

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 13, 2017, at 10:00 a.m.

1. **17-90509-E-7** **RAWNEESHA ROYA** **MOTION FOR RELIEF FROM**
PR-1 **Pro Se** **AUTOMATIC STAY**
MEADOW LAKES, LLC VS. **6-29-17 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on June 29, 2017. 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). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Relief from the Automatic Stay is granted.

Meadow Lakes, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 1401 Lakewood Avenue, #117, Modesto, California (“Property”). The moving party has provided the Declaration of Maria Rightnour to introduce evidence as a basis for Movant’s contention that Rawneesha Roy (“Debtor”) does not have an ownership interest in or a right to maintain

possession of the Property. Movant presents evidence that it is the owner of the Property. Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus and provided a copy of the Complaint. Exhibit C, Dckt. 20.

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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Meadow Lakes, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1401 Lakewood Avenue, #117, Modesto, California, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Meadow Lakes, 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 Meadow Lakes, 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 1401 Lakewood Avenue, #117, Modesto, California.

2. [17-90312-E-7](#) **FRANCISCO GARCIA**
APN-1 **Jessica Dorn**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-5-17 [9]**

**SANTANDER CONSUMER USA, INC.
VS.**

Final Ruling: No appearance at the July 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on June 5, 2017. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Francisco Garcia ("Debtor") commenced this bankruptcy case on April 19, 2017. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Ford Fusion, VIN ending in 9934 ("Vehicle"). The moving party has provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor.

The Erica Engel Declaration, executed on May 26, 2017, provides testimony that Debtor has not made four pre-petition payments, with a pre-petition arrearage of \$1,475.00. The Declaration also alleges fees in the sum of \$250.00.

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).

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 \$16,240.40, as stated in the Erica Engel Declaration, while the value of the Vehicle is determined to be \$9,575.00, as stated in the NADA Valuation Report provided by Movant, which is more than listed on Debtor's schedules.

DISCUSSION

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA Inc. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Ford Fusion (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

3. [17-90216-E-7](#) SETH KERN
KDS-16 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-28-17 [[13](#)]

TAH 2015-1 BORROWER, LLC VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on June 28, 2017. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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The Motion for Relief from the Automatic Stay is granted.

Seth Kern (“Debtor”) commenced this bankruptcy case on March 17, 2017. TAH 2015-1 Borrower, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 421 South Abbie Street, Empire, California (“Property”). Movant has provided the Declaration of Alicia Carroll to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

In the Motion, it is alleged that Movant is the owner of the Property and entered into a pre-petition lease for the Property with Debtor. Dckt. 13. It is further alleged that Debtor defaulted in the rent of \$1,750 per month for the month of June 2017. This bankruptcy case was filed on March 17, 2017, which pre-dates the rent default.

Movant seeks relief from the stay to allow it to proceed with an unlawful detainer action and obtain possession of, and evict Debtor from, the Property.

The Carroll Declaration contains a page that is for a debtor in another case. That defect has caused the Declaration not to provide any evidence in the support of the instant Motion.

Debtor's Schedule G states that a residential lease was contracted with "Tricon American Homes" that ends in January 2019, but Debtor has not identified the address associated with that lease. Movant provided a copy of a residential lease with Seth Kern that expires on November 30, 2018. Exhibit 1, Dckt. 16. However, such lease is not properly authenticated. FED. R. EVID. 901 & 902.

On the Petition Debtor lists his address as 521 Meta Ct., Modesto, California. Petition, Dckt. 1 at 2. On Schedule A, Debtor does not list any interest in real property. *Id.* at 11. On the Statement of Financial Affairs, Part 3 Question 6, Debtor lists having paid Movant rent in December 2016 and January–February 2017.

On the Statement of Intention Debtor states that he is a party to an unexpired residential lease that ends in January 2019. *Id.* at 46–47. (Though the real property lease is listed under the personal property lease section, it is consistent with Movant's contention that it has leased residential property to Debtor.)

The deadline for filing objections to Debtor's discharge expired on July 10, 2017. No objections have been filed, the discharge will be entered, and the automatic stay will terminate as to Debtor by operation of law. 11 U.S.C. § 362(c)(2)(C). The Chapter 7 Trustee has reported that there are no assets of the bankruptcy estate for the Trustee to administer. May 11, 2017 Trustee Docket Entry Report.

Though the court could deny without prejudice or continue the hearing for Movant to correct the filing error in connection with the Declaration, such would only unnecessarily delay the conclusion of this bankruptcy case and Debtor being able to move on to his fresh start.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor for 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant, as supported by Debtor's Schedules and Statement of Financial Affairs, has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Meadow Lakes, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 421 South Abbie Street, Empire, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 TAH 2015-1 Borrower, 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 TAH 2015-1 Borrower, 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 421 South Abbie Street, Empire, California.

4. [17-90154-E-7](#) **GAYLE HUTCHESON**
PPR-1 **Rabin Pournazarian**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-14-17 [15]**

**CHAMPION MORTGAGE COMPANY
VS.**

Final Ruling: No appearance at the July 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 14, 2017. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Gayle Hutcheson (“Debtor”) commenced this bankruptcy case on February 28, 2017. Champion Mortgage Company (Nationstar Mortgage LLC, DBA) (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 3300 Allan Adale Drive, Modesto, California (“Property”). Movant has provided the Declaration of Joel Martinez Jr. to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

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 \$288,396.60 (including \$288,396.60 secured by Movant’s deed of trust), as stated in the Joel Martinez Jr.’s Declaration and Schedule D. The value of the Property is determined to be \$350,000.00 as stated in Schedules A and D.

Debtor was granted a discharge in this case on June 27, 2017. 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.

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 Champion Mortgage Company (Nationstar Mortgage LLC, DBA) (“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 Champion Mortgage Company (Nationstar Mortgage LLC, DBA) , its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 3300 Allan Adale Drive, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Gayle Hutcheson (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

No other or additional relief is granted.

5. [17-90384-E-7](#) **MIGUEL OLIVO PENA AND
MWP-1 GLORIA OLIVO
 Scott Mitchell**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-15-17 [20]**

**NATIONAL INVESTMENT MORTGAGE
FUND, LLC VS.**

Final Ruling: No appearance at the July 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 15, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

Miguel Pena and Gloria Olivo (“Debtor”) commenced this bankruptcy case on May 5, 2017. Homestead Mortgage Income Investment Fund, LLC and National Investment Mortgage Fund, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 16419 Sonora Road, Oakdale, California (“Property”). Movant has provided the Declaration of Vivian Prieto to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Prieto Declaration states that there one post-petition default in the payments on the obligation secured by the Property, with a total of \$5,935.55 in post-petition payments past due. The Declaration also provides evidence that there are thirteen pre-petition payments in default, with a pre-petition arrearage of \$77,162.15. The Declaration also notes that Debtor intends to surrender the Property.

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 \$993,992.54 (including \$993,992.54 secured by Movant's first deed of trust), as stated in the Prieto Declaration. The value of the Property is determined to be \$925,186.63, as stated in Schedules A and D.

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

While Movant argues that Debtor intends to surrender the Property, the court's review of the docket shows otherwise. With the petition, Debtor filed a Statement of Intention indicating that the Property would be surrendered, but Debtor filed a new Statement of Intention on June 2, 2017, indicating that the Property would be retained and that Debtor would enter into a reaffirmation agreement. *Compare* Dckt. 1, *with* Dckt. 15. Nevertheless, the court has found cause to grant relief from the automatic stay.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988). Based upon the evidence submitted, the court determines that there is 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 Ramco Indus. v. Preuss (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.

REQUEST FOR RELIEF FROM THE FOURTEEN-DAY STAY

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is 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 Homestead Mortgage Income Investment Fund, LLC and National Investment Mortgage Fund, 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 Homestead Mortgage Income Investment Fund, LLC and National Investment Mortgage Fund, 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 that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 16419 Sonora Road, Oakdale, California.

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

No other or additional relief is granted.