46 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of $7,466.16.

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 $473,789.77 (including $360,000 secured by Movant's first deed of trust), as stated in the Ester M. Carino Declaration and Schedule D filed by Kenneth W. and Tracie A. Thorne ("Debtor"). The value of the Property is determined

to be $400,000, 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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant’s claims as of the commencement of this case, Movant is not awarded attorneys’ fees as part of Movant’s secured claim for all matters relating to this Motion.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 Chevron Federal Credit Union 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 Chevron Federal Credit Union, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 31527 Burnham Way, Hayward, California.

No other or additional relief is granted.

7. 13-91349-E-7 JASON RIVERS
PPR-1 Steven A. Alpert

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-21-14 [18]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the June 26, 2014 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 on May 21, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1722 Evergreen Road,

Modesto, California (the "Property"). Movant has provided the Declaration of Gilbert Beltran to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gilbert Beltran Declaration states that there are 9 post-petition default in the payments on the obligation secured by the Property, with a total of $9,515.76 in post-petition payments past due. The Declaration also provides evidence that there are 9 pre-petition payments in default, with a pre-petition arrearage of $9,039.33.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property from all liens is determined to be $418,700.57 (including $280,015.57 (including interest) secured by Movant's first deed of trust), as stated in the Gilbert Beltran Declaration and Schedule D filed by Jason Frederick Rivers ("Debtor"). The value of the Property is determined to be $180,000, 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).

Debtor was granted a discharge in this case on October 24, 2013. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1722 Evergreen Road, Modesto, California.
>
> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Debtor, the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).
>
> No other or additional relief is granted.

8. 14-90768-E-7 **CARLOS DOMINGUEZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RWD-1 **Pro Se** **6-11-14 [15]**

JAVED IQBAL VS.

Final Ruling: No appearance at the June 26, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

9. 14-90675-E-7 HELEN MOORE
RCO-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-22-14 [12]

CENTRAL MORTGAGE COMPANY VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Central Mortgage Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 720 Encino Drive, Aptos, California (the "Property"). Movant has provided the Declaration of Gerald Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

DEBTOR'S OPPOSITION

Opposition has been filed by Helen Moore ("Debtor") appearing in *pro per*, asserting that she will be attending the June 26, 2014 hearing in Modesto to object to the motion for relief of automatic stay. The Opposition does not state what the basis for opposing the motion.

On Schedule A the Debtor lists this property as the only real property in which she has an interest. Dckt. 1 at 9. On Schedule D Debtor lists Creditor's claim as "contingent." *Id.* at 14. On Schedule G the Debtor lists this Property as "Rental Residential." *Id.* at 22. On Schedule I the Debtor lists $2,300.00 a month in net income from rental property or operation of a business. *Id.* at 25. No attachment disclosing the expenses relating to this rental or business is attached. On the Statement of Financial Affairs the Debtor lists $2,800.00 of rental income for the period December 30, 2013 through February 14, 2014 from "vacation renters, and $6,900.00 for a full time lease for the period March 2014-May 2014. *Id.* at 30.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $725,236.99, as stated in the Gerald Brown Declaration and Schedule D filed by Helen Moore ("Debtor"). The value of the Property is determined to be $624,494, 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 waving 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 Central Mortgage Company 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 Central Mortgage Company, 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 Encino Drive, Aptos, California.
>
> No other or additional relief is granted.

10. 14-90280-E-7 WARREN RAMSEY **MOTION FOR RELIEF FROM**
TJS-1 Pro Se **AUTOMATIC STAY**
5-15-14 [23]

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the June 26, 2014 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 15, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Warren Ramsey ("Debtor") commenced this bankruptcy case on February 28, 2014. JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Nissan Altima, VIN ending in 485836 (the "Vehicle"). The moving party has provided the Declaration of Mariarosa De La Cruz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Mariarosa De La Cruz Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $2,828.41 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $21,248.23, as stated in the Mariarosa De La Cruz Declaration, while the value of the Vehicle is determined to be $12,050, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the Kelly Blue Book Valuation

Report for the Vehicle. Though authenticated, the Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

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 JPMorgan Chase Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 JPMorgan Chase Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Nissan Altima, VIN ending in 485836 ("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.

No other or additional relief is granted.

11. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON — ORDER TO APPEAR RE: WELLS FARGO BANK, N.A.
CK-5 Catherine King — 5-27-14 [120]

CONT. FROM 5-6-14

Tentative Ruling: The Motion to Approve Loan Modification 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 court's decision is to discharge the Order to Show Cause, and order Wells Fargo Bank, N.A. to provide the court, either directly or through another party to the transaction, a copy of the contract, agreement, or loan modification for which court approval is legally required or a legal condition precedent for one or more the parties to enter into the contract, agreement or loan modification.

JUNE 26 2014 HEARING

At the hearing,

As reviewed below, Wells Fargo Bank, N.A. has filed a response and advised the court of corrective action to be taken going forward to provide the parties and court with true and accurate information concerning loan modifications. The Chapter 13 Trustee has filed a Reply, after reviewing the Wells Fargo Bank, N.A. response. The Chapter 13 Trustee supports the granting the Motion and authorize the Debtor to enter into the permanent loan modification.

Several issues remain for the court. The first is that Wells Fargo Bank, N.A. is not disclosed in the trial loan modification letter. The "creditor" appears to be identified as Wells Fargo Home Mortgage. No such entity can be identified by the court from reviewing the California Secretary of State website or the FDIC website. The Debtors and their attorney were led to believe that such an entity existed and was the creditor in this case, as the motion names such an "entity" as the party with whom the Debtors want to enter into a contract to modify a loan with that "entity."

It is true that there is a small footer on the bottom of the page reading, "Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A." The court has relied on that footer in other cases to craft an order correcting naming the creditor. The court, and the least sophisticated consumer and such consumer's counsel, should not be left to guess that a footer on a letter is where key information about who the credit is can be found.

Secondly, the court has found Wells Fargo Bank, N.A. to use this type of form for a modification proposal (which does not identify the creditor with whom the modification is being entered into) generically not only when it is the creditor, but when it is servicing as a loan servicer for the true creditor. In those cases the identity of the creditor is so confused that the least sophisticated consumer and the least sophisticated consumer's counsel is misled into requesting that the court authorize the debtor to enter into a loan modification with an entity which is not the creditor. *See In re Aguirre*, E.D. Cal. No. 10-46214, DCN DLS-1.

In some cases the loan servicers have argued that the principal for whom they act need not be disclosed, the principal need not be disclosed, and their agency authorization need not be disclosed in connection with signing a written loan modification that modifies a promissory note. Two examples are Green Tree Servicing, LLC and Ocwen Loan Servicing, LLC, both of which failed to identify the actual creditor, causing the least sophisticated consumer debtors and their attorneys to believe that the servicing companies (similar to a collection agency when the loan payments are in default) are the actual creditors and there is no principal. *See In re Fernandez*, E.D. Cal. No. 14-25283, DCN CJO-1; *In re Heard*, E.D. Cal. No. 13-284480, DCN CA-1; *In re Cole*, E.D. Cal. No. 10-40834, DCN PGM-2; *In re Gumobao*, E.D. Cal. Case No. 13-20745, DCN CA-1. This raises serious questions. First, in California, the "Equal Dignities Rule" requires that when an instrument must be in writing, then the authority granted an agent to enter into the contract for the principal must be in writing. Cal. Civ. 3209; *O'Banion V. Paradiso*, 61 C.2d 559 (1964).

The cases and litigation are long with respect to the conduct of agents who hide the existence of the principal. In *Van Haaren v. Withmore*, 2 Cal. App. 632, 635 (1934), the California Court of Appeal held that when a purported agent contended that he was not personally liable on the note, "it must appear from the instrument itself that the true object and intent of it are to bind the principal and not the person who signed the note, before he can escape personal liability. (*Hobson v. Hassett*, 76 Cal. 203 [18 P. 320, 9 Am. St. Rep. 193].)" While the failure to disclose the identity or existence of the principal does not become the basis for the undisclosed principal from denying being bound by the agent, there is little good faith reason for hiding the existence of the principal from a least sophisticated consumer. To enforce the contract against the undisclosed principal, the least sophisticated consumer must not only first be able to determine who the principal is (in the home mortgage setting the note having most likely been transferred through multiple entities – including the use of MERS and being assigned out to various tranches of investment trusts. *Sterling v. Taylor*, 40 Cal. 4th 757, 773 (2007).

The Debtors provided a second exhibit, a letter dated May 2, 2014, again from Wells Fargo Home Mortgage (as stated on the banner at the top of the letter). Exhibit B, Dckt. 113. The court addresses this letter in detail below. In this letter, it is signed (there is a blank signature line with the name "SANDRA HASS" below the blank space) by a representative of "Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. While not clearly stated in the letter, at least the signature block indicates that it is from somebody at Wells Fargo Bank, N.A.

Wells Fargo Bank, N.A. is correct, the Debtors "jumped the gun" in treating the trial loan modification as if it were a final loan modification. The copy of the Loan Modification Agreement which Wells Fargo Bank, N.A. as Exhibit A to its Response, Dckt. 128, is the type of agreement that the court must have (or at least a definitive written set of terms for modifying the existing note and deed of trust) to approve such a transaction. The court does not require the Modification Agreement provided as an exhibit to be executed by the parties, as that would be premature.

Additionally, the court can appreciate the position of a creditor in not wanting to create the appearance that a Loan Modification has been executed when it is legally contingent on there first being court approval.

Response Filed by Wells Fargo Bank, N.A.

On June 10, 2014, Wells Fargo Bank, N.A. filed the Declaration of Darin Bueltel, Vice-President, who oversaw the processing and evaluation of applications for home loan modifications on existing loans held by Wells Fargo Bank, N.A. and the borrowers had filed for relief under the bankruptcy code. Mr. Bueltel states that the Debtors were informed by letter on January 17, 2014 that Wells Fargo Bank, N.A. would like to offer them a loan modification subject to the terms and conditions set forth in the letter for a trial payment period. The trial payment period was set for three dates for the Debtors to make voluntary trial payments on February 1, 2014, March 1, 2014 and April 1, 2014. Mr. Bueltel states that the motion for court approval of the loan modification was filed April 4, 2014. Mr. Bueltel states the May 2, 2014 letter was to notify, in writing, the essential modification it was prepared to make to the Debtors' existing mortgage loan agreement, but was not intended to be a substitute for the actual loan modification agreement itself.

Mr. Bueltel has provided a true and correct copy of the proposed loan modification agreement related to the loan of Debtors. Mr. Bueltel provides that Wells Fargo Bank, N.A. had adopted a general loan modification practice to provide courts with a "proposal document" outlining the terms of the loan modification, but now recognizes that there are district specific rules which require more or different documentation to obtain an order from the court to proceed with the loan modification process. Further, Mr. Bueltel states that while Debtors gave Wells Fargo Bank, N.A. notice of the Motion for Approval of Loan Modification, it had not received notice of the Chapter 13 Trustee's Objection or a copy of the court's order continuing the hearing on the motion.

Mr. Bueltel testifies that it did not intend to withhold information from the court regarding the terms of the loan modification agreement, but that Debtors filed their Motion for Approval almost one month before they received Wells Fargo Bank, N.A.'s final approval of the application for permanent loan modification. Mr. Bueltel states that while the parties were moving forward in the process of formalizing the terms of the permanent loan modification, it was not until May 2, 2014 that Wells Fargo Bank, N.A. provided the Debtors with formal, written confirmation that they had successfully completed the trial payment period and it was prepared to issue a written agreement. Mr. Bueltel adds that it was not Wells Fargo Bank, N.A.'s intent to present to the Debtors and their attorney the proposed loan modification agreement until after the court approved the loan modification terms summarized in the Debtor's motion, not knowing the requirement to do so.

Mr. Bueltel states that Wells Fargo Bank, N.A. has taken affirmative steps to modify its forms and the timeline for submitting a motion for approval of loan modification. Mr. Bueltel states that based on these

circumstances, corrective sanctions are not warranted.

PRIOR HEARING

Wells Fargo Home Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification. The trial payments are in the amount of $1,386.16 to be paid directly by Debtors on February 1, 2014, March 1, 2014 and April 1, 2014. All payments have been made. Wells Fargo Home Mortgage is in the process of determining the final modified payment. Debtors believe that the payment will be the current $1,386.16, or not more than his original note payment of $1,463.00.

Trustee's Opposition

The Chapter 13 Trustee opposes to the Motion on the ground that the final loan modification agreement has not been filed. According to the Trustee, Exhibit A filed by Debtors is merely for a trial loan payment period.

Discussion

It appears the actual Loan Modification Agreement has not been presented to the court as is required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor filed an additional Declaration and Exhibit of a letter dated May 2, 2014 from Wells Fargo Home Mortgage. Dckts. 112, 113. However, there does not appear to be an actual Loan Modification for the court to review.

ORDER FOR WELLS FARGO BANK, NA. TO APPEAR

While there is a term sheet for a modification, Wells Fargo Bank, N.A. appears to have refused to provide the Debtors with a copy of the actual loan modification agreement for which approval is sought. While the basic loan terms are stated, the court does not know what other "standard terms" are being made part of the loan modification.

The Term Sheet, which is in letter form sent to Debtors' counsel, states,

> **How your client can accept this offer:**
>
> Please review the proposal with your client. IF the terms meet your approval, the next step is to file a petition with the bankruptcy court to gain their consent to modify the first mortgage...When you receive written consent, please forward it to my attention. Once received, we will send the loan documents to you and your attorney for original

signatures. We will then withdraw any proof of claim in this case and process the modification as noted.

Exhibit B, Dckt. 113.

This statement by Wells Fargo Bank, N.A. concerns the court for several reasons. First, the court has made it clear over the last four and one-half years that a copy of the proposed loan modification agreement is required by the Bankruptcy Rules and is necessary for this court to approve such post-petition credit. The failure and refusal of Wells Fargo Bank, N.A. to provide such agreement to be presented to the court appears to be part of a coordinated campaign to obtain court authorizations for financing on terms and conditions undisclosed to the court.

Second, this Term Sheet uses some very imprecise terms. First, it instructs Counsel for the Debtors to file a "petition" to gain the bankruptcy court's "consent." As attorneys know, a "petition" in bankruptcy court is the document filed to commence a bankruptcy case. Taken at face value, Wells Fargo Bank, N.A. is telling Debtors' Counsel to file another bankruptcy case. Relief is requested from the bankruptcy court either by adversary proceedings (Fed. R. Bank. P. 7001) or contested matters (Fed. R. Bankr. P. 9014., generally a motion or an "application" if expressly authorized by the Federal Rules of Bankruptcy Procedure).

Third, the court is uncertain as to what Wells Fargo Bank, N.A. intends to have the Debtors obtain from the court when it demands that the Debtors obtain the court's "written consent." A federal judge does not provide "consent" to parties to undertake actions. Commonly the court will issue judgements and orders. Some orders, such as post-petition financing, may "authorize" a trustee, Chapter 13 debtor, or debtor in possession to obtain post-petition financing. 11 U.S.C. § 364(b) and (c), Fed. R. Bank. P. 4001(c).

Fourth, the court has no idea what other terms and conditions may be stated (or buried) in the actual loan modification agreement. Quite possibly the terms could include one in which the Debtors are required to waive their discharge, agree to a forfeiture of their property, and pay a default fee equal to 100% of the debt, as computed by the Bank, in the event of any other default. The loan modification agreement may require the Debtors to meet and maintain other financial conditions (such as deposit requirements at the Bank, obtain insurance from Bank related entities, or pay for weekly property inspections or other "due diligence" fees to Bank). If the court were to blindly "consent" to such loan modification agreement that Wells Fargo Bank, N.A. might subsequently generate, the Bank could (and most likely would) defend any attacks thereon by stating, "as a matter of federal law, the bankruptcy judge, after due consideration, issued an order stating that this loan modification agreement was proper." The court will not hand to the Bank such carte blanche authorization.

In reality, the court suspects that the actual loan modification agreement form is straight-forward and drafted in good faith. Wells Fargo Bank, N.A. has appeared before this court on many occasions, each time its attorneys and the Bank presenting themselves as reasonable "financial

institution citizens" asserting and enforcing its rights. However, the court cannot have one set of rules for the "teacher's pet creditors" who have overtime appeared to be acting in good faith and then create a list of "bad boy creditors" to whom the Rules will be enforced. Such a two tier system of justice is antithetical to the federal judicial process. It also leads to the inevitable conclusion that certain parties get whatever they want merely because the judge is biased. Finally, such a two tier system breeds a contempt for the system by the "favored parties," which inevitably leads to abusive conduct being "consented to" by the court.

The court finds it necessary to order Wells Fargo Bank, N.A. to appear and (1) present the court with the loan modification agreement form to be executed by the Debtors and (2) explain why it has failed to provide a copy of the loan modification agreement to Debtors' Counsel to present to the court. The court recognizes that the loan modification agreement may well be the unexecuted form with the interest rate and payment terms left blank, with such terms being stated in the Term Sheet filed as Exhibit B. The court can work with the loan modification form and Term Sheet as stating the universe of terms which will be stated in the final Loan Modification Agreement to be stated by the parties.

The court ordered Wells Fargo Bank, N.A., through an senior officer with personal knowledge of the bankruptcy debtor loan modification process and procedures of the Bank, and its counsel to appear to respond and show cause why, with respect to the following:

A. Produce a copy of the loan modification agreement form to be signed by the Debtors in connection with the loan modification which is the subject of the present motion;

B. Provide an explanation and good faith business reasons for withholding the loan modification agreement form and not providing the bankruptcy court with all of the terms and conditions of the loan modification;

C. Show Cause why the court does not order Wells Fargo Bank, N.A. to provide debtor counsel with copies of the loan modification agreement form with an statement of modified loan payment terms which loan modification terms may be presented to the bankruptcy court with the statement of modified loan payment terms.

D. Show Cause why the court does not order Wells Fargo Bank, N.A. to pay $1,000.00 in compensatory corrective sanctions to Counsel for the Debtors for having to appear at two hearing in which the Motion to Approve Loan Modification could not be granted because Wells Fargo Bank, N.A. failed to provide Debtors' Counsel with a copy of the proposed Loan Modification Agreement or the loan modification agreement form to be used by the parties.

Written responses to the above matters and a copy of the Loan Modification Agreement or loan modification agreement form, which is

properly authenticated by competent testimony, shall be filed and served on Counsel for Debtors, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office) on or before June 10, 2014. Replies, if any, to the written responses shall be filed and serve on or before June 17, 2014.

In addition to the Debtors, Debtors' Counsel of Record, the Chapter 13 Trustee, and the Office of the U.S. Trustee for Region 17 (Sacramento Office), the Clerk of the Court shall serve a copy of this Order on:

A. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
101 N. Phillips Avenue
Sioux Falls, SD 57104

B. Wells Fargo Bank, N.A.
Attn: Officer for Service of Process
CSC-Lawyers Incorporating Service, Registered Agent
2710 Gateway Oaks Dr., STE 150N
Sacramento, CA 95833

C. Courtesy Copy to Counsel Filing Proof of Claim in this Case for Wells Fargo Bank, N.A.

David M. McGraw, Esq.
Law Offices of David M. McGraw
2890 N. Main Street
Walnut Creek, California 94597

D. Courtesy Copy to Counsel Appearing for Wells Fargo Bank, N.A. in Unrelated Cases

Austin P. Nagel,
Law Offices of Austin P. Nagel
111 Deerwood Road, Suite 350
San Ramon, California 94583

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 Approve the Loan Modification filed by Debtors 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 Order to Show Cause is discharged, no sanctions ordered.

IT IS FURTHER ORDERED that Wells Fargo Bank, N.A.

shall in all cases pending before any United States Bankruptcy Court correctly identify itself as either the creditor, as that term is defined by the Bankruptcy Code (11 U.S.C. § 101(10)), or the agent for the creditor and the identity of the principal who is the creditor for which it acts in any agreement, documents, pleadings, or other writings when communicating with consumers who are debtors in bankruptcy cases, are filed with the court, or are provided to be filed with the court.

IT IS FURTHER ORDERED that Wells Fargo Bank, N.A. shall provide the court, either directly or through another party to the transaction, a copy of the contract, agreement, or loan modification for which court approval is legally required or a legal condition precedent for one or more the parties to enter into the contract, agreement or loan modification.

12. 10-39217-E-13 CK-5 STEPHEN/ELIZABETH DICKSON Catherine King CONTINUED MOTION TO APPROVE LOAN MODIFICATION 4-4-14 [99]

CONT. FROM 5-6-14

Tentative Ruling: The Motion to Approve Loan Modification 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 court's decision is to grant the Motion to Approve Loan Modification.

JUNE 26 HEARING

At the hearing, ...

The court has reviewed the Response and Loan Modification provided by Wells Fargo Bank, N.A. The Loan Modification Agreement states Wells Fargo Bank, N.A. will reduce Debtor's mortgage payment from the current $1,463.00 a month to $1,384.51 a month (including escrow amounts). The modification will require monthly payments rather than biweekly payments and the current interest rate is reduced from 4.400% to 2.125%.

PRIOR HEARING

Wells Fargo Home Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification. The trial payments are in the amount of $1,386.16 to be paid directly by Debtors on February 1, 2014, March 1, 2014 and April 1, 2014. All payments have been made. Wells Fargo Home Mortgage is in the process of determining the final modified payment. Debtors believe that the payment will be the current $1,386.16, or not more than his original note payment of $1,463.00.

Trustee's Opposition

The Chapter 13 Trustee opposes to the Motion on the ground that the final loan modification agreement has not been filed. According to the Trustee, Exhibit A filed by Debtors is merely for a trial loan payment period.

Discussion

It appears the actual Loan Modification Agreement has not been presented to the court as is required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor filed an additional Declaration and Exhibit of a letter dated May 2, 2014 from Wells Fargo Home Mortgage. Dckts. 112, 113. However, there does not appear to be an actual Loan Modification for the court to review.

Order for Wells Fargo Bank, Na. To Appear

While there is a term sheet for a modification, Wells Fargo Bank,

N.A. appears to have refused to provide the Debtors with a copy of the actual loan modification agreement for which approval is sought. While the basic loan terms are stated, the court does not know what other "standard terms" are being made part of the loan modification.

The court ordered Wells Fargo Bank, N.A. to appear and (1) present the court with the loan modification agreement form to be executed by the Debtors and (2) explain why it has failed to provide a copy of the loan modification agreement to Debtors' Counsel to present to the court. The court recognizes that the loan modification agreement may well be the unexecuted form with the interest rate and payment terms left blank, with such terms being stated in the Term Sheet filed as Exhibit B. The court can work with the loan modification form and Term Sheet as stating the universe of terms which will be stated in the final Loan Modification Agreement to be stated by the parties.

DISCUSSION

Based on the foregoing, the court finds this post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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 Approve the Loan Modification filed by Stephen and Elizabeth Dickson ("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 court authorizes Debtor to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 18521 County Road 96, Woodland, California, on such terms as stated in the Loan Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 128.

13. 10-39217-E-13 CK-6 STEPHEN/ELIZABETH DICKSON Catherine King CONTINUED MOTION TO MODIFY PLAN 4-4-14 [93]

Tentative Ruling: The Motion to Modify 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)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that there has been no substitution of parties or suggestion of death filed by Debtor.

Additionally, the Trustee states that there is no current statement of income and statement of expenses on file. According to the Trustee's records, the most current statement of income was filed on 5-17-11, Dckt. 83, and the most current statement of expenses was filed on 5-18-11, Dckt. 84.

The Trustee also argues that the order confirming plan, Dckt. 87, reflects attorney fees $726.00 paid prior to filing and an amount of $2,774.00 to be paid through the plan. The proposed plan lists attorney fees as $1,000.00 paid prior to filing, and an amount of $2,226.00 to be paid through the plan.

Lastly, Trustee states that Debtor's modified plan proposes to

reduce the commitment period from 60 months to 45 months. However, Trustee argues that Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Form B22C, indicates Debtors are above median income and the commitment period is 5 years. The Trustee has objected to the proposed loan modification.

The court having ordered Wells Fargo Bank, N.A. to appear on June 24, 2014, the court continued the hearing on confirmation.

However, it does not appear that the Debtors have addressed the issues raised by the Trustee. No current statement of income and expenses have been filed to date. Counsel has not clarified the attorney fees conflicting amounts of attorneys fees listed in the order confirming and the proposed plan. Furthermore, Debtors have not provided legal authority that enables Debtors to reduce the commitment period to 45 months when Debtors are above median income.

Based on the foregoing, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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 Confirm the Chapter 13 Plan 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 to Confirm the Chapter 13 Plan is denied and the proposed Chapter 13 plan is not confirmed.