

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

August 1, 2013 at 10:00 a.m.

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1. [13-90504-E-12](#) JOHN VON EICHEL-STREIBER CONTINUED MOTION FOR RELIEF  
WW-1 David C. Johnston FROM AUTOMATIC STAY  
6-19-13 [[34](#)]

GAIL BURTON, ET AL. VS.

CONT. FROM 7-18-13

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 12 Trustee, parties requesting special notice, and Office of the United States Trustee on June 19, 2013. By the court's calculation, 29 days' notice was provided. 43 days' notice is required.

**Final 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The Motion for Relief from the Automatic Stay is granted.** No appearance at the August 1, 2013 hearing is required.

This matter was continued because Movant did not state with particularity the grounds upon which relief is sought. Movant was required to file a supplemental document stating with particularity the relief sought. Movant properly plead with particularity in the supplemental document. Opposition was required by July 26, 2013. No supplemental opposition has been filed to date.

Peter Zeff, Thomas Lee Burton and Gail Beverly Burton, as Trustees of the Thomas Lee Burton and Gail Beverly Burton 2004 Trust seek relief from the automatic stay with respect to the real properties commonly known as 10 acres at 1 Diethelm Court, 10 acres at 2 Diethelm Court and 15.6 and .75 acres located at 1943 Shoemake Avenue, Modesto, California. The moving party has provided the Declaration of Peter W. Zeff to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

August 1, 2013 at 10:00 a.m.

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The Zeff Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$22,500.00 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$2,976,562.00 (including \$980,000.00 secured by Movant's first trust deed), as stated in the Zeff Declaration, while the value of the property is determined to be \$1,200,000.00, as stated in Schedules A and D filed by Debtor. However, Movant values the property, and specifically Debtor's interest, at \$461,000.00.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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 a minute order terminating and vacating the automatic stay to allow Peter Zeff, and Thomas Lee Burton and Gail Beverly Burton, as Trustees of the Thomas Lee Burton and Gail Beverly Burton 2004 Trust, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Peter Zeff, and Thomas Lee Burton and Gail Beverly Burton, as Trustees of the Thomas Lee Burton and Gail Beverly Burton 2004 Trust, 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 10 acres at 1 Dietheelm Court, 10 acres at 2 Dietheelm Court and 15.6 and .75 acres located at 1943 Shoemake Avenue, Modesto, California.

No other or additional relief is granted.

2. [13-91204-E-7](#)      **RAMON FITO**  
ADR-1                      **Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-1-13 [\[11\]](#)**

**EL SALTO INVESTMENTS VS.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

**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).

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

El Salto Investments seeks relief from the automatic stay with respect to the real property commonly known as 626 Mamilane Avenue, Modesto, California. The moving party has provided the Declaration of Roque Saldivar to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on February 15, 2013. Debtor is a tenant at sufferance, and movant would like to commence an unlawful detainer action.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dckt. 16. 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 a minute order terminating and vacating the automatic stay to allow El Salto Investments, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 626 Mamilane Avenue, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow El Salto Investments and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 626 Mamilane Avenue, Modesto, California.

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

No other or additional relief is granted.

3. [11-93308](#)-E-11 JOHN-PIERRE MENDOZA  
DT-2 David C. Johnston

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
5-29-13 [[167](#)]

WESTAMERICA BANK VS.

CONT. FROM 6-27-13

**The Hearing on this Motion is Continued  
to 10:30 a.m. on August 1, 2013  
to be Heard in Conjunction With  
the Motion to Dismiss the Case**

Local Rule 9014-1(f)(1) Motion - 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, creditors' committee or creditors holding the 20 largest unsecured claims, all creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

**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).

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This motion was continued from June 27, 2013 as per stipulation of the parties. Debtor was required to respond to this motion within fourteen days prior to this hearing date. No opposition has been filed to date.

Creditor Westamerica Bank filed a supplemental brief on July 19, 2013, stating that the Debtor has consented to a dismissal of this Chapter 11 case in response to the pending Motion to Dismiss.

Westamerica Bank seeks relief from the automatic stay with respect to the real properties commonly known as the "Civic Plaza" located at 1727 N. Street, Merced, California, APN 031-131-007. The moving party has provided the Declarations of Rhoda Speelman and Scott E. Rurik to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Speelman Declaration indicates that Movant holds two deed of trusts (first and second position) on the subject real property, a commercial property. The Speelman Declaration states that the Debtor has not made several payments, totaling \$19,250.70 past due on Loan 1202 (first deed of trust) and \$1,443.91 on Loan 9602 (second deed of trust). From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$972,233.73 (including \$802,170.50 secured by movant's first trust deed and \$170,063.23), as stated in the Speelman Declaration, while the value of the property is determined to \$960,000.00, as submitted by Movant's appraiser, Scott E. Rurick. Debtor values the property in Schedule A as \$1,100,000.00.

Once a movant under 11 U.S.C. § 362(d) (2) establishes that a debtor has no equity, it is the burden of the debtor 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). Debtor failed to oppose the present motion or provide evidence that the real property is effective to reorganization. The court notes that Debtor's response to the pending motion to dismiss is to consent to the dismissal of the case. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

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

The moving party 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Westamerica Bank, 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 the "Civic Plaza" located at 1727 N. Street, Merced, California, APN 031-131-007.

No other or additional relief is granted.

4. [13-90908-E-7](#) FELISIANO/MARIA VALLEJO MOTION FOR RELIEF FROM  
BCP-2 Thomas O. Gillis AUTOMATIC STAY  
7-18-13 [[20](#)]

**NATIONSTAR MORTGAGE LLC VS.**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to deny the Motion for Relief from the Automatic Stay without prejudice.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Nationstar Mortgage LLC seeks relief from the automatic stay with respect to the real property commonly known as 3157 Baker Street, San Francisco, California. The moving party has provided the Declaration of Monica Diaz to introduce evidence which establishes that the Debtor has defaulted on the loan and has received several notices of a Trustee's Sale.

However, the Motion for Relief does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with

particularity the grounds upon which the requested relief is based. The motion states with particularity the following grounds:

- A. Moving Party requests and order granting relief pursuant to 11 U.S.C. § 362(d)(4).
- B. The Motion is based on [and the court is instructed] the notice, points and authorities, declaration of Monica Diaz, request for judicial notice, and exhibits [and the court is directed to read all of those pleadings and discern what are the grounds being asserted, what constitutes factual arguments, what is legal argument, and what is conjecture and speculation].

Motion, Dckt. 20. Merely demanding that the court to grant Creditor relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4) is not stating grounds upon which the court may grant such relief. FN.1.

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FN.1. The court has reviewed the declaration of Monica Diaz in support of the Motion. Dckt. 24. She testifies that is an Assistance Secretary at Nationstar Mortgage, LLC, the servicer and beneficiary of a mortgage. She further states under penalty of perjury that she has personal knowledge of the facts stated in her declaration.

She testifies that it was not until July of 2012 that Nationstar obtained the servicing rights and beneficial interest in the loan and deed of trust. Though it does not appear that Ms. Diaz and Nationstar had any involvement with this transaction until July of 2012, Ms. Diaz states under penalty of perjury that she has personal knowledge of various fact, including,

- A. On or about April 11, 2007, SCME Mortgage Bankers make a \$2,283,000.00 refinance loan to Robert O'Connor.
- B. That the refinance loan was intended to refinance a loan for which the 3157 Baker Street Property was security.
- C. That the refinance loan was secured by a new deed of trust against the Baker Street Property.
- D. Mortgage Electronic Registration Systems, Inc. was the beneficiary under the deed of trust obtained to secured the SCME Mortgage Bankers loan.
- E. The beneficial interest in the deed of trust (without reference to the note it secures) was transfer to Aurora Loan Services, LLC in February 2011.
- F. On August 11, 2009, Cal Western Reconveyance Corporation was substituted in as the trustee under the deed of trust.
- G. On January 29, 2010, O'Connor defaulted on the obligation and a notice of trustee's sale was recorded.

- H. The February 2010 foreclosure on the Baker Street Property was postponed.
- I. After default, O'Connor made a series of transfers of fractional interests in the Baker Street Property.
- J. On March 17, 2011, O'Connor made a transfer of a fractional interest in the Baker Street Property.
- K. On April 25, 2011, O'Connor make a transfer of a fractional interest in the Baker Street Property.
- L. On June 13, 2011, O'Connor make a transfer of a fractional interest in the Baker Street Property.
- M. On January 6, 2012, O'Connor make a transfer of a fractional interest in the Baker Street Property.

Declaration, Dckt. 24. Nothing in the declaration shows how Ms. Diaz could or did have any personal knowledge of these various facts to which she testifies. It may well be that she merely reviewed files and is parroting information she has read therein. That is not having personal knowledge.

Or it may be that Ms. Diaz is mindlessly signing declarations written by attorneys and is actively misrepresenting that she is a competent witness.

It appears that Ms. Diaz does not understand or appreciate what it is to testify under penalty of perjury based on ones personal knowledge. This impugns the credibility of her testimony in general. The court cannot determine what, if any, of what she is testifying to is of her personal knowledge and what is made up testimony for her. When Movant filed a new motion, that is in the cards, it may need to find a witness who can competently testify in this court.

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

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief

that is plausible on its face.” *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the short-and-plain-statement standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b) (1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] shall state with particularity the

*grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the Automatic Stay is denied without prejudice.

No other or additional relief is granted.

5. 13-91113-E-7 JACK GARCIA  
SW-1 Nelson F. Gomez

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-16-13 [[10](#)]

**ALLY FINANCIAL INC. VS.**

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 July 16, 2013. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Ally Financial Inc. seeks relief from the automatic stay with respect to an asset identified as a 2011 GMC Terrain, VIN ending in 40005. The moving party has provided the Declaration of John Murray to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Murray Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$665.38 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$29,243.19, as stated in the Murray Declaration, while the value of the asset is determined to be \$18,820.00, as stated in Schedules B and D filed by Debtor. The Declaration and Motion state that the Debtor has voluntarily surrendered the vehicle to Movant.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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 asset for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2). This being a Chapter 7 case, the asset 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 a minute order terminating and vacating the automatic stay to allow Ally Financial Inc., and its agents, representatives and successors, and all other creditors having lien rights against the asset, 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.

The moving party has plead 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ally Financial Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 GMC Terrain, VIN ending in 40005, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset 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.

6. 13-91128-E-7      GUADALUPE/CRYSTAL      MOTION FOR RELIEF FROM  
SW-1                    RODRIGUEZ                    AUTOMATIC STAY  
                             Pro Se                                7-16-13 [[36](#)]  
ALLY FINANCIAL INC. VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 16, 2013. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Ally Financial Inc. seeks relief from the automatic stay with respect to an asset identified as a 2011 Chevrolet Malibu, VIN ending in 4883. The moving party has provided the Declaration of John Murray to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Murray Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$614.07 in post-petition payments past due. 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 \$32,412.48, as stated in the Murray Declaration, while the value of the asset is determined to be \$16,000.00, as stated in Schedules B and D filed by Debtor. The Murray Declaration values the property at \$13,875.00 based on an authenticated NADA valuation.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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 asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset 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 a minute order terminating and vacating the automatic stay to allow Ally Financial Inc., and its agents, representatives and successors, and all other creditors having lien rights against the asset, 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.

The moving party 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ally Financial Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Chevrolet Malibu, VIN ending in 4883, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

7. [13-91142-E-7](#) KATHLEEN AGUILAR  
JBC-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-1-13 [[14](#)]

KLARAOS NEIGHBORHOOD  
REDEVELOPMENT 132, LLC VS.

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

Incorrect Notice Provided. The moving party did not file a proof of service and therefore the court is unable to determine whether proper notice and service was provided.

**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).

**The court's tentative decision is to deny the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Klaraos Neighborhood Redevelopment 132, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2182 Royal Wood Lane, Turlock, California. However, the moving party did not file a proof of service with the present motion. Therefore the court is unable to determine whether proper notice and service was provided.

If the Movant provides sufficient proof of service at the hearing, the court will make the following findings of fact and conclusions of law:

The moving party has provided the Declaration of John H.R. Mueller, Managing Member of Klaraos Neighborhood Redevelopment 132, LLC, to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on March 11, 2013. Debtor is a tenant at sufferance, and movant commenced an unlawful detainer action on April 2, 2013, and received a Writ of Possession.

Movant has provided an authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and a copy of the Writ of Possession. 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 a minute order terminating and vacating the automatic stay to allow Klaraos Neighborhood Redevelopment 132, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2182 Royal Wood Lane, Turlock, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Klaraos Neighborhood Redevelopment 132, 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 2182 Royal Wood Lane, Turlock, California.

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

No other or additional relief is granted.

8. [11-94146-E-11](#) DOMINIC/MARIA DEPALMA MOTION FOR RELIEF FROM  
TJS-1 David C. Johnston AUTOMATIC STAY  
7-1-13 [[340](#)]

JPMORGAN CHASE BANK, N.A.  
VS.

Local Rule 9014-1(f)(1) Motion - 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, creditors' committee or creditors holding the 20 largest unsecured claims, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

**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).

**The court's tentative decision is to deny the Motion for Relief from the Automatic Stay without prejudice.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JPMorgan Chase Bank, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2011 Lexus ES 350, VIN ending in 17504. The moving party has provided the Declaration of Charlene Hartman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hartman Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$607.99 in post-petition payments past due. 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 \$18,219.15, as stated in the Hartman Declaration, while the value of the asset is determined to be \$31,000.00, as stated in Schedules B and D filed by Debtor.

However, Movant values the vehicle at \$28,717.00, according to *Kelley Blue Book*. The Hartman Declaration seeks to introduce evidence establishing the value of the asset. Though the *Kelley Blue Book* valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication

requirement, Fed. R. Evid. 901. In this case, the court will presume the Declaration of Hartman to be that she obtained the *Kelley Blue Book* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

### **Trustee's Opposition**

Michael D. McGranahan, the Trustee, opposes this motion. The Trustee acknowledges that the Debtors are delinquent on their payments, but suggests instead of relief from the stay, that the Trustee pays the secured creditor through insurance proceeds from a recent accident caused by a third party. The Trustee states that he is working diligently with the insurance company to explore different options. The Trustee states the cost of repairs to the Lexus total \$20,000 and in light of the high monthly debt services, the Trustee is not inclined to repair the vehicle. Rather, the Trustee is attempting to get the monies for the costs of the repairs, pay Movant a portion of the proceeds, pay Debtors the remainder of the proceeds and abandon the vehicle. If the insurance company is unwilling to give the Trustee, the Trustee would repair and sell the vehicle.

### **Discussion**

The court maintains the right to grant relief from stay for cause when the 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).

However, the existence of missed payments by itself does not guarantee relief from stay. Based on either the Debtor's valuation of \$31,000.00 or the Movant's valuation of \$28,717.00 and the outstanding obligation being \$18,219.15, there is sufficient equity to protect the Movant. Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

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

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

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

**IT IS ORDERED** that the Motion for Relief from the automatic stay is denied without prejudice.

**IT IS FURTHER ORDERED** that commencing in August 2013, the Trustee shall make a \$---- a month payment to JPMorgan

**August 1, 2013 at 10:00 a.m.**



§ 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 Debtor was granted a discharge on July 9, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c) (2) (C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Navdeep Bali, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4003 Ballen Ct., Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Navdeep Bali and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4003 Ballen Ct., Modesto, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to the debtor(s), who have been granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c) (2) (C).

**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.

10. [13-91155](#)-E-7 CECIL RODRIGUES  
ADR-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-1-13 [[28](#)]

ANGELA GODINEZ VS.

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 July 1, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

**Final 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). 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 respondent 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.** No appearance required.

Angela Godinez seeks relief from the automatic stay with respect to the real property commonly known as 1513 Teresa Street, Modesto, California. The moving party has provided the Declaration of Angela Godinez to introduce evidence which establishes that the Debtor is no longer a tenant of the property, movant owning the property. Debtor is a tenant at sufferance, has not paid rent, failed to comply with the 3 day notice to pay rent or quit, and movant commenced an unlawful detainer action after the 3 day notice expired May 10, 2013.

Movant has provided a Rental Agreement, dated September 1, 2012, to substantiate its claim of ownership and a copy of the Three Day Notice to Pay Rent or Quit. Dckt. 33. 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 a minute order terminating and vacating the automatic stay to allow Angela Godinez, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1513 Teresa Street, Modesto, California, including

unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Angela Godinez and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1513 Teresa Street, Modesto, California.

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

No other or additional relief is granted.

11. [13-90882-E-7](#) LOREN/DEBORAH PARRISH  
JAB-1 Scott D. Mitchell

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-9-13 [[15](#)]

FLAGSTAR BANK, FSB VS.

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, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Flagstar Bank, FSB seeks relief from the automatic stay with respect to the real property commonly known as 1401 Oakwood Drive, Modesto, California. The moving party has provided the Declaration of Nakia Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Brown Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$1,469.98 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$213,028.89 (including \$196,358.00 secured by movant's first trust deed), as stated in the Brown Declaration, while the value of the property is determined to be \$96,431.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the 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

August 1, 2013 at 10:00 a.m.

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determines that cause exists for terminating the automatic stay since the debtor has 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 has no equity, it is the burden of the debtor 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 a minute order terminating and vacating the automatic stay to allow Flagstar Bank, FSB, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Flagstar Bank, FSB, 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 1401 Oakwood Drive, Modesto, California.

No other or additional relief is granted.

12. [13-90608-E-11](#) **MODESTO SELF STORAGE**  
**DMW-1** **INVESTORS, LLC**

**CONTINUED MOTION FOR RELIEF**  
**FROM AUTOMATIC STAY**  
4-24-13 [[22](#)]

**WESTAMERICA BANK VS.**

**CONT. FROM 6-27-13, 5-23-13**

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

Correct Notice Provided. No proof of service has been filed to date. Therefore, the court cannot determine if the Motion and supporting documents have been properly served on the correct parties in interest. 28 days' notice is required for notice pursuant to Local Bankruptcy Rule 9014-1(f)(1).

**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).

**The court's tentative decision is to grant the Motion for Relief from the Automatic Stay.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARINGS**

The Moving party failed to file a proof of service at the original hearing date. The court continued the hearing to allow Movant to serve the parties and provide supplemental documentation to support the relief requested. Movant filed supplemental pleadings on May 29, 2013. Dckt. 56.

The parties then filed a Stipulation to continue the hearing, as the parties have agreed to a forbearance agreement. The parties stated that the Bank would file a motion for approval of the forbearance agreement and the Debtor would file a companion motion for dismissal of the case.

#### **ACCELERATED HEARING**

Movant submitted an application to advance the hearing on this motion, arguing that Debtor now refuses to execute the agreements prepared by the Bank and approved by counsel. Movant states that the Debtor refuses to provide an explanation for the omission and that it had previously represented that "cure" payments would be made to the bank and to the County Tax Collector, but these payments were never made.

Movant now requests that the court accelerate the hearing and grant it relief under the changed circumstances.

## **MOTION**

WestAmerica Bank seeks relief from the automatic stay with respect to the real property commonly known as 1305 10th Street, Modesto, California. The moving party has provided the Declaration of Rhonda Speelman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Speelman Declaration states that the Debtor has not made one (1) post-petition payment, with a total of \$5,722.43 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$817,222.08 (including \$782,930.07 secured by movant's first trust deed), as stated in the Speelman Declaration, while the value of the property is determined to be \$690,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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). Debtors have failed to provide any opposition or evidence that this collateral is necessary for an effective reorganization.

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

The moving party 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 the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow WestAmerica Bank, 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 1305 10<sup>th</sup> Street, Modesto, California.

No other or additional relief is granted.