

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 4, 2014 at 10:00 a.m.

1. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA MOTION FOR RELIEF FROM
EDC-1 Robert M. Yaspan AUTOMATIC STAY
8-20-14 [[973](#)]
DON MOSCO VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.
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Don Mosco ("Movant") seeks relief from the automatic stay with respect to the real properties commonly known as Dale Road, Modesto, California, Assessor's Parcel Number 078-015-007 (the "007 Property") and 313 Banner Court, Modesto, California (the "Banner Court Property"). Movant asserts that Mosco acquired the Note which is secured by the two properties from Mid Valley Services, Inc. by an assignment October 27, 2010. Movant has provided the Declaration of Don Mosco to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mosco Declaration states that there are 31 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$290,985.00 in post-petition payments past due. The Declaration also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$49,544.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by the 007 Property is determined to be \$1,286,745.00 (including \$1,200,529.00 secured by Movant's first deed of trust), as stated in the Mosco Declaration and Schedule D filed by Sawtantra and Aruna Chopra ("Debtors"). Movant also offers the Declaration of David Giomi, a licensed real estate appraiser with 43 years' experience, who opines that the value of the 007 Property is \$1,200,000.00.

The total debt secured by the Banner Court Property is determined to be \$2,865,972.00 (including \$918,549.00 secured by Movant's second deed of trust), as stated in the Debtors' Disclosure Statement. Dckt. 882. The value of the Banner Court Property is determined to be \$1,936,000.00, as stated in Schedules A and D filed by the Debtor.

The court notes that on August 21, 2014, the court terminated the automatic stay as to real properties commonly known as 1907 East F Street, Oakdale, California, APN 064-019-008 ("Parcel 08, Oakdale Property") and APN 078-015-007 ("Parcel 07, Modesto Property"). Order, Dckt. 1026. That order terminated the automatic stay to allow for non-judicial foreclosure sales for the movant in that motion, but "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...." *Id.*

Therefore, as to the 007 Property, the automatic stay having already been terminated by order of this court, further relief from such stay is not necessary, rendering the motion moot. However, to avoid confusion as to the rights of the parties and for clarity in the California title records, the court will issue an order granting such relief.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

Based upon the evidence submitted, the court determines that there is no equity in the 007 Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition

or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the 007 Property for either the Debtor or the Estate, and the Banner Court Property is not necessary for any effective reorganization in this Chapter 11 case.

Based upon the evidence submitted, the court determines that there is no equity in the Banner Court Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the Banner Court Property for either the Debtor or the Estate, and the Banner Court Property is not necessary for any effective reorganization in this Chapter 11 case.

The court ordered that the Trustee was authorized to abandon the 007 Property and the Banner Court property on August 21, 2014. The Trustee asserted that the property was not necessary for an effective reorganization in this case, and were burdensome to the estate. Though the Debtors are attempting to fashion a plan (which would appear to require the consent of the creditors with secured claims for these properties), merely attempting a plan three years into the case does not necessary show that the properties are necessary for an "effective" reorganization. See Orders, Dckts. 1029, 1031.

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 Properties, 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 007 Property and the Banner Court 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 Don Mosco having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Don Mosco, his 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 properties, and each of them, commonly known as 313 Banner Court Road, Modesto,

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

The Nazario Declaration states that there are two (2) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$6,263.46 in post-petition payments past due. The Declaration also provides evidence that there are 19 pre-petition payments in default, with a pre-petition arrearage of \$56,692.27.

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 \$436,708.41 (including \$436,708.41 secured by Movant's first deed of trust), as stated in the Nazario Declaration and Schedule D filed by Yaohinh Lee ("Debtor"). The value of the Property is determined to be \$400,000.00, as stated in Schedules A and D filed by Debtor.

Movant's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Movant has not adequately plead or provided an evidentiary basis for granting relief for "cause."

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by U.S. Bank Trust, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow U.S. Bank Trust, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 11506 Yosemite Boulevard, Waterford, California.

No other or additional relief is granted.

3. 14-90920-E-7 **JOSHUA BROWN** **MOTION FOR RELIEF FROM**
ASW-1 **Brian Haddix** **AUTOMATIC STAY**
BANK OF AMERICA, N.A. VS. **7-29-14** [11]

Final Ruling: No appearance at the September 4, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and parties requesting special notice on July 29, 2014. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 14679 Banner Quaker Hill Road, Nevada City, California (the "Property"). Movant has provided the Declaration of Irene Frenes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Frenes Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$2,288.87 in post-petition payments past due. The Declaration also provides evidence that there are 20 pre-petition payments in default, with a pre-petition arrearage of \$45,909.72.

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 \$336,143.90 (including \$336,143.90 secured by Movant's first deed of trust), as stated in the Frenes Declaration and Schedule D filed by Joshua Brown ("Debtor"). The value of the Property is determined to be \$325,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Bank of America, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 14679 Banner Quaker Hill Road, Nevada City, California.

No other or additional relief is granted.

4. 14-91122-E-7 CARLA WHITE
ADR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-14-14 [18]

ALI PROPERTIES, LLC VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

ALI Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3921 Hollywood Drive, Ceres, California (the "Property"). The moving party has provided the Declaration of Walid Ali to introduce evidence as a basis for Movant's contention that Carla White ("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 asserts it purchased the Property at a pre-petition

Trustee's Sale on June 17, 2014. Based on the evidence presented, Debtor would be at best tenant at sufferance.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow ALI Properties, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3921 Hollywood Drive, Ceres, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by ALI Properties, LLC 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 ALI Properties, 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 3921 Hollywood Drive, Ceres, California.

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

No other or additional relief is granted.

5. 14-90928-E-7 DEBORAH MILLER
APN-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-7-14 [19]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the September 4, 2014 hearing is required.

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

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

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

The Motion for Relief From the Automatic Stay is granted.

Deborah Miller ("Debtor") commenced this bankruptcy case on June 26, 2014. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Chevrolet Suburban, VIN ending in 6956 (the "Vehicle"). The moving party has provided the Declaration of Earl Bowman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bowman Declaration provides testimony that Debtor has not made two (2) post-petition payments, with a total of \$825.46 in post-petition payments past due. The Declaration also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$764.45. Additionally, the Bowman Declaration states that Movant has been unable to verify that Debtor is maintaining insurance coverage for the Vehicle.

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 \$12,659.66, as stated in the Bowman Declaration, while the value of the Vehicle is determined to be \$10,725.00, as stated in the NADA Valuation Report supplied by the Movant.

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).

RULING

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Movant has plead adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue 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 2004 Chevrolet Suburban ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

6.	<u>14-91042-E-7</u> KYRA RAMIREZ TC-41 Christian Younger	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-5-14 [9]
FIRST TECHNOLOGY FEDERAL		
CREDIT UNION VS.		

Final Ruling: No appearance at the September 4, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and parties requesting special notice on August 6, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Kyra Ramirez ("Debtor") commenced this bankruptcy case on July 18, 2014. First Technology Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2002 Ford Mustang, VIN ending in 9515 (the "Vehicle"). The moving party has provided the Declaration of Cassandra Kuring to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kuring Declaration provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$295.14.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$4,038.67, as stated in the Kuring Declaration, while the value of the Vehicle is determined to be \$2,050.00, as stated in the NADA Valuation Report supplied by Movant.

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).

RULING

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by First Technology Federal Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting

it a lien in the asset identified as a 2002 Ford Mustang ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

7. 14-91063-E-7 CHRISTOPHER SOUZA AND MOTION FOR RELIEF FROM
SW-1 ARMINDA PEREIRA-SOUZA AUTOMATIC STAY
 Scott Mitchell 8-20-14 [[10](#)]

CALIFORNIA REPUBLIC BANK VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

Christopher Souza and Arminda Pereira-Souza ("Debtors") commenced this bankruptcy case on July 24, 2014. California Republic Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as 2012 Ford Focus, VIN ending in 5450 (the "Vehicle"). The moving party has provided the Declaration of Jacquelyn Dobbins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

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 \$18,725.88, as stated in the Dobbins Declaration, while the value of the Vehicle is determined to be between \$9,554.00 and \$7,754.00, as stated in the Kelley Blue Book Valuation Report supplied by Movant.

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

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by California Republic Bank ("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 Focus ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

8. 14-90672-E-7 ALBERT/CARMEN AZEVEDO
TDS-4 Hilton Ryder

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-8-14 [23]

HARWINDER PATTAR VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 7, 2014. However, the Proof of Service did not state the physical addresses at which the parties were served, nor the name of the Chapter 7 Trustee assigned to the case. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is denied without prejudice.

SERVICE

Local Bankruptcy Rule 9014-1(d)(4) requires that notices, as well as documents filed in support of a motion, be served on parties "who are directly affected by the requested relief." The Proof of Service filed by Harwinder Pattar's ("Movant") attorney does not clearly show that all of the necessary parties, namely the Chapter 7 Trustee assigned to the case, have been properly served with the Notice of the Motion and the documents in support. It also states that Debtor's Attorney was served at a P.O. Box address and not a street address associated with his firm. This does not constitute adequate service, since it was not mailed to Debtor's Attorney's regular place of business. Fed. R. Bankr. P. 7004(b)(1), Local Bankruptcy R. 9014(b). (Debtor's counsel's office address is clearly shown on the face of the bankruptcy Petition itself

filed in this case. Dckt.1)

Furthermore, service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

MOTION

The Motion for Relief From the Automatic Stay is deficient in itself because it does not clearly state the relief sought. It is only through the attached Memorandum of Points and Authorities that the Movant's desire to proceed in the stayed unlawful detainer action involving the Debtors is known.

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

- A. Debtor filed bankruptcy.
- B. Creditor holds a secured claim against the Debtor,
 - 1. Balance owing is \$5,175.00 (consisting of \$5,000.00 past due rent and \$175.00 in attorneys' fees).
- C. Debt was incurred monthly at the rate of \$1,000.00 per month rent.
- D. Movant owns real property commonly known as 331 Holland Drive, Turlock, California.
- E. Debtor is a resident fo that property, for which the past due rent is owed.
- F. Movant purchased the Property on September 25, 2013.
- G. Movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Motion, Dckt. 23.

LACK OF EVIDENCE IN SUPPORT OF MOTION

The Motion also lacks evidentiary support for the relief sought. No exhibits nor authenticating declarations were provided in relation to this Motion.

The Memorandum of Points and Authorities ("Memorandum") states that Movant seeks relief from the automatic stay with respect to the real property commonly

known as 331 Holland Drive, Turlock, California (the "Property"). The moving party has provided no declaration to introduce evidence as a basis for Movant's contention that Albert and Carmen Azevedo ("Debtors") do not have an ownership interest in or a right to maintain possession of the Property. Though the Memorandum indicates that the Movant's state court unlawful detainer action was nearly finished when the Debtor filed their bankruptcy petition, no exhibits were provided from the state court showing any judgments made in the proceeding. The Movant has also failed to provide exhibits showing that Movant owns the property. Without evidence establishing the facts of the rental relationship and history between the Movant and the Debtor, this court cannot grant the relief requested. Local Bankr. R. 9014-1(d)(6).

The court will not grant relief merely because an attorney demands it from the court. Evidence in support of the Motion may be presented by witnesses with personal knowledge of the facts stated therein. Fed. R. Evid. 601, 602. Documents must be properly authenticated to be considered by the court. Fed. R. Evid. 901 et seq.

The Movant has not properly served, nor presented sufficient evidence to support the court granting the requested relief from the automatic stay.

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

IT IS ORDERED that the Motion is denied without prejudice.