

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

December 19, 2013 at 10:00 a.m.

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1. [13-92013-E-7](#) HARI PAL MOTION TO CONFIRM TERMINATION
RDW-1 Michael H. Luu OR ABSENCE OF STAY
11-14-13 [[13](#)]
CAM MORTGAGE TRUST VS.
CASE DISMISSED 11/26/13

**APPEARANCE OF REILLY D. WILKINSON, ATTORNEY FOR
MOVANT
REQUIRED FOR DECEMBER 19, 2013 HEARING**

Telephonic Appearance Permitted

Tentative Ruling: The Motion is denied.

Cam Mortgage Trust 2013-1 ("Movant") filed the present motion seeking an order pursuant to 11 U.S.C. § 362(j) for an order confirming that no automatic stay went into effect in this case as provided in 11 U.S.C. § 362(c)(4). Movant states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief requested in the instant contested matter:

- A. Movant applies for an order providing that the automatic stay of 11 U.S.C. § 362 has been "terminated." [This portion of the Motion appears to presume that the automatic stay was in effect and terminated by some post-petition event.]
- B. The Motion is submitted in accordance with 11 U.S.C. §§ 362(c)(4)(A)(I) and 362(c)(4)(A)(ii).
- C. The Debtor filed two bankruptcy cases, Nos. 13-91487 and 13-91846, both of which were dismissed within the one-year period preceding the commencement of the instant bankruptcy case by the Debtor. The two prior cases were dismissed due to the Debtor's failure to file the basic bankruptcy documents (schedules, statement of financial affairs).
- D. The Debtor has not filed a motion for an order "extending" the automatic stay in this case. [Again, Movant appears to

presume that there was an automatic stay to be "extended" in this case.]

- E. Movant requests "relief from the stay" in accordance with 11 U.S.C. §§ 362(c)(4)(A)(I), (ii) and 362(j).
- F. 11 U.S.C. § 362(c)(4)(A)(I) provides that no automatic stay shall go into effect when there have been two prior bankruptcy cases were pending and dismissed in the one-year period prior to the commencement of the then current case.
- G. Movant seeks "In Rem" relief [which is not specified] to avoid any future bankruptcy filing affecting the property and preventing Lender from moving forward with the foreclosure.

Motion, Dckt. 13.

Movant has not provided the court with a points and authorities in support of the Motion. While there is one case cite and several statutory cites in the Motion, the court recognizes those as being part of the basic pleading and not an improper attempt to combine a points and authorities with a motion in violation of Local Bankruptcy Rule 9004-1 and the Revised Guidelines for the Preparation of Documents in this District.

A declaration is provided in support of this Motion. As Movant and counsel know, testimony provided must be based on personal knowledge of the declarant/witness, except as permitted for expert witnesses. Fed. R. Evid. 601, 602, 701, 702. The declaration is provided by the attorney who is representing Movant in this Contested Matter. This attorney (who the California State Bar records show was first admitted to practice in 2007), states under penalty of perjury,

- A. Movant is the current payee on the Note secured by property of the Debtor.
- B. The Note and Deed of Trust were initially assigned by Movant by the original lender.
- C. "Lender" (which is not a term defined in the declaration to be Movant) is the current holder of the Note.
- D. The Debtor has filed three bankruptcy cases which have been dismissed. Counsel then recites facts about each of the cases.
- E. Lender (not Movant) is seeking "In Rem" relief to avoid future bankruptcy filings.
- F. Reilly D. Wilkinson, counsel for movant further states,

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on NOVEMBER 14, 2013 at SAN RAFAEL, CA."

December 19, 2013 at 10:00 a.m.

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Declaration, Dckt. 15.

Fundamental Standing Defect

The Declaration of Counsel raises serious questions in connection with the Motion and conduct of counsel. First, Counsel states under penalty of perjury that "Lender," someone other than his client (defined term "Secured Creditor") is the person who is the holder of the note. Nothing indicates why or how Movant is before this court or has standing to seek such "In Rem" relief.

A "Person entitled to enforce" an instrument means: (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 3309 or 3418(d). Cal. Com. Code § 3301 (2010); *In re Lee*, 408 B.R. 893 (Bankr. C.D. Cal. 2009), *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008).

A holder of a note can enforce that note, even if it is in wrongful possession of the note (i.e., they found or stole the note), when that note has been endorsed in blank or to bearer. Cal. Com. Code §§ 3205(b), 3301. Also, a person may be a holder of a note (and so have standing to do things like bringing a relief from stay motion) even if that person already sold the loan to someone else. *In re Hwang*, 438 B.R. 661 (C.D. Cal. 2010); Cal. Com. Code § 1201(b) (21).

In 2011, the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034 (9th Cir. 2011). The court addressed the general proposition that notes and deeds of trust remain together as a matter of law, with it being the right of the note owner to exercise the power under the deed of trust.

It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. Therefore, if one party receives the note and another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred. *Adler v. Sargent*, 109 Cal. 42, 49-50 (Cal. 1895).

However, Counsel's testimony provides the court with no evidence that Movant has any interest in, or right to enforce, the Note and the Deed of Trust securing the Note. To the contrary, it provides a basis for the court to conclude that Movant fails to satisfy the basic minimum standing requirements for person seeking relief from a federal court.

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and

(b). Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy as required by the United States Constitution, Article III, Section 2, Clause 1. Failure to meet this requirement puts a person outside of the jurisdiction of the federal courts. *Southern Pacific Company v. McAdoo*, 82 F.2d 121, 121-122 (9th Cir. 1936).

Based on counsel's testimony, it appears that Movant is an officious intermeddler seeking to have the adjudication of someone else's rights.

Request for Relief Not Available

Movant seeks an order for "In Rem Relief." While such may be an internal code for seeking relief in Counsel's law firm, there is nothing in the Motion to indicate what "In Rem Relief" is being requested except the phrase, "to avoid any future filings affecting the Property and preventing Lender from moving forward with the foreclosure." Declaration ¶ 12, Dckt. 15; Motion 2:18-19, Dckt. 13. If this means the issuance of an injunction barring the filing of a future case, then such relief must be sought through an adversary proceeding. Fed. R. Bank. P. 7001. If the Movant seeks an order by which the court "avoids" (such as it would a preference or fraudulent conveyance) of a future bankruptcy filing by the Debtor, then no indication is given as to the legal basis for such relief.

Movant correctly states that pursuant to 11 U.S.C. § 362(c)(4)(A)(I) the automatic stay did not go into effect in this case, the Debtor having had dismissed two prior cases which had been pending in the one-year period prior to the commencement of this case.

"11 U.S.C. § 362(4)(A)(I)

(I) if a single or joint case is filed by or against a debtor who is an individual under this title, and **if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707 (b), **the stay under subsection (a) shall not go into effect upon the filing of the later case."**

11 U.S.C. § 362(a)(4)(A)(I) [emphasis added], the 11 U.S.C. § 707(b) provisions not being applicable to the instant case. On the request of a party in interest, the court will issue an order confirming that there was no stay in effect by virtue of this paragraph. 11 U.S.C. § 362(c)(4)(A)(ii), ("(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;....")

While the court could issue an order granting such relief to a party in interest, the court is unsure why Movant, who is not the holder of the note and is not the person to whom the debt is owed (see Declaration of Counsel testifying that "Lender," not Movant/"Secured Creditor" (defined term for Movant)) is the actual "creditor" as that term is defined by the Bankruptcy Code. 11 U.S.C. § 101(10), (5).

Further, the Motion requests that the court issue an order that the automatic stay has been terminated. 11 U.S.C. § 362(j). However, as clearly shown by Movant, there was not stay that ever when into effect and there was not stay which was "terminated." Thus, for the court to issue an order stating that an automatic stay was terminated would be a misstatement of the law of this case. FN.1.

FN.1. The Merriam Webster Dictionary defines "terminate" to include,

- " : to end in a particular way or at a particular place
- : to cause (something) to end
- : to take a job away from (someone)."

The Dictionary further defines the phrase, "in effect" as,

- "8: the quality or state of being operative : operation
<the law goes into effect next week>
- : in substance : virtually <the ... committee agreed to what was in effect a reduction in the hourly wage - "

<http://www.merriam-webster.com/dictionary/in%20effect.>

Congress has provided that no automatic stay went into effect in this bankruptcy case. There is nothing for the court to state as being "terminated." To do so would mislead other parties in interest into believing that there was a stay and that they have may have violated such (non-existent) stay.

Possibly Movant, if it has a case or controversy with the Debtor, thought about seeking relief under the statutory grounds provided in 11 U.S.C. § 362(d)(4). Congress provides in this section that the court (by Motion, Fed. R. Bank. P. 4001) may issue an order determining that for a two year period the automatic stay which comes into effect in a subsequent bankruptcy case shall not be binding with respect to specific property identified in the order. Such order may be issued upon a finding that the bankruptcy petition at issue was part of a scheme to delay, hinder, or defraud creditors (as defined in the statute). However, Movant does not seek relief under this section, specifically stating that relief is sought pursuant to 11 U.S.C. § 362(c)(4)(I) and (ii). Congress having so expressly provided, there is no free-ranging "this is how a feel today" authority for a judge to grant non-specific "In Rem Relief" (apparently sought, without citation to any legal authority, as part of the general equitable powers of the court).

Due to the court's concern over Counsel's testimony (including statements not based on personal knowledge and that Movant does not have standing to be before the court), his appearance at the December 19, 2013 hearing on this Motion is required. Based on the responses of counsel, the court will determine if further corrective action by this court is

necessary, and whether this conduct should be referred to the United States District Court.

The Motion is denied, without prejudice as to any relief which may be sought by separate motion, for which there is competent, admissible evidence which is in compliance with the Federal Rules of Evidence, if any, pursuant to 11 U.S.C. § 362(d)(4).

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 CAM Mortgage Trust 2013-1 ("Movant") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

The denial of this Motion is without prejudice to the real party in interest who meets the minimal Constitutional requirements for standing (including Movant), to seek an order from this court pursuant to 11 U.S.C. § 362(d)(4).

2. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED MOTION FOR RELIEF
LW-2 George C. Hollister FROM AUTOMATIC STAY
10-30-13 [[270](#)]

THE GUARANTEE COMPANY OF
NORTH AMERICA, USA VS.

CONT. FROM 11-21-13

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, Chapter 7 Trustee, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from 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.

The court's decision is to grant the Motion for Relief from 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:

PRIOR HEARING

The Guarantee Company of North America ("Movant") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2) to complete one of Debtor's projects and to apply the remaining contract balance to satisfy the Debtor's contractual obligations.

Debtor entered into a construction contract with the City of San Jose to construct a fire station. Movant, the surety, issues a performance bond in the sum of \$4,008,500 on behalf of the Debtor naming the City as the obligee. Under the terms of the bond, the Debtor and Movant bound themselves, jointly and severally, to the City to truly and faithfully perform all duties, undertakings, covenants, terms, and conditions of the contract. The parties entered into a Indemnity Agreement, in which the Debtor agreed to indemnify the surety and hold it harmless from and against all claims, damages, losses, costs, and expenses of every nature which the surety may sustain, incur, or become liable for by reason of having executed the bond. In addition, the Debtor expressly assigned all bonded contract proceeds to the surety as collateral security.

The City asserts that the Debtor has defaulted on the project and acknowledges a contract balance on the project of \$605,959.04, but alleges an offset of \$944,566.00 for the cost of correcting allegedly non-conforming work, liquidated damages of \$765,000.00, and claims from subcontractors and suppliers totaling \$788,383.43. Based on the City's allegations and the obligations of the Surety under the Bond, the Surety's potential loss exceeds \$2,000,000.

Movant requests relief from the automatic stay to enable it to enter into an agreement with the City for completion of the project and/or to undertake other efforts to complete the project and correct any non-conforming work. Movant also seeks relief from the automatic stay to apply the contract balance to the cost of completing and/or correcting the Debtor's work, paying subcontractors and suppliers, and satisfying liquidated damages.

Movant argues that under 11 U.S.C. § 362(d)(2) the contract balance is not necessary to an effective reorganization, as this is a Chapter 7 liquidation. Movant argues the Debtor lacks equity in the contract balance because the doctrine of equitable subrogation as set forth in *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 136-37 (1962) allows the surety to stand in the position of the City and off-set the contract balance against damages incurred by the Debtor under the contract. Additionally, Movant states the Debtor expressly pledged the contract balance to the Surety in the Indemnity Agreement and, hence, it never became property of the estate.

CONTINUANCE

On November 20, 2013, Movant requested that the hearing be continued due to unavailability of counsel. This motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which no written opposition was required. The court grants Movant's request of the continue the (f)(2) hearing on the Motion to December 19, 2013.

No written opposition has been filed by the parties.

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). 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 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 The Guarantee Company of North America, USA, and its agents, representatives and successors, and all other creditors having lien rights against the property, to complete the City of San Jose Fire Station No. 36 and collect and apply the contract balance of \$605,959.04 to the obligations of the Debtor and under the Construction Contract dated January 26, 2010, and the General Agreement of Indemnity dated January 26, 2007.

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 The Guarantee Company of North America, USA, its agents, representatives, and successors, to complete the City of San Jose Fire Station No. 36 and collect and apply the contract balance of \$605,959.04 to the obligations of the Debtor and under the Construction Contract dated January 26, 2010, and the General Agreement of Indemnity dated January 26, 2007.

No other or additional relief is granted.

3. [13-91720-E-7](#) IDA ORTEGA
TJP-1 Axel B. Gomez

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-12-13 [[12](#)]

CALIFORNIA REPUBLIC BANK 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 November 12, 2013. By the court's calculation, 37 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.

California Republic Bank seeks relief from the automatic stay with respect to an asset identified as a 2011 Mercury Grand Marquis, VIN ending in 1089. The moving party has provided the Declaration of Jacquelyn Dobbins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dobbins Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$1,409.98 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 \$17,023.56, as stated in the Dobbins Declaration, while the value of the asset is determined to be \$15,000.00, as stated in Schedules B 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 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 California Republic Bank, 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 California Republic Bank, 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 2011 Mercury Grand Marquis, 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.

4. [13-91821-E-7](#) **MICHAEL HAMILTON**
RDW-1 **David C. Johnston**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-31-13 [[15](#)]**

WESTAMERICA BANK 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 31, 2013. By the court's calculation, 49 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:

WestAmerica Bank, successor in interest to County Bank, seeks relief from the automatic stay with respect to an asset identified as business assets of the Debtor's business, accounts receivable and general intangibles of the business (including without limiting the extend of such personal property collateral, all personal property collateral in possession of or due the business on the date of the filing of Debtor's bankruptcy petition, on March 11, 2011 secured by UCC-1 Financing Statement with the California Secretary of State which encumbers all Inventory, chattel paper, accounts, equipment, instruments and general intangibles for the business located at 4641 Spyres Way #3, Modesto, California.

The moving party has provided the Declaration of Christie Marriott to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Marriott Declaration states that the Debtor has not made one post-petition payment, with a total of \$19,991.16 in post-petition payments

past due. Ms. Marriott also testifies that Debtor filed a prior petition under Chapter 7 under his business, Hamilton Dental Designs, Inc., in which Debtor and Movant entered into a stipulation, which granted a post-petition replacement lien on all assets of the Debtor and the business. Movant states that it has performed every act required under the terms of the promissory note, commercial security agreement, business loan agreement and UCC-1 financing statement.

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).

The court shall issue a minute order terminating and vacating the automatic stay to allow WestAmerica Bank, successor in interest to County Bank, 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's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including the provisions of the note, deed of trust and any other contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what "non-bankruptcy law" is being asserted as the basis for attorney fees. Though the motion makes reference to the deed of trust, the movant was unable to direct the court to any specific provision. As such, the request for attorney fees is denied.

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 WestAmerica Bank,

successor in interest to County Bank, 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 business assets of the Debtor's business, accounts receivable and general intangibles of the business (including without limiting the extend of such personal property collateral, all personal property collateral in possession of or due the business on the date of the filing of Debtor's bankruptcy petition, on March 11, 2011 secured by UCC-1 Financing Statement with the California Secretary of State which encumbers all Inventory, chattel paper, accounts, equipment, instruments and general intangibles for the business located at 4641 Spyles Way #3, Modesto, California, 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.

5. [13-91924-E-7](#) **CHARLES MCWHORTER** **MOTION FOR RELIEF FROM**
ADR-1 **Pro Se** **AUTOMATIC STAY**
KENNETH PANG VS. **10-31-13 [12]**

Local Rule 9014-1(f)(1) Motion - 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 October 31, 2013. By the court's calculation, 49 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)(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 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:

Kenneth Pang seeks relief from the automatic stay with respect to the real property commonly known as 1117 Van Gogh Lane, Patterson, California. The moving party has provided the Declaration of Lisa Sanchez to introduce evidence which establishes that the Debtor is not the owner of the property, but rented the real property from Movant pursuant to a written rental agreement. Movant asserts the lawful right to live at the subject real property was terminated pre-petition by the service of a Three Day Notice to Quit or Pay Rent after which Debtor did not pay any money and did not quit possession of the real property. Debtor is a tenant at sufferance, and movant commenced an unlawful detainer action.

DEBTOR'S OPPOSITION

Debtor filed opposition to the motion, stating he filed his Chapter 7 petition in good faith. Debtor concedes that he is behind on rent and communicated with Movant. Debtor also cites health issues and requests more time to get back on track.

DISCUSSION

Although the court is sympathetic to the Debtor's situation, Congress has provided specific rules to allow Creditors to obtain relief from stay under certain circumstances.

Movant has provided an authenticated copy of the Three Day Notice to Pay Rent or Quit. No copy of the rental agreement is provided the court in connection with this motion. No real property is listed by the Debtor on Schedule A, no creditors with secured claims are listed on Schedule D, and no leases are listed on Schedule G. Dckt. 31. In his opposition the Debtor honestly and candidly discusses the rental of the property.

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) and (2). The subject property is not property of the estate. 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 Kenneth Pang, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1117 Van Gogh Lane, Patterson, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Trustee has filed his No Asset Report. December 5, 2013 Docket Entry. The deadline for the filing of objections to discharge in this case is February 3, 2014. The entry of a discharge results in the termination of the stay as to the Debtor. 11 U.S.C. § 362(c)(2)(C). The Trustee has not filed an opposition to the Motion, and his default is entered.

The court grants the Motion, terminating the automatic stay effective noon on January 1, 2014. 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 modified and terminated, effective January 1, 2014, to allow Kenneth Pang and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1117 Van Gogh Lane, Patterson.

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

No other or additional relief is granted.

6. [13-92027-E-7](#) ABDUL HAMID
VVF-1 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-5-13 [[10](#)]

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 December 5, 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 5503. 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 one post-petition payment, with a total of \$735.00 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 asset is determined to be \$40,655.89, as stated in the Bello Declaration. The Bello Declaration also seeks to introduce evidence establishing the value of the asset at \$21,250, using the *N.A.D.A. Official Used Car Guide*.

Creditor also states that it is in possession of the vehicle, which it obtained pre-petition.

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 plead 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 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, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

The court shall issue a minute order terminating and vacating the automatic stay to allow Vijay Solanki, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 519 Dakota Ave, 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 Vijay Solanki and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 519 Dakota Ave, 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.

8. [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 10-31-13, 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.

Final 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. The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on January 16, 2014, pursuant to court order, Dckt. 81. No appearance at the December 19, 2013 hearing required.

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.

DECEMBER 11, 2013 ORDER

On December 11, 2013, the court continued the hearing on the motion for relief from the automatic stay. Dckt. 81. Therefore, the motion is continued per that order.

9. [13-91583-E-7](#) SCOTT MEHL
MBB-1 Patrick B. Greenwell

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-13-13 [[11](#)]

BANK OF AMERICA, 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 November 13, 2013. By the court's calculation, 36 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 America, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2009 Skyline Weekender 180W, VIN ending in 0208. The moving party has provided the Declaration of Katrina Huntley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Huntley Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$299.02 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 \$12,730.44, as stated in the Huntley Declaration.

The Movant also seeks to introduce evidence establishing the value of the asset as \$9,315.00, based on *N.A.D.A. Official Used Car Guide*. However, Movant has not properly authenticated the exhibits. Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Huntley to be that she obtained the *N.A.D.A. Official Used Car Guide* 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 Bank of America, N.A., 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 Bank of America, N.A., 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 2009 Skyline Weekender 180W, 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.

10. [13-91297-E-11](#) **ARIANA AVESTA, INC.**
DBP-2 **W. Steven Shumway**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-5-13 [[43](#)]**

**BAYSIERRA WALLACE
PROPERTIES, LLC 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, creditors holding the 20 largest unsecured claims, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 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:

BaySierra Wallace Properties, LLC 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, manager of BaySiera Wallace Properties, LLC, to introduce evidence which establishes that the Debtor is not the owner of the property, but rented the real property from Movant pursuant to an agreement. Movant was formed to acquire title to the real property at the Trustee's Sale and Movant is now the owner of the real property at the Trustee's Sale on December 4, 2013.

Movant explains that this court previously granted relief from the automatic stay in the Chapter 11 entitled *In re Marvis Waden and Shiama Kakar*, Case Number 13-01701 for BaySierra Financial, Inc. to conclude its

foreclosure and obtain possession of the Real Property. Before the trustee's sale, the Wadens owned the Real Property and were indebted to BaySierra Financial, Inc. under a promissory note secured by a deed of trust. Debtor Ariana Avesta, Inc.'s states it has a month to month lease on the Real Property in its Bankruptcy Schedule G. According the three monthly operating reports it has filed, this debtor has not made any payment to the former owners since the filing of this Chapter 11 on the alleged month to month lease.

DISCUSSION

Movant has not provided a certified or authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership, but has provided the testimony of John Graziano, president of BaySierra Financial, Inc., the manager of the owner of the property, states that it is the owner of the property. The Debtor not being the owner of the subject real property, the court determines that there is no equity in the property for the Debtor of the estate. Movant contends that the property is not necessary for any effective reorganization in this Chapter 11 case. 11 U.S.C. § 362(d)(2).

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). Debtor has not provided any evidence or response to the motion establishing that the property is necessary for its reorganization. Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow BaySierra Wallace Properties, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8090 Highway 12, Wallace, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Wallace Properties, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8090 Highway 12, Wallace, California.

No other or additional relief is granted.