

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 12, 2016 at 1:30 p.m.

1. [15-24309](#)-E-13 KAREN PACOL
JCW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
11-24-15 [[50](#)]

BANK OF AMERICA, N.A. VS.

Final Ruling: No appearance at the January 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and parties requesting special notice on November 24, 2015. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Deutsche Bank National Trust Company, as indenture trustee under the indenture relating to IMH Assets Corp., Collateralized Asset-Backed Bonds, Series 2007-A ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7628 Roosterfish Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Ignacio Alvarado to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Alvarado Declaration states that there are a total of \$12,528.54 in

January 12, 2016 at 1:30 p.m.

- Page 1 of 15 -

post-petition payments past due.

The Motion states that on October 27, 2004, Ruben Almodovar transferred an alleged interest in the property to Ruben A. Almovador a married man, as his sole and separate property, and Jervil S. Paco and Karen N. Pacol husband and wife as joint tenants. The Movant did not have knowledge of the transfer nor consent of the Movant which is in violations of the terms of the Deed of Trust. The Movant asserts that the transfer was not effective and that the Debtor failed to list the Property on the Debtor's Schedules. Additionally, the Movant is seeking relief from the co-debtor stay.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 16, 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$353,101.95, as stated in the Alvarado Declaration and Schedule D filed by Karen Pacol ("Debtor"). The value of the Property is determined to be \$329,000.00, as stated in Schedules A and D filed by Debtor.

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

Additionally, the Movant has provided sufficient grounds to grant relief from the co-debtor stay. The Movant has established that, pursuant to 11 U.S.C. § 1301(c), that the Movant would be irreparably harmed if relief from the co-debtor stay was not granted.

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Deutsche Bank National Trust Company, as indenture trustee under the

indenture relating to IMH Assets Corp., Collateralized Asset-Backed Bonds, Series 2007-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 Deutsche Bank National Trust Company, as indenture trustee under the indenture relating to IMH Assets Corp., Collateralized Asset-Backed Bonds, Series 2007-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 7628 Roosterfish Way, Sacramento, California, California.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Jervil Pacol of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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

No other or additional relief is granted.

2. [15-26309](#)-E-13 KIRBY/CYNTHIA QUALLS
TRM-57

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-24-15 [[27](#)]

HILTON RESORTS CORPORATION
VS.

Final Ruling: No appearance at the January 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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Hilton Resorts Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2650 Las Vegas Blvd. South, Las Vegas, Nevada (the "Property"). Movant has provided the Declaration of Donna Barras to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Property is a time-share.

The Barras Declaration states that there are 4 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$862.64 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$862.64.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 16, 2015.

From the evidence provided to the court, and only for purposes of this

Motion for Relief, the total debt secured by this property is determined to be \$12,744.14. The Debtor fails to list the Property on the Debtor's schedules.

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Hilton Resorts Corporation ("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 Hilton Resorts Corporation, 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 2650 Las Vegas Blvd. South, Las Vegas, Nevada.

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

No other or additional relief is granted.

3. [15-26309](#)-E-13 KIRBY/CYNTHIA QUALLS
TRM-58

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-24-15 [[33](#)]

HILTON RESORTS CORPORATION
VS.

Final Ruling: No appearance at the January 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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Hilton Resorts Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 69-699 Waikoloa Beach Drive, Waikoloa, Hawaii (the "Property"). Movant has provided the Declaration of Donna Barras to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Property is a time-share.

The Barras Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,728.84 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,305.12.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 16, 2015.

From the evidence provided to the court, and only for purposes of this

Motion for Relief, the total debt secured by this property is determined to be \$22,142.87. The Debtor fails to list the Property on the Debtor's schedules.

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Hilton Resorts Corporation ("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 Hilton Resorts Corporation, 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 69-699 Waikoloa Beach Drive, Waikoloa, Hawaii.

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

No other or additional relief is granted.

4. [15-26710](#)-E-13 ROBERTO RAMIREZ
JCW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-4-15 [[79](#)]

NATIONSTAR MORTGAGE, LLC VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on December 4, 2015. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2440 Beaufort Drive, Fairfield, California (the "Property"). Movant has provided the Declaration of Raquel Bryan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Bryan Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,398.56 in post-petition payments past due.

The Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4). The Movant also requests that the stay be annulled to validate the foreclosure sale which took place on August 26, 2015, a day after the filing of the instant petition. The

Movant asserts that the Movant was unaware of the bankruptcy filing.

DEBTOR'S OPPOSITION

Opposition has been filed by Roberto Ramirez ("Debtor") on January 6, 2016. Dckt. 92. The Debtor asserts that he has attempted to discuss with Movant adequate protection payments but has not received a response. Furthermore, the Debtor asserts that the court should not grant retroactive relief from the stay. The instant case was filed on August 25, 2015. On August 26, 2015, the Movant performed a foreclosure sale of the Property. The Debtor asserts that this was a violation of the automatic stay.

Furthermore, the Debtor asserts that the Movant has not shown proper grounds pursuant to 11 U.S.C. § 362(d)(4) because the existence of prior cases in and of itself does not allege sufficient grounds for 11 U.S.C. § 362(d)(4) relief.

Lastly, the Debtor asserts that the Movant violated the California Home Owner Bill of Rights.

TRUSTEE'S NONOPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 16, 2015.

DISCUSSION

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

This is Debtor's fourth bankruptcy since 2014 (and Debtor's fifth since 2011. The following charts provides the four most recent cases:

Case Number	Date Filed	Date Discharged	Date Dismissed	Reason for Dismissal
14-23403-Chapter 13	April 2, 2014		May 1, 2014	Failure to timely file documents. Dckt. 27.
14-25966 - Chapter 7	June 4, 2014	October 24, 2015		
14-31766	December 2, 2014		June 29, 2015	Delinquency and delay in filing plan. Dckt. 44.
15-26710	August 25, 2015			

On September 28, 2015, the court issued an order denying the Debtor's

Motion to Extend Automatic Stay. Dckt. 39. The court specifically stated:

The court has previously addressed the filing of the current case, the dismissal and vacating of the dismissal, and denial without prejudice of a prior motion to extend the automatic stay. Order Denying Motion to Extend Stay, Dckt. 11; Memorandum Opinion and Decision, Dckt. 12; and Order Vacating Dismissal of Case, Dckt. 29. This bankruptcy case was filed on August 25, 2015. The current Motion to Extend the Automatic Stay was filed on September 24, 2015. This was the thirtieth day after the commencement of the bankruptcy case.

To extend the automatic stay as provided in 11 U.S.C. § 362(c)(3)(B), the order must be entered within thirty days of the commencement of the case. That is an impossibility in this case. As previously noted by the court, 11 U.S.C. § 362(c)(3)(A) provides that on the thirtieth day after the commencement of a bankruptcy case within one year of a prior case being dismissed, the automatic stay will terminate by operation of law in the second case, as to the debtor. This is contrasted to the language used by Congress in 11 U.S.C. § 362(c)(4) which provides that the automatic stay (without qualification as to the "debtor" or the "estate") will not go into effect as provided in that section.

Additionally, while Debtor believes that he has submitted evidence to rebut the presumption of bad faith arising under 11 U.S.C. § 362(c)(3) (A), such does not appear to be the case. The "evidence" consists of nothing more than the Debtor's declaration which states,

"I have made all efforts to address all courts' points in the rebuttal of bad faith."

Declaration, Dckt. 34. This is nothing more than the Debtor stating his personal conclusions of law, and does not provide the court with evidence to make necessary findings of fact and conclusions of law concerning whether Debtor is in fact acting in good faith.

Therefore, upon review of the Motion, Debtor's Declaration, the files in this case, and good cause appearing;

IT IS ORDERED that the Debtor's Motion to Extend the Automatic Stay, which for the specified acts "shall terminate with respect to the debtor" by operation of law pursuant to 11 U.S.C. § 362(c)(3)(A) on the thirtieth day after the commencement of this case, pursuant to 11 U.S.C. § 362(c)(3)(B) is denied.

Id.

While the Debtor argues that there is not sufficient evidence to show that there is cause to grant relief retroactively and under § 362(d)(4), there appears to be efforts by the Debtor to delay the Movant from enforcing their rights. As mentioned before by the court, it is not surprising when a debtor

files on the eve of a foreclosure sale to stop the sale. However, the Debtor has not only filed the instant case, it appears that the Debtor has attempted to "hide" the previous cases from the court. On August 25, 2015, along with the petition, the Debtor filed a Statement of Social Security Number, indicating that the Debtor has a Social Security number. Dckt. 5. This Social Security number matches those that the Debtor used in previous cases. As such, the Debtor admits to having a Social Security number.

However, on November 23, 2015, the Debtor filed an Amended Statement of Social Security number. Dckt. 72. In this amendment, the Debtor now indicates that he does not have a Social Security number, and instead has only a tax payer identification number. No information is provided how the Debtor has apparently "lost" his Social Security number.

It appears to the court that this amendment was part of a scheme to "hide" the Debtor's prior cases and to avoid the court from issuing any orders due to the Debtor's repeated filing. Such tactics are not only impermissible but also raise serious concerns over the veracity of the Debtor's filings.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfers of interests in the subject property to beneficiaries who then filed several bankruptcies were a deliberate attempt as a stay to any foreclosure. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute order terminating and vacating the automatic stay to allow Nationstar Mortgage LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

As to the request for retroactive effect, a bankruptcy court ordinarily should examine the circumstances of the specific case and balance the equities of the parties' respective positions. *See Nat'l Envtl. Waste Corp.*, 129 F.3d at 1055; *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24 (9th Cir. BAP 2003). In balancing the equities, the court may consider a number of different factors. *In re Fjeldsted*, 293 B.R. at 24-25. The following list is of factors to assess the equities:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Id. at 25 (citations omitted).

In the instant case, and upon reviewing the factors, annulling the stay retroactively is appropriate given the totality of the circumstances. As discussed *supra*, the repeated filings of the Debtor are transparently purposeful in prejudicing the Creditor. The Debtor relies on an alleged communications to the Creditor on the eve of the scheduled foreclosure sale. However, there is no evidence provided to substantiate these claims. The Debtor has been in four bankruptcies in the past year. The numerous attempts of the Debtor to prevent the Creditor from exercising its rights are evidence of such. The administrative factors outlined above all way in favor of annulling the stay. This is due to the fact that the sale has already taken place and unwinding the sale, in light of the instant case being part of a scheme to prejudice the Creditor, would cause prejudice to the Creditor, Debtor, and third parties.

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).

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 annulled effective to August 25, 2015, to allow Nationstar Mortgage LLC, 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 2440 Beaufort Drive, Fairfield, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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. [15-26969](#)-E-13 JESUS AVILA
FHS-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-15-15 [[45](#)]

PLAZA DE LAS AMERICAS RANCHO
SQUARE, LLC VS.

Final Ruling: No appearance at the January 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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Plaza De Las Americas Rancho Square, LLC ("Movant") seeks relief from the automatic stay with respect to the commercial real property commonly known as 130 N. Butte Street, Suites I, J and K, Willows, California (the "Property"). Movant has provided the Declaration of Margaret Sharkey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Sharkey Declaration states that the Movant leased the Property to Debtor. The Debtor failed to pay the unpaid balance of the security deposit in the amount of \$1,300.00. The parties never took possession of the Property.

Debtor filed a non-opposition to the instant Motion on December 15, 2015. DCkt. 50. The Debtor states that the Debtor does not intend to assume the lease or take or assert possession of the premises.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 23, 2015.

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

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

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 Plaza De Las Americas Rancho Square, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Plaza De Las Americas Rancho Square, LLC , 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 130 N. Butte Street, Suites I, J and K, Willows , California.

No other or additional relief is granted.