UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 16, 2014 at 1:30 p.m.

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1. 08-24727-E-13 JAE LEE AND KI CHUNG
14-2272
LEE ET AL V. HFC ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-16-14 [1]

Plaintiff's Atty: Mark A. Wolff
Defendant's Atty: Austin Beardley

Adv. Filed: 9/16/14
Answer: 10/31/14

Nature of Action:
Declaratory judgment
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:

Continued from 11/12/14 to allow the parties to document their settlement for entry of judgment.

DECEMBER 16, 2014 STATUS CONFERENCE

As of the court's December 14, 2014 review of the Docket, no settlement documents were filed by the parties.

2. 11-27845-E-11 IVAN/MARETTA LEE
14-2060
LEE ET AL V. SELECT PORTFOLIO SERVICING, INC. ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-20-14 [1]

Final Ruling: No appearance at the December 16, 2014 Status Conference is required.

Plaintiff's Atty: Raymond E. Willis
Defendant's Atty:
Sanford Shatz [Select Portfolio Servicing, Inc.]
Adam N. Barasch [Bank of America, N.A.]

Adv. Filed: 2/20/14
Answer: none

Nature of Action:
Injunctive relief - other
Declaratory judgment

The Status Conference is continued to 2:30 p.m. on February 18, 2015.

DECEMBER 16, 2014 STATUS CONFERENCE

The court has approved the settlements by which all issues in this Adversary Proceeding have been resolved. The court continues the Status Conference as a follow up date to insure that all of the proper dismissals have been filed.

Notes:

Continued from 11/12/14. On or before 11/26/14, Defendant to file and serve a supplemental status conference report. On or before 12/9/14, Plaintiff-Debtor shall file and serve a response, if any.

[REW-1] Ex Parte Application for Order Approving Stipulation of Plaintiffs and Bank of America Regarding Loan Modification Agreement Approved by the Court by Order Filed October 26, 2013 filed 11/25/14 [Dckt 35]

Select Portfolio Servicing, Inc.'s Supplemental Status Conference Statement filed 11/26/14 [Dckt 38]

Plaintiffs' Response to Select Portfolio Servicing, Inc.'s Supplemental Status Conference Statement filed 12/8/14 [Dckt 39]

3. 13-21878-E-7 THOMAS EATON
14-2106
RICE V. EATON

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-9-14 [15]

Final Ruling: No appearance at the December 16, 2014 Status Conference is required.

Plaintiff's Atty: Pro Se
Defendant's Atty: David Foyil

Adv. Filed: 4/16/14
Summons Reissued: 4/30/14
Answer: 7/3/14

Amd Cmplt Filed: 9/9/14
Reissued Summons: 9/11/14
Answer: 10/8/14

Nature of Action:
Dischargeability - domestic support
Recovery of money/property - preference
Objection/revocation of discharge
Validity, priority or extent of lien or other interest in property

The Status Conference is continued to 10:30 a.m. on February 5, 2015 to be heard in conjunction with the Motion to Dismiss.

Notes:

Continued from 11/18/14 to be heard in conjunction with the motion to strike.

SUMMARY OF COMPLAINT

The First Amended Complaint seeks a determination that the debt owed to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(4). The Second Cause of Action seeks to have the Defendant-Debtors Chapter 7 Discharge revoked based on: (1) Defendant-Debtor concealing $4,800.00 in a bank account from the Trustee; (2) Defendant-Debtor failing to disclose the existence of bank accounts held in his name and his daughters name; (3) $131,000 of monies held for Defendant-Debtor in his family law attorneys trust account; (4) failure to disclose to the Chapter 7 Trustee 12
other accounts of the Defendant-Debtor; (5) Defendant-Debtor materially understating his annual income to be $233,772 when it is $727,162; (6) Defendant-Debtor understating his taxes; (7) Defendant-Debtor not accurately stating the value of a whole life insurance policy which he has paid into $2,500 a month; (8) Defendant-Debtor materially overstating his monthly health insurance expense to be $1,288.00, when he has previously stated it is $350 in other financial statements; and (9) Defendant-Debtor has provided an incorrect copy of a tax return to the Trustee and has failed to provide the correct amended return. Further, the discharge should be revoked because of Defendant-Debtors failure to disclose the support obligation to Plaintiff, failed to truthfully and accurately state his income and expenses, and failed

to explain the loss of assets.

SUMMARY OF ANSWER

The Answer to the First Amended Complaint either admits the allegations (federal court jurisdiction, core proceeding) or fails to deny the allegations (stating that Defendant can "neither admit nor deny the allegations"). The Defendant-Debtor then included a text book recitation of affirmative defenses which provided no specific allegations as they relate to this Adversary Proceeding. The Defendant-Debtor did not oppose the Motion to Strike the 20 affirmative defenses, and the court granted Plaintiff's motion to strike each of the affirmative defenses. Scheduling Order required Opposition, if any, to be filed and served on or before December 5, 2014; Dckt. 36.

FINAL BANKRUPTCY COURT JUDGMENT

The First Amended Complaint states that Plaintiff seeks a determination of nondischargeability under 11 U.S.C. § 523(a)(4) and revoke the Defendant-Debtors discharge pursuant to 11 U.S.C. § 727(d)(1). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). This is an action to determine the dischargeability of a debt and revoke the Defendant-Debtor's discharge, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint introduction and 4 Dckt. 1. In his answer, Thomas Eaton, the Defendant-Debtor admits the allegations of jurisdiction and that this is a core matter. Answer Introduction (the court construing the allegation that this is a core proceeding to also be an allegation or admission that the underlying jurisdiction for this bankruptcy court exists pursuant to 28 U.S.C. §§ 1334 and 157, and the reference to this bankruptcy court by the United States District Court for the Eastern District of California.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. The First Amended Complaint states that Plaintiff seeks a determination of nondischargeability under 11 U.S.C. § 523(a)(4) and revoke the Defendant-Debtors discharge pursuant to 11 U.S.C. § 727(d)(1). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). This is an action to determine the dischargeability of a debt and revoke the Defendant-Debtor's discharge, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint introduction and 4 Dckt. 1. In his answer, Thomas Eaton, the Defendant-Debtor admits the allegations of jurisdiction and that this is a core matter. Answer Introduction (the court construing the allegation that this is a core proceeding to also be an allegation or admission that the underlying jurisdiction for this bankruptcy court exists pursuant to 28 U.S.C. §§ 1334 and 157, and the reference to this bankruptcy court by the United States District Court for the Eastern District of California. This is a core matter for which the bankruptcy judge issues all orders and the final judgment.

b. Initial Disclosures shall be made on or before -----, 2014.

c. Expert Witnesses shall be disclosed on or before ----------, 2015, and Expert Witness Reports, if any, shall be exchanged on or before ----------, 2015.

d. Discovery closes, including the hearing of all discovery motions, on ----------, 2015.

e. Dispositive Motions shall be heard before ----------, 2015.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ------- p.m. on ----------, 2015.

4. 13-21878-E-7 THOMAS EATON **CONTINUED MOTION TO STRIKE**
14-2106 LR-2 **10-28-14 [30]**
RICE V. EATON

Final Ruling: No appearance at the December 16, 2014 hearing is required.

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

Correct Notice Provided. No Proof of Service for this Motion and supporting pleadings appears on the Docket. Even if it was served on the day the Motion was filed, October 28, 2014, only 21 days notice was initially provided. 28 days' notice is required. The hearing was continued and all parties afforded sufficient time for supplemental briefing. Scheduling Order, Dckt. 36.

The failure of the respondent and other parties in interest to file written opposition as required by the court pursuant to the Scheduling Order 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.

The Motion to Strike is continued to 10:30 a.m. on February 5, 2015 to be heard in conjunction with the Motion to Dismiss.

Below is the tentative the court prepared prior to Lorain Rice, the pro se Plaintiff, filing her Motion to Dismiss. The court continues the hearing on the instant Motion to 10:3 a.m. on February 5, 2015 to be hearing in conjunction with the Motion to Dismiss. However, the court provides the tentative on the instant Motion for the parties.

Lorain Rice, the pro se Plaintiff, has filed this Motion to Strike the affirmative defenses stated in the answer filed by Thomas Eaton, the Defendant-Debtor. Dckt. 30. The Notice of Hearing merely states that on November 6, 2014 (a typographic error in the body of the Notice) Plaintiff will move for the court to strike the affirmative defenses. Actually, the Plaintiff has already

so moved in the Motion itself.

The first challenge to the Motion is that it was not set on the required 28 days notice, but only 20 days. Second, the Notice does not state that written opposition is required fourteen days before the hearing. Local Bankruptcy Rule 9014-1(a), (f)(1), (f)(2)(A). Additionally, the motion is to be filed as a separate pleading from the points and authorities. Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents.

This Adversary Proceeding is one in which Plaintiff seeks to have a determination that the child support obligations upon which her claim is based is nondischargeable and that the Defendant-Debtor's discharge should be revoked. This Adversary Proceeding appears to have all of the earmarks of contentious, lay waste to the opposition, family law state court litigation. Such proceeds require the court to be ever vigilant over the Adversary Proceeding. FN.1.

FN.1. War of the Roses is a 1998 Moving directed by Danny DeVito which stars Michael Douglas, Kathleen Turner, and Danny DeVito. The storyline for the movie relates to the unrelenting campaign spouses wage against the other in a divorce battle over who will be victorious in retaining their home, and successfully punishing the other. One description of the plot line is,

> "In an effort to win the house, Oliver offers his wife a considerable sum of cash in exchange for the house, but Barbara still refuses to settle. Realizing that his client is in a no-win situation, Gavin advises Oliver to leave Barbara and start a new life for himself. In return, Oliver fires Gavin and takes matters into his own hands. At this point, Oliver and Barbara begin spiting and humiliating each other in every way possible, even in front of friends and potential business clients. Both begin destroying the house furnishings; the stove, furniture, Staffordshire ornaments, and plates. Another fight results in a battle where Barbara nearly kills Oliver by using her monster truck to ram Oliver's antique automobile. In addition, Oliver accidentally runs over Barbara's cat in the driveway with his car. When Barbara finds out, she retaliates by trapping him inside his in-house sauna, where he nearly succumbs to heatstroke and dehydration."

Www.Wikipedia.org and www.imbd.com.

Such battles are not permitted to be transported to federal court.

Defendant-Debtor's Answer to the First Amended Complaint states twenty affirmative defenses. Dckt. 28. For the body of the Answer, for most of his responses Defendant Debtor merely states "Defendant can neither admit nor deny the allegation set forth in paragraph 'x' of the complaint." Defendant-Debtor makes this "I cannot (or will not) admit or deny" statement for 26 of the 30 paragraphs of the First Amended Complaint.

Federal Rule of Civil Procedure 8(b)(1)-(6) and Federal Rule of Bankruptcy Procedure 7008 require that a defendant either admit or deny the allegations in the Complaint. "A denial must fairly respond to the substance of the

allegation." Fed. R. Civ. P. 8(b)(2). While a defendant may deny an allegation based on a lack of information and belief, must so expressly state that the defendant lacks knowledge or information to form a belief about the truthfulness of the allegation and thereon denies the allegation. Fed. R. Civ. P. 8(b)(5).

The Defendant-Debtor has failed to deny or admit at least 26 of the allegations in the First Amended Complaint, stating that he can "neither admit or deny the allegation" of the specified paragraphs. Failure to deny an allegation is deemed to be an admission of the allegation. Fed. R. Civ. P. 8(b)(6); See 8 Moore's Federal Practice Civil § 8.07.

AFFIRMATIVE DEFENSES STATED

The Defendant-Debtor asserts 20 affirmative defenses in his Answer. Each affirmative defense states only the legal principal upon which the affirmative defense is based (such as "fails to state a claim sufficient to constitute a cause of action" and "Plaintiff failed to mitigate damages." There are no affirmative allegations in the general allegations for the Answer.

Federal Rule of Civil Procedure 8(c) requires a defendant to state any affirmative defenses in the answer. The lower courts differ on whether affirmative defenses must be comply with the "plausibility" standard required for the Complaint enunciated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007). In *Barnes v. AT&T Pension Benefit Plan*, 718 F.Supp. 2d 1167 (N.D. Cal. 2010), the court concluded that the general pleading requirements of Federal Rule of Civil Procedure 8(a) apply to affirmative defenses and a plausible defense must be stated, not merely a legal conclusion or principal. Other courts have held that stating a plausible affirmative defense is not required, but only require only that it give fair notice of the defense. *Baroness Small Estates, Inc. V. BJ's Restaurants, Inc.*, 2011 U.S. Dist. LEXIS 86917 (C.D. Cal. 2011).

NOVEMBER 18, 2014 HEARING

At the November 18, 2014 hearing, the court continued the hearing to 1:30 p.m. on December 16, 2014. The court ordered that opposition to the Motion shall be filed and served on or before December 5, 2014, and Response of Plaintiff, if any, shall be filed and served on or before December 11, 2014.

No supplemental pleadings have been filed by either party.

MOTION TO STRIKE STANDARD

Federal Rule of Civil Procedure 12(f), as incorporated by Federal Rule of Bankruptcy Procedure 7012, provides that the court may strike from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act on its own or on a motion made by a party. *Id.* The purposes of a Rule 12(f) motion is to avoid spending time and money litigating spurious issues. *Barnes v. AT & T Pension Ben. Plan Nonbargained Program*, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010)(citing *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993)). A matter is immaterial if it has no essential or important relationship to the claim for relief pleaded. *See Fogerty*, 984 F.2d at 1527. A matter is impertinent if it does not pertain and is not necessary to the issues in question in the case.

See id.

Rule 12(f) motion provides the means to excise improper materials from pleadings, such motions are generally disfavored because the motions may be used as delaying tactics and because of the strong policy favoring resolution on the merits. *See Stanbury Law Firm v. I.R.S.*, 221 F.3d 1059, 1063 (8th Cir.2000). Accordingly, once an affirmative defense has been properly pled, a motion to strike which alleges the legal insufficiency of an affirmative defense will not be granted "unless it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense." *See William Z. Salcer, Panfeld, Edelman v. Envicon Equities Corp.*, 744 F.2d 935, 939 (2d Cir.1984) (internal citations omitted).

DISCUSSION

Plaintiff asserts in the Motion to Strike the 20 affirmative defenses are stated to increase the discovery burden and force Plaintiff to unearth (or draft out of) the grounds upon which such legal conclusions are asserted by Defendant-Debtor. This burden is asserted to have been imposed to increase the cost and expense for the Plaintiff and not based on any bona fide, good faith belief in the affirmative defenses.

The asserted affirmative defenses appear to be moot in light of Defendant-Debtor's failure to admit or deny the allegations in the First Amended Complaint, other than the First Affirmative Defense that the First Amended Complaint fails to state a claim for which judgment may be granted. The court considers each of the Affirmative Defenses and in light of Defendant-Debtor's conduct in this case and pleading strategy in the Answer to neither admit or deny the specific allegations in the First Amended Complaint.

While there remains a split as to whether affirmative defense must meet Fed. R. Civ. P. 8(a) pleading standard and whether a "plausible defense" must be stated, in the instant case, the failure of the Defendant-Debtor to admit or deny the allegations in the complaint with the legal conclusions stated in each of the 20 affirmative defenses support the court's conclusion that Defendant-Debtor has failed to meet the pleading requirements for affirmative defenses. The Defendant-Debtor has not stated any factual basis to support any of the defenses nor admitted to any facts that may support any of the 20 affirmative defenses. Even giving the Defendant-Debtor the benefit of the doubt as to the First Affirmative Defense that the First Amended Complaint fails to state a claim for which judgment may be granted, the Defendant-Debtor provides no factual support or inclination to support that conclusion. It appears to this court that under the Fed. R. Civ. P. 12(f) standard, the boiler-plate, unsupported, conclusory affirmative defenses asserted in conjunction with the Defendant-Debtor's failure to follow Federal Rule of Civil Procedure 8(b)(1)-(6) and Federal Rule of Bankruptcy Procedure 7008 falls within the "insufficient defense" category justifying the striking of affirmative defenses.

Additionally, the Defendant-Debtor's failure to file any opposition by the December 5, 2014 deadline is further evidence of Defendant-Debtor's lack of commitment to the defense of the case, or at least a belief in the validity of the laundry list of affirmative defenses.

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 Strike Affirmative Defenses filed by Lorain Rice, Plaintiff, 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 Strike Affirmative Defenses is continued to 10:30 a.m. on February 5, 2015 to be heard in conjunction with the Motion to Dismiss.

5. 10-22769-E-13 GLENN LEW AND ROSA RIVERA MOTION FOR RELIEF FROM STAY
APN-1 Mikalah Liviakis 6-30-10 [85]
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 1, 2014. By the court's calculation, 15 days' notice was provided. Pursuant to the court's Order (Dckt. 112), 10 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") sought relief from the automatic stay with respect to the real property commonly known as 615 34th Street, Sacramento, California on June 30 2010. Dckt. 85. The moving party provided the Declaration of Mike Kalbach to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Kalbach Declaration states that the Debtors failed to make three post-petition payments, with a total of $1,929.32 in post-petition payments past due. Debtor's untimely reply authenticates a receipt from Wells Fargo showing that Debtor made a $3,251.67 payment on July 19, 2010.

The Movant alleges that the grounds for the Motion is that the prevailing contractual agreement and Note are in default in that Movant is without adequate protection because Debtor is delinquent in the payments to Movant and, therefore, Debtor has failed to provide Movant with the adequate protection and/or compensation it is entitled to receive.

OCTOBER 19, 2010 ORDER

Pursuant to a stipulation, the court issued an Order regarding Wells Fargo Bank, N.A. Motion for Relief from the Automatic Stay. Dckt. 112. The Order, in relevant part, stated:

> **IT IS HEREBY ORDERED** that Debtors, GLENN H. LEW and ROSA RIVERA (hereinafter collectively referred to as "the Debtor") shall remain current in their monthly payment to Secured Creditor, WELLS FARGO BANK, N.A. (Hereinafter referred to as "Secured Creditor") until their account with Secured Creditor has been paid in full regarding real property located at 615 34th Street, Sacramento, CA 95816.
>
> **IT IS HEREBY FURTHER ORDERED** that should Debtors default under any of the terms and conditions contained herein, that Secured Creditor's attorney of record herein shall give Debtors and their attorneys of record herein written notice of said default. . .and shall contain a date (said to be fifteen (15) days after the postmarked date of notice) before which said default must be cured.
>
> Should Debtors fail to cure said default within the time specified, **IT IS HEREBY FURTHER ORDERED** that Secured Creditor shall restore this Motion to the Court's calendar upon ten (10) days' notice to all parties-in-interest hereunder.

NOTICE OF RESTORATION AND JACKSON DECLARATION

On December 1, 2014, the Movant filed a Notice of Restoration of the Motion, setting the hearing for December 16, 2014 at 1:30 p.m. Dckt. 161.

Along with the Notice of Restoration, the Movant filed the Declaration of Marla Jackson. Dckt. 162.

DISCUSSION

The Jackson Declaration states that on September 15, 2014, attorney Austin Nagel sent a letter to Debtors and Debtors' attorney of record herein noticing them of Debtors' default and specifying the fifteen day cure period. Dckt. 163, Exhibit D.

The Jackson Declaration states that the Debtors have failed to cure the default. Furthermore, the Jackson Declaration states that the Debt Agreement has reached maturity. As such, Jackson Declaration states that Debtors are delinquent for the matured balance of $186,732.37.

As to the Property, the confirmed plan has Holden County Bank as a Class 2 secured claim in the amount of $5,784.00 remaining to be paid. The

confirmed plan lists both of Movant's secured claim as a class 4 claim, with the first having 1,233 monthly contract installment and the second have 672 to be paid directly from the Debtor

From the evidence provided to the court and the information provided in Debtor's confirmed plan, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $392,516.37 (including $186,732.37 secured by Movant's second deed of trust), as stated in the Jackson Declaration and Schedule D filed by Glenn Holman and Rosa Rivera ("Debtor"). The value of the Property is determined to be $400,000.00, as stated in Schedules A and D filed by Debtor.

At this point, there is no effective equity cushion for this Creditor with a junior lien. The Debtors have weathered what will be five years of a bankruptcy plan come February 2015 (just two months from now). Under the Confirmed Modified Plan, Dckt. 146, Debtor is required to make the payments to Wells Fargo Bank, N.A. directly as Class 4 payments, not through the Trustee.

Creditor states that the "default" on the payments has occurred because the loan is due in full, having matured on February 20, 2014.

With two months left for any plan in this bankruptcy case, there is no multi-year plan to pay this amount that has come due. Shortly, Debtors will be out of the bankruptcy case.

Cause exists to terminate the automatic stay for the few remaining months in this case. Debtors can, and will have to, work for a refinance or sale of the property. Creditor's interests are not adequately protected in this case.

Additionally, in light of the upcoming holidays and the fact that the plan is set to be completed in February 2015, 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 615 34th Street, Sacramento, 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.