

Eastern District of California

Bankruptcy Judge
Modesto, California

1. [15-90814](#)-E-7 MARKET 49 VENTURES INC MOTION FOR RELIEF FROM
DAR-1 Patrick B. Greenwell AUTOMATIC STAY
9-2-15 [[12](#)]
WELLS FARGO BANK, N.A. VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 2, 2015. 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.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1267 South main Street, Angels Camp, California (the "Property"). Movant has provided the Declaration of Scott A. Kapin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

First, Movant provides documents showing that an unlawful detainer action was filed on July 24, 2015, in California Superior Court, County of Calaveras; Default Judgment was entered on August 5, 2015. Dckt. 17, Exh. D, E. Also, the Kapin Declaration provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of \$4,425.00. Dckt. 17, Exh. C.

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Market 49 Ventures, Inc. ("Debtor") did not file an opposition.

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 state court's unlawful detainer judgment declared the rental agreement terminated and forfeited. 11 U.S.C. § 362(d)(1); *In re Windmill Farms, Inc.*, 841 F.2d 1467, 1471 (9th Cir. 1988).

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 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 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 1267 South main Street, Angels Camp, California, 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 not waived for cause shown by Movant.

No other or additional relief is granted.

2. [08-91933](#)-E-7 BULMARO/MARIA PALAFOX
JCW-1 Pro se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-31-15 [[79](#)]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and parties requesting special notice on August 28, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2007-OA11, Mortgage Pass-Through Certificates, Series 2007-OA11 in interest ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 668 Vassar Avenue, Merced California (the "Property"). Movant has provided the Declaration of Erika Smith to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Smith Declaration states that there are 78 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$147,957.60 in post-petition payments past due.

Bulmaro Palafox and Maria de la Luz Palafox ("Debtor") did not file an opposition.

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 \$591,702.31, as stated in the Smith Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$430,000.00, as stated in

Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Further, 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 The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2007-OA11, Mortgage Pass-Through Certificates, Series 2007-OA11 in interest ("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 The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2007-OA11, Mortgage Pass-Through Certificates, Series 2007-OA11 in interest ,

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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 668 Vassar Avenue, Merced California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Bulmaro Palafox and Maria de la Luz Palafox ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

3. [15-90347](#)-E-7 MICHAEL/MELANIE DODGE
JHW-1 Steele Lanphier

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-2-15 [[59](#)]

TD AUTO FINANCE, LLC VS.

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. 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.

Michael S. Dodge and Melanie M. Dodge ("Debtor") commenced this bankruptcy case on April 8, 2015. TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Nissan Rouge, VIN ending in 1121 (the "Vehicle"). The moving party has provided the Declaration of Alexandra Pickard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Pickard Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of \$1,475.15 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$12,476.42, as stated in the Pickard Declaration, while the value of the Vehicle is determined to be \$4,206.00, as stated in Schedules B and D filed by Debtor.

Debtor did not file an opposition.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow TD Auto Finance LLC, 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 TD Auto Finance LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED 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 2009 Nissan Rouge, VIN ending in 1121 ("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 to the extent the Motion seeks relief from the automatic stay as to Michael S. Dodge and Melanie M. Dodge ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

No other or additional relief is granted.

9-4-15 [[31](#)]

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The Motion For Approval of Compromise is granted.
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Bergman Landscaping, Inc., the Creditor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Irma Edmonds, the Chapter 7 Trustee, and Holly Tobin, Debtor. The proposed settlement is for relief from the automatic stay for the Creditor as to the real property commonly known as 1717 E. Hawkeye Avenue, Turlock, California ("Property") in which the Creditor holds a second deed of trust.

Movant and Settlers has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Dckt. 18):

- A. The parties stipulate that the automatic stay as to the Property is modified so as to allow Movant to exercise its rights and remedies pursuant to either state law or federal law against the Property.
- B. The parties stipulate that the stay of Fed. R. Bankr. P. 4001(a)(3) is waived.
- C. Debtor agrees to vacate the Property with her family on or before October 2, 2015.
- D. Debtor, during her continued occupancy of the Property shall maintain both the interior premises as well as the exterior of the premises and surrounding property, in good condition, reasonable wear and tear expected.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement, the Movant will be able to move under any state or federal rights the Movant has on the Property while the Debtor and the Trustee no longer have the burden of the Property in which the Trustee has determined is not necessary for the estate or Debtor and is of inconsequential value.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted and the Trustee is authorized to enter into the Stipulation.

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.

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

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

The Motion to Approve Compromise filed by Bergman Landscaping, 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 that the Motion to Approve Compromise is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Dckt. 18.

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Bergman Landscaping, Inc., 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, or such judicial proceedings as are necessary and appropriate to enforce the federal court judgment by which the rights and interests in the deed of trust were determined to exist, and for the purchaser at any such sale obtain possession of the real property commonly known as 1717 East Hawkeye Avenue, Turlock, California.

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

IT IS FURTHER ORDERED that Irma Edmonds, the Chapter 7

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Trustee, is authorized to enter into the Stipulation For Relief From the Automatic Stay filed on August 17, 2015 (Dckt. 18).

5. 15-90456-E-7 DENICE LEMINGS MOTION FOR RELIEF FROM
 APN-1 Pro Se AUTOMATIC STAY
 8-21-15 [[22](#)]

 SANTANDER CONSUMER USA, INC.
 VS.

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on August 21, 2015. 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.

Denice Machell Lemings ("Debtor") commenced this bankruptcy case on May 11, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Mercedes-Benz C-Class, VIN ending in 7137 (the "Vehicle"). The moving party has provided the Declaration of Marianne Favors to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Favors Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of \$2,028.12 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$1,027.42.

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

\$12,281.17, as stated in the Favors Declaration, while the value of the Vehicle is determined to be \$9,600.00, as stated in Schedules B and D filed by Debtor.

Debtor did not file an opposition.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow 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 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 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 2006 Mercedes-Benz C-Class,

VIN ending in 7137 ("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 to the extent the Motion seeks relief from the automatic stay as to Denise Machell Lemings ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

6. [11-93160](#)-E-7 SALVADOR/EVA GONZALEZ MOTION FOR RELIEF FROM
JCW-1 Thomas O. Gillis AUTOMATIC STAY
8-31-15 [[69](#)]

AMERICAS SERVICING COMPANY
VS.

Final Ruling: No appearance at the October 1, 2015 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, and Chapter 7 Trustee on August 31, 2015. By the court's calculation, 31 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.
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America's Servicing Company, servicing agent for US Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2006-AC1, Asset-Backed Certificates Series 2006-AC1 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 342 Caballos Court, Oakdale California (the "Property"). Movant has provided the Declaration of Melvin Dee Boothe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Boothe Declaration states that there are 8 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,372.40 in post-petition payments past due.

Salvador Gonzales and Eva Gonzalez ("Debtor") did not file an opposition.

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 \$207,004.60 (including \$100,500.00 secured by Chase Mortgage's second deed of trust), as stated in the Boothe Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$142,606.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court 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 America's Servicing Company, servicing agent for US Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2006-AC1, Asset-Backed Certificates Series 2006-AC1("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 America's Servicing Company, servicing agent for US Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2006-AC1, Asset-Backed Certificates Series 2006-AC1, 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 342 Caballos Court, Oakdale 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 not waived for cause shown by Movant.

No other or additional relief is granted.

7. [14-90772-E-7](#) AIRELL/GRETCHEN NYGAARD MOTION FOR RELIEF FROM
BHT-102936 Michael R. Germain AUTOMATIC STAY
8-17-15 [[29](#)]

HSBC BANK USA, N.A. VS.

Final Ruling: No appearance at the October 1, 2015 hearing is required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.
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HSBC Bank USA, National Association, as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-1, its assignees and/or successors in interest, by Ocwen Loan Servicing, LLC as servicer ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 17600 Fitch Ranch Road, Tuolumne, California (the "Property"). Movant has provided the Declaration of Christian Lazu to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Lazu Declaration states that there are 12 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$44,041.83 in post-petition payments past due.

Airell Leighton Bygaard and Gretchen Ann Nygaard ("Debtor") has not filed an opposition. Eric Nims, as Chapter 7 Trustee, filed a non opposition on August 31, 2015.

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 \$669,867.07, as stated in the Lazu Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$505,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

Debtor was granted a discharge in this case on October 6, 2014. Dckt. 23. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

Movant has 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 granted. FN.1.

FN.1. Movant states with particularity grounds for modification of the automatic stay. Included in those grounds are also grounds which could have been stated as also grounds for terminating the automatic stay. However, the body of the motion does not state with particularity the relief from the fourteen day stay of enforcement of the order or with particularity the grounds upon which relief is based. The court will assemble for Movant, for this Contested Matter the grounds which are stated which would be stated with particularity with a claim for the court to waive, for cause, the fourteen-day stay of enforcement imposed by the United States Supreme Court when it adopted Federal Rule of Bankruptcy Procedure 4001(a)(3). Movant and counsel should not rely on the court to so construct such claims in the future. The court does not operate with a "sometimes the party needs to follow the rules and sometimes the rules can be ignored" procedure. Merely throwing in the prayer requests for additional relief does not comply with the requirements of Federal Rules of Bankruptcy Procedure 9013 and 7007, and Federal Rule of Civil Procedure

7(b).

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 HSBC Bank USA, National Association, as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-1, its assignees and/or successors in interest, by Ocwen Loan Servicing, LLC as servicer ("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 HSBC Bank USA, National Association, as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-1, its assignees and/or successors in interest, by Ocwen Loan Servicing, LLC as servicer, 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 17600 Fitch Ranch Road, Tuolumne, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Airell Leighton Bygaard and Gretchen Ann Nygaard ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

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

No other or additional relief is granted.

8. [15-90774-E-7](#) **ANDREA RINCON**
 Jeffrey S. Prather

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-24-15 [9]

CIG FINANCIAL, LLC VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, and Office of the United States Trustee on August 24, 2015. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief From the Automatic Stay is granted.</p>

Andrea Rincon ("Debtor") commenced this bankruptcy case on August 6, 2015. Dckt. 1. CIG Financial, LLC, its successors and/or assigns, ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Dodge Durango, VIN ending in 1867 (the "Vehicle"). The moving party has provided the Declaration of Michelle Doan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Dckt. 11.

The Doan Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$395.48 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$356.92.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. In her Declaration Ms. Doan testifies that a copy of a Kelly Blue Book report is attached and that Kelly Blue Book is a valuation guide commonly used in the vehicle sale industry. However, Ms. Doan does not testify as to who generated the Kelly Blue Book report, how it was done, or if she has any reason to believe it is accurate (as opposed to a false document in which someone has inserted inaccurate information). Since it is so easy for a person to testify that he or she went to the Kelly Blue Book website, the person entered the information, and that the report submitted is an accurate copy which that person printed, the failure to do so raises serious questions as to the credibility and the validity of the report.

The court notes that Debtor has failed to file a Statement of Intention with respect to this vehicle and Movant's secured claim. The Chapter 7 Trustee has filed a No Distribution Report in this case. September 18, 2015 Docket Entry Report. On Schedule B Debtor lists Movant's collateral as : (In co-debtor's possession who is making payments: Gonzalo Mata of Modesto, CA, street address unknown." Schedule B, Dckt. 1 at 12. On Schedule J Debtor does not list any payment for Movant's secured claim. *Id.* at 29.

In her Declaration, Ms. Doan opines that based on the Kelly Blue Book report (which has not been authenticated), the Vehicle has a value of \$5,365.00. This appears to be the "Lending Value" for the Vehicle in "Fair Condition." Ms. Doan provides no testimony as to why: (1) she deems the Vehicle to be in fair value and (2) why the relevant value to be used is lending value instead of retail value. In 11 U.S.C. § 506(a) in determining a creditor's secured claim for a personal use vehicle, the court uses the retail (replacement) value. 11 U.S.C. § 506(a)(2). Possible Movant believes that the replacement value is not proper for determining the value of its secured claims, and by this Declaration is consenting to the court using lower lending values for all 11 U.S.C. § 506(a) valuations and adequate protection determinations for Movant's claims and interests.

If the court relies on the unauthenticated Kelly Blue Book report , the only retail value is \$8,633. Exhibit B, Dckt. 12. Ms. Doan testifies that Movant's secured claim is only \$6,579.58, which is 24% less than the value of the vehicle. Thus, the evidence presented by Movant indicates that Movant has a substantial equity cushion (approximately 33%) to protect its secured claim.

Ms. Doan also makes the statement that "the [Vehicle] is depreciating and continues to depreciate,... Movant's interest, therefore, is not adequately protected...." Declaration, 2:24-25; Dckt. 11. However, Ms. Doan does not provide testimony as to any facts, but merely states her personal finding of fact. She does not provide any testimony as to how fast an eleven model year old vehicle is actually depreciating.

The Motion also asserts that cause exists pursuant to 11 U.S.C. § 362(a)(1) because Debtor states under penalty of perjury that: (1) "the vehicle is in the possession of a co-debtor on the obligation" and (2) Debtor does not know the location of the Vehicle. The person named as the co-debtor by Debtor is named as the purchaser on the Retail Installment Contract filed by Movant as Exhibit 1. Dckt. 12. The address for the co-debtor listed on the Retail Installment Contract is the same as the Debtor on that contract.

Though Movant did not believe the failure to file a Statement of Intention

for Movant's secured claim, Debtor states that the obligation is to be paid by the co-debtor, or that Debtor does not provide any expense on Schedule J for payment of Movant's secured claim, these are significant facts to consider in determining whether cause exists to terminate the stay (especially in light of Movant's unauthenticated exhibit showing a 33% equity cushion).

Debtor has not filed an opposition.

RULING

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Vehicle for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). Debtor does not have possession of the Vehicle. Debtor has not stated any intention to retain the Vehicle and makes no provision on the Schedule J expenses to pay the debt secured by the Vehicle. Finally, Debtor states under penalty of perjury on Schedule J that Debtor will not make any payments on the claim secured by the Vehicle, but that payments, if any, are to be made by the non-bankruptcy contractual co-debtor.

Cause exists to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Movant has failed to show that there is no equity in the Vehicle for Debtor or the estate. Movant has failed to show that grounds exist for relief pursuant to 11 U.S.C. § 362(d)(2).

While in the prayer Movant adds in a throw in request that the court waive the fourteen-day stay of enforcement mandated by Federal Rule of Bankruptcy Procedure 4001(a)(3) adopted by the United States Supreme Court, Movant fails to state what grounds exist for granting such relief. It is improper for the court to construct what possible grounds could exist for such relief so as to warrant cause for this court to "overrule" the Rule as adopted by the Supreme Court.

The court shall issue an order terminating and vacating the automatic stay to allow CIG Financial, LLC, its successors and/or assigns, 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.

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 CIG Financial, LLC, its successors and/or assigns ("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 2006 Dodge Durango, VIN ending in 1867("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 not waived.

No other or additional relief is granted.