

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

September 29, 2016, at 10:00 a.m.

1. [16-90500-E-11](#) **ELENA DELGADILLO** **MOTION FOR RELIEF FROM**
ASW-1 **David Johnston** **AUTOMATIC STAY**
8-19-16 [42]

**WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.**

Final Ruling: No appearance at the September 29, 2016 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 11 Trustee, and Office of the United States Trustee on August 19, 2016. By the court's calculation, 41 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.

Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as Trustee for BCAT 2015-14BTT ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 24606 Patricia Court, Hayward, California ("Property"). The moving party has provided the Declaration of Kayo Manson-Tompkins to introduce evidence as a basis for Movant's contention that Elena Delgadillo aka Elena Delgadillo Casillas ("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 October 29, 2015. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant

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commenced an unlawful detainer action in California Superior Court, County of Alameda and received a judgment for possession, with a Writ of Possession having been issued by that court on June 6, 2016. Exhibit 4, Dckt. 45.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as Trustee for BCAT 2015-14BTT, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 24606 Patricia Court, Hayward, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

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 Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as Trustee for BCAT 2015-14BTT ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as Trustee for BCAT 2015-

14BTT and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 24606 Patricia Court, Hayward, California.

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

No other or additional relief is granted.

2. [16-90812-E-7](#) **KENNETH MCCORKLE AND** **MOTION FOR RELIEF FROM**
ADR-1 **KATRINA CAMPBELL** **AUTOMATIC STAY**
 Pro Se **9-14-16 [15]**
SUSAN SANTUCCI 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 Debtors (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 14, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required. FN.1.

FN.1. The Notice of Hearing cites Local Rule 9014-1(f)(1) in the document’s heading, but both the Declaration and the Certificate of Service cite Local Rule 9014-1(f)(2). The court interprets that difference as a mere scrivener’s error and applies Local Rule 9014-1(f)(2).

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 Debtors, 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.

Susan Santucci (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 669 Dixie Court, Oakdale, California (“Property”). The moving party has provided the Declaration of Susan Santucci to introduce evidence as a basis for Movant’s contention that Kenneth

McCorkle and Katrina Campbell (“Debtors”) do not have an ownership interest in or a right to maintain possession of the Property.

Movant presents evidence that she is the owner of the Property. Declaration, Dckt. 17. Based on the evidence presented, Debtors would be at best tenants at sufferance. Movant commenced an unlawful detainer action by filing a Complaint after the Sixty (60) Day Notice to Vacate expired on July 4, 2016.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtors 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).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8–9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Susan Santucci, and her agents, representatives and successors, to exercise rights to obtain possession and control of the real property commonly known as 669 Dixie Court, Oakdale, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof. FN.1.

FN.1. Though the Clerk issued an order dismissing this case for failure to file Schedules and other required documents, it appears that such documents were filed on September 14, 2016. Dckts. 28 and 29. However, it appears that the documents listed the wrong bankruptcy case number, Debtors’ prior 2016 case that was dismissed in August 2016. The court considers the substance of this Motion, notwithstanding the Clerk’s order, to avoid confusion as to the status of the automatic stay in connection with this case.

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 Susan Santucci (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Susan Santucci and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 669 Dixie Court, Oakdale, California.

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

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

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4213 Lighthouse Avenue, Modesto, California.

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

No other or additional relief is granted.

4. [16-90539-E-7](#) **DAVID MUNOZ** **MOTION FOR RELIEF FROM**
RLM-1 **Thomas Gillis** **AUTOMATIC STAY**
8-31-16 [\[23\]](#)

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY VS.**

Final Ruling: No appearance at the September 29, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 31, 2016. 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.

State Farm Mutual Automobile Insurance Company ("Movant"), seeks relief from the automatic stay to proceed only against the available insurance assets of David Munoz ("Debtor") in the automobile insurance claim. Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Richard Mahfouz II to introduce evidence to authenticate the documents upon which it bases its claim.

DEBTOR'S NON-OPPOSITION

The Debtor filed a statement of non-opposition on September 7, 2016. Dckt. 30.

DISCUSSION

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Given that the movant would not seek to enforce any judgments against the Debtor and will proceed against the Debtor only to the extent its claims can be satisfied from the Debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the movant to prosecute the claims against the Debtor, but not enforce any judgments against the Debtor or the estate other than against available insurance coverage, if any.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen (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 State Farm Mutual Automobile Insurance Company ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow State Farm Mutual Automobile Insurance Company, its agents, representatives, and successors to allow the Movant to prosecute the claims against David Munoz ("Debtor"), but not enforce any judgments against the Debtor or the Estate other than against available insurance coverage, if any.

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

No other or additional relief is granted.

5. [16-90760-E-7](#) **NATALIE ORTIZ** **MOTION FOR RELIEF FROM**
KEN-3 **Ryan Keenan** **AUTOMATIC STAY**
 8-30-16 [12]

MARILYN MUNOZ VS.

Final Ruling: No appearance at the September 29, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 30, 2016. By the court’s calculation, 30 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.

Marilyn Munoz (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 2700 MacDougal Street, #2, Modesto, California (“Property”). The moving party has provided the Declaration of Marilyn Munoz to introduce evidence as a basis for Movant’s contention that Natalie Ortiz (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property.

Movant declares under penalty of perjury that she is the owner of the Property and that Debtor rented the real property on a month-to-month basis pursuant to an oral rental agreement. Dckt. 14. Movant asserts that the lawful right to live at the real property was terminated pre-petition on August 10, 2016, by

the service of a Three-Day Notice to Quit or Pay Rent, after which the Debtor did not pay any money and did not quit possession of the property. Exhibit 1, Dckt. 15. Debtor would be at best a tenant at sufferance.

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 Marilyn Munoz, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2700 MacDougal Street, #2, Modesto, 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 waiving the fourteen (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 Marilyn Munoz (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Marilyn Munoz and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2700 MacDougal Street, #2, Modesto, California.

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

No other or additional relief is granted.

6. [16-90568-E-7](#) **DAVID CORGIAT**
APN-1 **Mark Nelson**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-30-16 [11]**

**WELLS FARGO BANK, N.A. VS.
WITHDRAWN BY M.P.**

Final Ruling: No appearance at the September 29, 2016 hearing is required.

Wells Fargo Bank, N.A. having filed a “Withdrawal of Motion” for the pending Motion for Relief from Automatic Stay, the “Withdrawal” being consistent with the opposition filed to the Motion, the court interpreting the “Withdrawal of Motion” to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice Wells Fargo Bank, N.A.’s Motion for Relief from Automatic Stay.**

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.

A Motion for Relief from Automatic Stay having been filed by Wells Fargo Bank, N.A. (“Movant”), Movant having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

7. [16-90083-E-7](#) VALLEY DISTRIBUTORS,
KS-2 INC.
Iain MacDonald

**MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY**
8-5-16 [[188](#)]

**RANCHWOOD HOMES CORP., ET AL
VS.**

Final Ruling: No appearance at the September 29, 2016 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 5, 2016. By the court's calculation, 55 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 to Approve Stipulation for Relief from the Automatic Stay is granted.

Ranchwood Homes Corp.; Ranchwood Residential, Inc.; Mission Village, LLC; Regency Park Estates 1-4, LLC; and Vineyards 14-18, LLC ("Movant") seeks relief from the automatic stay to proceed only against the available insurance assets of Valley Distributors, Inc. ("Debtor") in the automobile insurance claim. Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Kimia Sagarchi to introduce evidence to authenticate the documents upon which it bases its claim.

STIPULATION

The Movant and the Trustee filed a stipulation that provides the following:

- A. Movant shall be granted limited relief from the stay to pursue and recover the proceeds of any insurance that may cover its claims and causes of action against Debtor as alleged in the state court action.

- B. The Trustee for Debtor makes no representation or warranty that Movant's claims are covered by insurance, or the scope, terms or conditions of any insurance policies.
- C. Movant expressly waives any deficiency or other claims against Debtor or Debtor's bankruptcy estate in or related to the state court action.
- D. Debtor shall not be responsible for any deductible or self-insured retention required under any insurance policy covering Movant's claims.

Dckt. 193.

APPLICABLE LAW

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Given that Movant would not seek to enforce any judgments against the Debtor and will proceed against the Debtor only to the extent its claims can be satisfied from the Debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the Movant to prosecute the claims against the Debtor, but not enforce any judgments against the Debtor or the estate other than against available insurance coverage, if any.

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 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 Ranchwood Homes Corp.; Ranchwood Residential, Inc.; Mission Village, LLC; Regency Park Estates 1-4, LLC; and Vineyards 14-18, LLC ("Movant"), its agents, representatives, and successors to allow the Movant to prosecute the claims against Valley Distributors, Inc. ("Debtor"), but not enforce any

judgments against the Debtor or the estate other than against available insurance coverage, if any, to final judgment (including all appeals) in the state court action captioned *Coleman, et al. v. Ranchwood Lakes, LLC, et al.* in the Superior Court of the State of California, County of Merced, Case No. 16CV-00714.

IT IS FURTHER ORDERED that the Trustee is authorized to enter into the Stipulation for Relief from Automatic Stay filed as Docket No. 193.

No other or additional relief is granted.

8. [16-90385-E-7](#) **MELVIN REECE** **CONTINUED MOTION FOR RELIEF**
FF-1 **Pro Se** **FROM AUTOMATIC STAY**
7-15-16 [[22](#)]

FRANCES MESSIER-REECE VS.

**COUNSEL FOR MOVANT MAY APPEAR AT THE HEARING AND
REQUEST THE COURT CALL THE MATTER TO ADDRESS ANY
CLARIFICATION WHICH MAY BE REQUIRED FOR THE ORDER**

Final Ruling: No appearance at the September 29, 2016 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 July 15, 2016. By the court's calculation, 41 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 denied as moot as to Debtor, discharge having been entered, and granted as to the interests of the estate.

Melvin Reece (“Debtor”) commenced this bankruptcy case on May 2, 2016. Frances Messier-Reece (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2014 Hyundai Elantra, as well as to allow the state court to adjudicate the Dissolution of marriage, to enforce the order for temporary spousal support, to enter a final order for spousal support, and to allow the state court to adjudicate the Order to Show Cause against Debtor. The moving party has provided the Declaration of Robert Moore to introduce evidence to authenticate the documents upon which she bases the claim and the obligation owed by the Debtor.

The Robert Moore Declaration provides testimony that the state court issued rulings ordering that the Movant shall have the exclusive use of the 2014 Hyundai Elantra and that she shall make all automobile and automobile insurance payments, and the Debtor shall pay temporary spousal support in the sum of \$559.00 per month effective November 1, 2015. Dckt. 25.

AUGUST 25, 2016 HEARING

At the hearing, the court continued the matter to September 29, 2016, at 10:00 a.m. and required Movant to file a Supplemental Motion that includes missing pages from the original filing.

MOVANT’S SUPPLEMENTAL MOTION

Movant filed a Supplemental Motion on August 30, 2016. Dckt. 38. The Supplemental Motion contains the missing pages. Movant declares that she is harmed by the automatic stay in that she cannot proceed with state court action for dissolution of marriage to Debtor and to receive spousal support, which Debtor has not made any payments toward yet. Movant asserts that Debtor is not entitled to a discharge under 11 U.S.C. § 523(a)(5), (15), and (19).

Movant requests the following relief:

- A. “Granting relief from the automatic stay to allow Movant to proceed with her state court rights and remedies to dissolve her marriage to Debtor, allow the state court to enforce its ruling for temporary spousal support due to Movant and enter a final order for spousal support, and allow the state court to adjudicate the Order to Show Cause against the Debtor;
- B. Ordering that the relief be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter;
- C. Ordering that the 2014 Hyundai Elantra is not subject to the automatic stay; and
- D. For such other and further relief as the court deems just and proper.”

Dckt. 38.

DISCUSSION

Debtor was granted a discharge in this case on August 2, 2016. Dckt. 33. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor.

Additionally, Congress has provided that the automatic stay does not apply to specified domestic law matters, which include:

“(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

...

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver’s license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

11 U.S.C. § 362(b)(2).

11 U.S.C. § 362(c)(1) provides that the automatic stay continues against property of the estate until such property is no longer part of the debtor's estate. The court may grant relief from the automatic stay for cause to allow litigation to proceed in a nonbankruptcy forum. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Here, though the Debtor has received his discharge, the bankruptcy case has not been closed and therefore, property of the bankruptcy estate, such as the 2014 Hyundai Elantra, has not been abandoned back to the Debtor by operation of law. 11 U.S.C. § 554(c).

The Motion is granted, and the court confirms that the automatic stay has terminated as to the Debtor upon his discharge by operation of the law as provided in 11 U.S.C. § 362(c)(2)(C), did not apply to the specified family law dissolution issues as provided in 11 U.S.C. § 362(b)(2), and is terminated as to the estate's interest in the 2014 Hyundai Elantra.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) 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 Frances Eva Messier-Reese ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief From the Automatic Stay is granted and the court confirms that:

- A. The automatic stay terminated by operation of law effective August 2, 2016, upon the entry of the discharge in this Chapter 7 case as to the Debtor and non-bankruptcy estate property of the Debtor pursuant to 11 U.S.C. § 362(c)(2)(C); and

B. That the automatic stay did not go into effect upon the filing on this bankruptcy case as provided in 11 U.S.C. § 362(b)(2) for the following family law proceedings:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

...

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

IT IS FURTHER ORDERED that the automatic stay is terminated as to the bankruptcy estate, and any interests of the estate herein, with respect to the 2014 Hyundai Elantra.

9. [16-90385](#)-E-7 MELVIN REECE SUPPLEMENTAL MOTION FOR RELIEF
FF-1 Pro Se FROM AUTOMATIC STAY
FRANCES MESSIER-REECE VS. 8-30-16 [38]

Final Ruling: No appearance at the September 29, 2016 hearing is required.

The Motion appears to be an erroneous duplicate docket entry, the ruling being provided in Matter 8 for the September 29, 2016 Calendar. This item is removed from the calendar.

10. [16-90591-E-7](#) **JEREMY/KRISTINA CASTRO**
[APN-1](#) **James Mootz**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-18-16 [\[16\]](#)**

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the September 29, 2016 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 18, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Jeremy Castro and Kristina Castro ("Debtors") commenced this bankruptcy case on July 5, 2016. Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Honda Accord, VIN ending in 3625 ("Vehicle"). The moving party has provided the Declaration of Jennifer Woessner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Woessner Declaration provides testimony that Debtor has not made one (1) post-petition payment, with a total of \$449.45 in post-petition payments past due. Dckt. 18. The Declaration also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$963.18.

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 \$25,847.42, as stated in the Woessner Declaration. Debtors list \$15,450.00 on Schedules B and D as the Vehicle's value. Movant has provided a copy of a NADA Valuation Report for the Vehicle, listing a clean retail value of \$16,300.00. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The court adopts the NADA value of \$16,300.00 as the Vehicle's value.

DISCUSSION

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 because the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors 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 Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen (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 Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services (“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 2013 Honda Accord (“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 Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.