

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 31, 2013 at 10:00 a.m.

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1. [13-91701](#)-E-11 MARVAIS WADEN AND SHIAMA MOTION FOR RELIEF FROM
DBP-1 KAKAR AUTOMATIC STAY
David Foyil 10-16-13 [[25](#)]
BAYSIERRA FINANCIAL, INC.
VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

BaySierra Financial, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 8090 Highway 12, Wallace, California. The moving party has provided the Declaration of John Graziano to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Graziano Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$12,390.00 in post-petition payments past

due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$1,493,776.65 (including \$1,118,098.84 secured by movant's first trust deed), as stated in the Graziano Declaration, while the value of the property is determined to be \$1,011,000.00, as stated in Schedules A and D filed by Debtor.

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

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

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow BaySierra Financial, Inc., its agents, representatives, and successors, and

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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 8090 Highway 12, Wallace, California.

No other or additional relief is granted.

2. [13-91712-E-7](#) SONJA RADINOVICH MOTION FOR RELIEF FROM
ADR-1 Michael R. Stone AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-1-13 [[15](#)]
JOE/ANDREA LEAL 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 October 1, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Joe Leal and Andrea Leal seek relief from the automatic stay with respect to the real property commonly known as 2610 Chester Drive, Modesto, California. The moving party has provided the Declaration of Andrea Leal to introduce evidence which establishes that the Debtor is a tenant at sufferance. Movants contend that Debtor has not paid full amount of rent since September 2012. On August 25, 2013, Debtor's right to possessory interest was terminated because three day notice had expired. Debtor filed bankruptcy on September 23, 2013. The movant commenced an unlawful detainer action.

Movant has provided a copy of the renter agreement and testifies that she is the owner and manager of the subject real property. Dckt. 20. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(1). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Joe Leal and Andrea Leal, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2610 Chester Drive, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Joe Leal and Andrea Leal and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2610 Chester Drive, Modesto, California.

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

No other or additional relief is granted.

3. [13-91226-E-7](#) MICHAEL/MARGARET SCHMIDT MOTION TO CONFIRM TERMINATION
Michael R. Germain OR ABSENCE OF STAY
9-30-13 [[16](#)]
TD AUTO FINANCE, LLC

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 September 30, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Confirm Termination or Absence of Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The Motion to Confirm Termination or Absence of Stay is continued to 10:00 a.m. on November 21, 2013. No Appearance at October 31, 2013 is Required.

Creditor Nationstar Mortgage, LLC, moves for an order confirming that the automatic stay has terminated by reason of the Trustee's abandonment of collateral. The Court issued an Order continuing the hearing to 10:00 a.m. on November 21, 2013. Dckt. 25. Therefore, the Motion is continued to that date and time.

4. [13-91735-E-7](#) BRYAN/LEANNE SCOLES MOTION FOR RELIEF FROM
JHW-1 Martha Lynn Passalacqua AUTOMATIC STAY
10-2-13 [9]
TD AUTO FINANCE, LLC 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Auto Finance LLC seeks relief from the automatic stay with respect to an asset identified as a 2008 GMC Sierra, VIN ending in 4226. FN.1. The moving party has provided the Declaration of William J. Schober to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

FN.1. The court is baffled by the Movant's attorney's inclusion of a heading entitled "Points & Authorities" in his motion. Local Bankruptcy Rule 9004-1(a) and the Revised Guidelines for Preparation of Documents ¶ (3)(a), which require that the motion, points and authorities, each declaration, and the exhibits be filed as separate electronic documents.

The Schober Declaration states that the Debtor has not made three pre-petition payments from July 10, 2013 to September 10, 2010. Each payment amount is \$429.17 and late charges in the amount of \$64.38. 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 \$23,179.11, as stated in the Schober Declaration, while the value of the asset is determined to be \$14,975.00, as stated in Schedules B and D filed by Debtor.

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

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Auto Finance LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2008 GMC Sierra, VIN ending in 4226, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

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

No other or additional relief is granted.

5. [13-91538-E-7](#) BENJAMIN ARGUELLES
VVF-1 Crispin C. Lozano

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-17-13 [[15](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

American Honda Finance Corporation seeks relief from the automatic stay with respect to an asset identified as a 2012 Honda Odyssey, VIN ending in 07434. The moving party has provided the Declaration of Magda Bello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bello Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$1,486.40 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 \$33,851.88, as stated in the Bello Declaration, while the value of the asset is determined to be \$18,774.00, as stated in Schedules B and D filed by Debtor.

The Bello Declaration relies on the NADA Official User Car Guide to value the subject vehicle at \$25,775.00.

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

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

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Honda Odyssey, VIN ending in 7434, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

7. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
WJS-1 David C. Johnston

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-26-13 [[34](#)]

AMERICAN AGCREDIT, PCA VS.

CONT. FROM 10-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

American AgCredit, PCA ("Movant") seeks relief from the automatic stay with respect to an asset identified as the Dairy Herd and milk pool quota. The moving party has provided the Declarations of Teresa Rose, Eric Capron, and Steve Gallichio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), as cause exists because there is a potential for damage to the dairy herd from insufficient feed.

The Rose Declaration states that Debtor had borrowed total of \$2,561,128.14 from Movant. There have been post-petition payments received by milk check assignment, which may serve to decrease the total debt slightly.

The Capron Declaration states that Debtor had approximately 60 days of feed on hand on August 20, 2013. However, supplements needed to be purchased to generate feed mix with appropriate nutrition level (estimated

cost of \$50,000). As of September 4, 2013, Debtor has failed to file a motion to appoint a broker to liquidate the herd.

The Gallichio Declaration states that he performed a Dairy Valuation. He found that additional feed will need to be purchased. Also, the Debtor did not have supplements such as oat hay, straw or corn stalks for supplements with alfalfa. There are 3,403 animals which he valued at \$2,880,500.

Movant argues that it has been in contact with Debtor's Counsel and understood that the herd would be sold, but no motion to sell has been brought forward and then the September 11, 2013 status report by the Debtor also stated that Debtor expected to employ a broker to sell its livestock. However, no such motion has been filed to date.

PRIOR HEARING

Stipulation for Relief and Continued Hearing

The parties stated on the record a stipulation to grant the Motion and modifies the automatic stay the hearing to modify the stay to allow Movant to exercise its rights in the "Dry Cows," "bred heifers," "open heifers," "bucket calves (0-6 months)." For this relief, the 14-day stay of enforcement is waived. The hearing is continued as to the balance of the motion and collateral to 10:00 a.m. on October 31, 2013.

No additional documents have been filed to date either arguing for or against further relief from the stay.

DISCUSSION

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

A bankruptcy court "shall" lift the automatic stay "for cause." 11 U.S.C. § 362(d)(1). "Cause" has no clear definition and is determined on a case-by-case basis. *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The party moving for relief from stay has initial burden of coming forward with prima facie evidence showing that cause exists for granting such relief. 11 U.S.C. § 362.

Here, Movant has shown a potential for damage to the dairy herd collateral from insufficient feed. It appears from the status conference that Debtor-in-Possession intends to sell the herd or a portion of the herd. However, no such motion appears on the docket to date. If there is not action by the Debtor, the herd will be damaged and Movant will be prejudiced. Therefore, cause exists for relief from the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay to allow American AgCredit, PCA, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to

applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

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

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

No other or additional relief is granted.

8. [12-91564-E-11](#) POCH TAN AND SAMEAN CHUM MOTION TO APPROVE STIPULATION
PPR-1 Anthony D. Johnston FOR RELIEF FROM THE AUTOMATIC
STAY
9-20-13 [[162](#)]

BANK OF AMERICA 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 Debtors, Debtors' Attorney, creditors, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Creditor Bank of America, N.A. ("Movant") moves the court for an order approving the stipulation for relief from automatic stay with the Debtors. The Motion is filed pursuant to Federal Rule of Bankruptcy Procedure 4001(d)(1). Creditor states the parties have reached an agreement to enter into stipulation terminating the automatic stay as to the Movant, which was filed on May 16, 2013. Dckt. 143. Movant is a holder for junior lien in 613 Tuolumne Boulevard, Modesto, California.

The material provisions of the stipulation state that the automatic stay will be terminated as it applies to the enforcement by Movant of all of its rights in the subject real property. The Debtors will surrender and abandon all of their rights, title, and interest to Movant. The 14-day stay created by Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. The terms of the stipulation shall be incorporated into the Debtors' Chapter 11 Plan and/or any subsequently filed Amended Chapter 11 Plan. Lastly, the Stipulation will be subject to Bankruptcy Court approval.

DISCUSSION

Federal Rule of Bankruptcy Procedure 4001(d) specifies how a creditor obtains approval of a stipulation and order for relief from the automatic stay to be, in pertinent part,

(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.

(1) Motion; Service.

(A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(i) an agreement to provide adequate protection;

(ii) an agreement to prohibit or condition the use, sale, or lease of property;

(iii) an agreement to modify or terminate the stay provided for in §362;

(iv) an agreement to use cash collateral; or

(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property....

(B) Contents. The Motion shall consist of... a concise statement of the relief requested...that lists, or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement...

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs....

(3) Disposition; Hearing. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

Here, the Motion satisfies the requirements of the Federal Rule of Bankruptcy Procedure 4001(d)(1)-(3). The Motion describes the material provisions of the stipulation in detail in the Motion and provides a copy of the stipulation agreement. Dckt. 143. Based on a review of the stipulation, the court grants the Motion to Approve Stipulation.

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 Stipulation filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the Stipulation of the Parties (Dckt. 143), and good cause appearing,

IT IS ORDERED that the Stipulation (Dckt. 146) is approved and pursuant thereto the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Secured Creditor Bank of America, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 613 Tuolumne Boulevard, Modesto, California.

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

9. [13-91172-E-7](#) RAYMOND SAYAD
BER-1 Stephen C. Ruehmann

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-19-13 [[23](#)]

BANK OF STOCKTON 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 18, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Bank of Stockton seeks relief from the automatic stay with respect to the real property commonly known as 735 E. Main Street, Turlock, California. The moving party has provided the Declaration of Leonard Berg to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Berg Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$2,251.90 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$205,701.84 (including \$112,370.84 secured by movant's first trust deed), as stated in the Berg Declaration, while the value of the property is determined to be \$202,500.00, as stated in Schedules A and D filed by Debtor.

NON-OPPOSITION BY DEBTOR

The Debtor filed non-opposition statement to the Motion for Relief from Automatic Stay.

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

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

The Debtor was granted a discharge on October 1, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

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

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees in the total amount of \$1,000.00 for all matters relating to this Motion.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Bank of Stockton, 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 735 E. Main Street, Turlock, California.

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

No other or additional relief is granted.

10. [13-91285-E-7](#) JOSE LUNA AND MARIA PEREZ MOTION TO CONFIRM TERMINATION
Scott D. Mitchell OR ABSENCE OF STAY
9-30-13 [[13](#)]

NATIONSTAR MORTGAGE, LLC

DISCHARGED 10-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee and Office of the United States Trustee on September 30, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Confirm Termination or Absence of Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The Motion to Confirm Termination or Absence of Stay is denied. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Nationstar Mortgage LLC seeks to confirm the termination or absence of stay from the Chapter 7 petition filed by the Debtor on July 8, 2013. Creditor asserts that Debtors stated on Schedule D an undisputed, secured claim in the amount of \$235,223.00 for real property located at 2030 Ariano Lane, Ceres, California. Trustee Gary Farrar filed a Report of No Distribution on August 8, 2013. The Trustee also indicated his intent to abandon certain assets, including the subject real property. Creditor seeks an ordering confirming the abandonment of the subject real property and the termination of the stay, allowing the Creditor to pursue state court remedies.

Pursuant to 11 U.S.C. § 362(j) the court shall issue an order confirming that the automatic stay has not gone into effect in this case and that no order for the stay to take effect has been entered by the court in this case.

A review of the docket shows that neither the Trustee nor the Debtor have moved to abandon the subject real property from the estate pursuant to 11 U.S.C. § 554. If the Debtor or Trustee have not abandoned the property, it is

still property of the estate (and subject to the automatic stay) until the case closes. 11 U.S.C. § 554(c). This case has not yet been closed.

With the respect of the Trustee's intention to abandon, there is the Trustee's Docket Entry Report of August 8, 2013, stating that he intends to abandon property with a value of \$160,277.00. This Docket Entry states,

"Chapter 7 Trustee's Report of No Distribution. The Section 341 Meeting was concluded on 08/08/13. I, Gary Farrar, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): \$ 160277.00, Assets Exempt: \$ 13326.62, Claims Scheduled: \$ 346883.65, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$ 346883.65. (Farrar, Gary)"

The Debtors list on Schedule A the Ariano Lane property as having a value of \$148,892.00 and personal property on Schedule B having a value of \$24,711.62. Added together, these assets total \$173,603.62.

This Docket Entry is not an abandonment of any property. Rather, it is a statement that the Trustee, as of the time of making the Docket Entry, does not intend to otherwise administer the estate. Absent an order of the court authorizing the abandonment of property, it continues to be property of the estate until the case is closed. 11 U.S.C. § 554(c).

Even though the Debtors received their discharge on October 10, 2013 (Dckt. 21), which terminates the stay as to the Debtors, 11 U.S.C. § 362(c)(2)(C), it does not terminate the stay as to property of the estate. That will occur only when the property is no longer property of the estate, 11 U.S.C. § 362(c)(1). The stay has not been terminated as to this property of the estate.

The Motion is denied.

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 Confirm Termination or Absence of Stay filed by Creditor Aurora Loan Services LLC having been

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

IT IS ORDERED that the Motion to Confirm Termination or Absence of Stay is denied.

11. [08-91491-E-7](#) ERICA/DAVID BURDG MOTION FOR RELIEF FROM
JML-1 Pro Se AUTOMATIC STAY AND/OR MOTION TO
MODIFY THE AUTOMATIC STAY
9-23-13 [[113](#)]
CARLOS GONZALES VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Carlos Gonzales & Ernestina Gonzales, ("Movants") seek relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow them to continue litigation in the Stanislaus County Superior Court of California. The Michael Linn Declaration states that there is a pending litigation known as *Gonzalez v. Burdg, et al.*, No. 617314. The Linn Declaration authenticates the exhibits attached to the motion including the residential purchase agreement, letter to Chicago Title Company, and Assignment of Rights and Novation Agreement and Escrow Cancellation Instructions.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit

involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, Movants have commenced a suit against Debtors and several other parties. The lawsuit is set for trial no later than May 2014. Movant states there is a need to conduct additional discovery to prosecute its joint and several liability claim against Chicago Title Company and Debtors. Movants argue that, if they are able to conduct discovery and pursue the lawsuit, it may be able to reduce or eliminate inchoate claims that are on file and even the adversary proceeding. Additionally, inchoate claims that are subject of the adversary proceeding are also subject of a conditional confidential mediation agreement that was reached in August 29, 2013 and will become final in December 2013. Therefore, relief from automatic stay is necessary for judicial economy.

The court finds that the nature of the civil court case warrants relief from stay for cause.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtors, and each of them, to allow the Movant to continue the civil court case, *Gonzalez v. Burdgo, et al.*, No. 617314.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow Carlos M. Gonzales and Ernestina Gonzales, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the *Gonzalez v. Burdgo, et al.*, No. 617314 case to final judgment.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy

estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

12. [13-91594-E-7](#) JEFFREY/KIMBERLY WOODARD MOTION FOR RELIEF FROM
JHW-1 Scott D. Mitchell AUTOMATIC STAY
9-16-13 [[10](#)]
TD AUTO FINANCIAL, LLC 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Auto Financial LLC seeks relief from the automatic stay with respect to an asset identified as a 2012 Chrysler 200, VIN ending in 2113. The moving party has provided the Declaration of William J. Schober to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schober Declaration states that the Debtor has not made 4 pre-petition payments, with a total of \$2,067.32. 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 \$28,660.82, as stated in the Schober Declaration.

The Schober Declaration also seeks to introduce evidence establishing the value of the asset at \$16,550. Though the *Kelley Blue Book* valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Schober and Spillman to be that she obtained the *Kelley Blue Book* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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

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

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Auto Financial LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Chrysler 200, VIN ending in 2113 and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.