UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

January 16, 2014 at 10:00 a.m.

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1. 13-91807-E-7 GEORGE/LEANORE HAYES — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
PD-1 Pro Se — **11-21-13 [20]**

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. VS.

CASE DISMISSED 1-6-13

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

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 Automatic Stay 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 dismissed as moot, the case having been dismissed.

2. 13-92011-E-7 WALTON/TERRAE CARPENTER **MOTION FOR RELIEF FROM**
MBB-1 Mark W. Girdner **AUTOMATIC STAY**
12-5-13 [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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 42 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 2007 Ranger 520, VIN ending in J607, 2007 Mercury 225 PROXS, VIN ending in 9383, 2007 Ranger TRA TR, VIN ending 5341. The moving party has provided the Declaration of Paul Burrill to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Burrill Declaration states that the Debtor has not made 1 post-petition payment, with a total of $362.89 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 $27,134.28, as stated in the Burrill Declaration, while the value of the asset is determined to be $20,000.00, 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 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 2007 Ranger 520, 2007 Mercury 225 PROXS, 2007 Ranger TRA TR, 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.

3. 13-91315-E-7 APPLEGATE JOHNSTON, INC. MOTION FOR RELIEF FROM
APN-1 George C. Hollister AUTOMATIC STAY
12-6-13 [355]

TOYOTA MOTOR CREDIT
CORPORATION 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 December 6, 2013. By the court's calculation, 41 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.

Toyota Motor Credit Corporation seeks relief from the automatic stay with respect to an asset identified as a 2012 Toyota Tacoma, VIN ending in 8928. The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ibarra Declaration states that the Debtor has not made six (6) post-petition payments, with a total of $2,854.68 in post-petition payments past due.

Movant also contends that no insurance is being maintained on the vehicle by the Debtor. Movant states that the Trustee has abandoned the subject vehicle.

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). Furthermore, the Debtor's failure to maintain insurance on the property is

sufficient cause to grant relief. The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments and has not maintained insurance on the subject vehicle. 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 Toyota Motor Credit 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 Toyota Motor Credit 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 Toyota Tacoma and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.
>
> No other or additional relief is granted.

4. 13-91315-E-7 APPLEGATE JOHNSTON, INC. MOTION TO COMPEL ABANDONMENT
LIB-1 George C. Hollister AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
12-19-13 [365]

LIBERTY MUTUAL INSURANCE COMPANY 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 December 19, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Compel Abandonment and for Relief from 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 court's tentative decision is to deny the Motion to Compel Abandonment and for Relief from Stay without prejudice. 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:

Movant Liberty Mutual Insurance Company ("Movant") seeks to compel abandonment of all the Debtor's rights, claims defenses, causes of action and cross-cations in the state court actions titled *Double B Demolition, Inc. v. Applegate Johnston, Inc. et al.*, Superior Court of California, Stanislaus County, Case No. 677254 and *Kilik General Engineering, Inc. V. Applegate Johnston, Inc. et al.*, Superior Court of California, Santa Clara County, Case No. 112-CV-223253 and to lift the automatic stay to allow Movant to assert all of the rights arising out of Debtor's subcontracts on their project and Debtor's claims and defenses in the state court actions.

The Motion seeks to have the court compel abandonment and terminate the automatic stay. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join a motion to compel abandonment with a motion for relief from the automatic stay.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for

motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate – proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. The Motion is denied for this independent ground.

REVIEW OF MOTION

The court has parsed through the Motion and has identified the following grounds stated with particularity (Fed. R. Bank. P. 9013) asserted by Movant.

A. Movant was and is the surety for Debtor with response to a construction project in connection with the City of San Jose Environmental Innovation Project.

B. In 2010, Debtor executed a general agreement of indemnity to indemnify and hold harmless Movant from claims and losses arising out of bonds provided by Movant.

C. Debtor assigned to Movant all right, title, and interest in and to all subcontracts let in connection with contracts bonded by Movant. Further, assigned all causes of action, claims, and demands whatsoever which the Debtor may have or acquire against any subcontractor, laborer, or materialman in connection with a contract bonded by Movant.

D. Debtor confirmed on July 11, 2013, that it defaulted on its obligations to Movant.

E. On July 16, 2013, Debtor filed the present Chapter 7 bankruptcy case.

F. Movant has suffered $1,200,000.00 in losses on the bonds it issued for Debtor's contracts.

G. Movant is subrogated to the rights of the Debtor arising out of the contracts bonded by Movant.

H. All of the Debtor's interests, rights and defenses for the claims in two specified state court actions were "fully assigned" to Movant prior to the commencement of the present Chapter 7 case.

I. There is little or no net recovery value for the estate in or from the specified state court actions.

Motion, Dckt. 365.

The court is left unsure what, if anything, may be properly be abandoned pursuant to 11 U.S.C. § 554(b). The court may order the abandonment of property of the estate if it is burdensome or of inconsequential value. However, it must be property of the estate. The Motion asserts that all of the rights, interests, and defenses at issue were assigned to Movant prior to the commencement of this bankruptcy case. Therefore, taking Movant's pleadings as true and accurate (Fed. R. Bankr. P. 9011), there would be nothing to abandon. Further, if the court were to order the abandonment of assets of the Debtor which became property of the estate, then they would be abandoned back to the Debtor. If Movant seeks to obtain an "assignment" of such rights and interests, a motion for abandonment is not the "poor man's" shortcut for an assignment. Movant may obtain such an assignment, upon proper court order, from the Trustee. If the rights, interests, and defenses were so transferred, then Movant does not meet the minimum Constitutional standard for a case or controversy as required by Article III of the United States Constitution.

The Motion also includes a request for a "comfort order" so that Movant can prosecute the Debtor's counterclaim (which contrary to the other allegations appears to indicate a claim which is property of the estate). In asking for a "comfort order," Movant is stating that no order is required, but "it would be nice to have one." This further indicates that Movant does not meet the minimum Constitutional standard for a case or controversy as required by Article III of the United States Constitution. Alternatively, an order may be required but Movant is attempting to downplay the significance of the Motion to make it appear that the court's order is of no legal import.

Quite possibly if Movant had filed a separate motion for relief from the automatic stay, it could have stated with particularity clear grounds upon which relief was requested, why relief was necessary, the impact of the relief on the rights, interests, and other property of the estate. Further, a separate motion to abandon could clearly identify the specific property owned by the estate to be abandoned, why abandonment of the property was proper, and the factual and legal basis for the abandonment of the property of the estate to the Debtor.

As pleaded by Movant, it is asserted that all of the rights, defenses, and interests were assigned prior to the commencement of the case. (In her declaration, Christine Bartholdt states under penalty of perjury her legal conclusion that based on a pre-petition assignment, "Liberty has acquired any and all rights of the Debtor in the State Court Action. Dckt. 368, p. 4:13.) However, Movant wants to litigation claims and rights of the estate in the state court action pursuant to a motion for relief from the stay.

The court in the guise of this patchwork of motions issue orders or rulings which could appear to make determinations of the conflicting allegations and testimony provided by Movant.

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 Compel Abandonment and for Relief from the Automatic Stay filed by Creditor Liberty Mutual Insurance Company having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

5. 13-92022-E-7 MICHAEL/MIKKI KOEPP — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 Steven A. Alpert — 12-18-13 [12]

HSBC BANK USA, 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 18, 2013. By the court's calculation, 29 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.

HSBC Bank USA, National Association seeks relief from the automatic stay with respect to the real property commonly known as 328 Live Oak Drive, Angels Camp, California. The moving party has provided the Declaration of Cyrstal Baker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Baker Declaration states that the Debtor has not made one (1) post-petition payment, with a total of $1,695.86 in post-petition payments past due. Debtor has not made seven (7) pre-petition payments, with a total of $11,871.02 in pre-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be $304,499.97, as stated in the Baker Declaration, while the value of the property is determined to be $290,000.00, as stated in Schedules A and D filed by Debtor.

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 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 HSBC Bank USA, National Association, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow HSBC Bank USA, National Association, 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 328 Live Oak Drive, Angels Camp, California.

No other or additional relief is granted.

6. 13-91632-E-7 JAMES RAYMER
RCO-1 Allan S. Williams

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-22-13 [13]

JPMORGAN CHASE BANK, N.A.
VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney Chapter 7 Trustee, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 55 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.

JPMorgan Chase Bank, National Association seeks relief from the automatic stay with respect to the real property commonly known as 4819 Driver Rd, Valley Springs, California. The moving party has provided the Declaration of Bianca Penaloza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Penaloza Declaration states that the Debtor has not made two pre-petition payments totaling $3,825.92 and one post-petition payment of $1,912.96, with a total of $5,738.88 in payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be $254,795.00 from Movant's First Deed of Trust, while the value of the property is determined to be $200,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839

(B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The Debtor was granted a discharge on December 26, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. *See* 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow JPMorgan Chase Bank, National Association, 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 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 JPMorgan Chase Bank, National Association, 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 4819 Driver Rd, Valley Springs, California.
>
> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).
>
> No other or additional relief is granted.

7. 13-91939-E-7 ROBERT MEAD **MOTION FOR RELIEF FROM**
SW-1 Tamie L. Cummins **AUTOMATIC STAY**
12-10-13 [15]

WELLS FARGO BANK, N.A. VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 10, 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.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2009 Toyota Scion TC, VIN ending in 6349. The moving party has provided the Declaration of Kassandra Jaramillo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jaramillo Declaration states that the Debtor has not made two pre-petition payments totaling $848.96 and one post-petition payment of $393.44, with a total of $1,242.40 in payments past due. As of November 27, 2013, the remaining sums owing under the Contract, including accrued and unpaid charges, total $12,154.72. 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 $12,154.72 as stated in the Jaramillo Declaration, while the value of the asset is determined to be $11,925.00, as stated in Schedules B and D filed by Debtor.

The Jaramillo Declaration also seeks to introduce evidence establishing the value of the asset. In order to determine the Retail Value of a vehicle, Movant uses an online subscription service provided by the Nada Online Values. According to the Nada Auction Valuation, which accounts for the Vehicle's mileage and features, the estimated retail and wholesale values of the Vehicle are $11,925.00 and $9,675.00 respectively. Though the NADA valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the NADA Auction Valuation can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Kassandra Jaramillo to be that she obtained the NADA 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. FN.1.

FN.1. The court is surprised that counsel for Movant has not modified its forms to provide for the simple authentication of this essential piece of evidence. Counsel should not rely on the court drawing the inference that the declarant obtained the NADA Report, rather than inferring that the testimony, if given, would be something like, "some person unknown to me obtained the report, it went to someone at our client, who then emailed it to my assistant, who then filled in the information on our forms, and then attached it to our exhibits." Failing to provide the basic, simple testimony may be indicative of larger defects in the testimony.

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 Wells Fargo Bank, 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.

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 Wells Fargo Bank, 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 Toyota Scion TC, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

8. 13-92151-E-7 JOSE QUIROZ
ADR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-13-13 [14]

RUBEN ESCARENO 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 34 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:

Ruben Escareno seeks relief from the automatic stay with respect to the real property commonly known as 1320 Conrad Way, Modesto, California. The moving party has provided the Declaration of Ruben Escareno to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on July 19, 2013. Debtor is characterized as a tenant at sufferance.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Fed. R. Evid. 902(4),

self-authenticating certified public record. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Ruben Escareno, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1320 Conrad Way, Modesto, 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 Ruben Escareno and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1320 Conrad Way, Modesto, California
>
> No other or additional relief is granted.

9. 13-91459-E-11 LIMA BROTHERS DAIRY
WJS-1 Hagop T. Bedoyan

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. That requirement was met.

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 February 13, 2014, pursuant to court order, Dckt. 98. 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.

JANUARY 8, 2014 ORDER

On January 8, 2014, the court ordered that the hearing on the Motion for Relief be continued until February 13, 2013, to be heard at 10:00 am. Dckt. No. 98. It was further ordered that any opposition to the Motion be filed on or before January 30, 2014, and that any reply to opposition to the Motion be filed on or before February 6, 2014.

Therefore, the motion is continued per that order.

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 Motion for Relief from the Automatic Stay is continued to February 13, 2013 at 10:00 am.

10. 13-92067-E-7 JOHN/BONNIE OWENS
MES-2 Richard L. Sheppard

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-5-13 [11]

JULI SILVA VS.

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

Correct Notice Provided. The Proof of Service for the Amended Notice of Hearing states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 17, 2013. By the court's calculation, 30 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay was not properly set for hearing pursuant to notice required by Local Bankruptcy Rule 9014-1(f)(1) or Local Bankruptcy Rule 9014-1(f)(2). Local Bankruptcy Rule 9014-1 requires that parties file, serve, and set for hearing all contested matters, including motions in accordance with Local Bankruptcy Rule 9014-1's rules governing motion calendars and associated procedures.

The Motion for Relief is denied without prejudice. 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:

Local Bankruptcy Rule 9014-1(d) mandates that parties filing contested matters file separate notices of hearing advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

Movant's Amended Notice of Hearing, filed on December 17, 2013, does not comply with the content requirements of Local Bankruptcy Rule 9014-1(d)(3). The Notice does not reflect whether the matter is a Local Bankruptcy Rule 9014-1(f)(1) or Local Bankruptcy Rule 9014-1(f)(2) motion. Thus, it is unclear whether the Motion is being set on 28 or 14 Days' Notice. Additionally, the Motion for Relief itself does not contain the correct hearing date, and a revised Motion with a correct caption has not been filed.

In violation of Local Bankruptcy Rule 9014-1(e)(3), the Proof of Service is not filed as a separate document, with an independently assigned Docket Control Number. Rather, the Proof of Service is filed as attached to the Amended Notice of Hearing. The original Notice of Hearing was not included in the Proof of Service filed on December 5, 2013 (Dckt. No. 15). Additionally, the Proof of Service attached to the Amended Notice of Hearing

indicates that Debtors themselves, John and Bonnie Owens, have not been served.

In reviewing the Motion, the court notes that it states with particularity the following grounds and relief requested:

A. James S. Birtola and Lori Birtola, as co-trustees, ("Movant") will move the court for relief from the stay.

B. Movant seeks to exercise a power of sale contained in deeds of trust secured by real property commonly known as 1320 Cooper Avenue, Turlock, California.

C. Relief should be granted because there is no equity in the real property.

D. Relief should be granted because Movant lacks adequate protection for the interest in the real property.

E. Relief should be granted because the bankruptcy filing is part of a scheme by Debtors to delay, hinder, and defraud Movant.

F. The court and parties in interest need to read, the notice of motion, memorandum of points and authorities, and declaration of Juli A. Sila to determine the basis upon which the relief is requested.

G. The Motion will also be based on whatever other evidence Movant presents at the hearing.

Motion, Dckt. 11.

FEDERAL RULE OF BANKRUPTCY PROCEDURE 9013

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states legal conclusions and instructs the court and parties in interest to mine other pleadings and assemble for Movant the required grounds. That is not sufficient or proper under the Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure (Fed. R. Civ. 7(b)).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The Twombly pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. Id. A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." Id. It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plan statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also In re White, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

For the present Motion, Movant merely states three legal conclusions for the general theory upon which relief is based. The court has no idea as to the value of the property, the amount of the debt, the amount of any junior or senior liens, what is asserted to be the impairment that causes the lack of adequate protection, why Movant's interest may not be adequately protected, and what grounds are being asserted for the present bankruptcy cases being part of a scheme to hinder, delay, or defraud Movant. The court declines the opportunity to provide associate attorney or law clerk services to Movant, to assemble the proper motion for Movant, assert those grounds, and then rule upon such asserted grounds. FN.1.

FN.1. The court reviewed the declaration of Juli Silva, a co-trustee, in support of the Motion. Dckt. 12. The testimony is that the Debtors defaulted in January 2010 on the obligation secured by the deeds of trust. However, because the Debtors were continuing to make payments on an obligation secured by a senior deed of trust (no testimony provided as to the amount that obligation). In July 2013, the Debtors stopped making payments on the obligation secured by the senior deed of trust, so Movant

recorded a Notice of Default. On October 30, 2013, Movant recorded a Notice of Non-Judicial Foreclosure Sale. When the Debtors filed their Chapter 7 case, the non-judicial foreclosure sale was postponed.

The witness further testifies that she is "informed and believes," based on some unidentified source, that certain information is stated in the schedules. She further provides hearsay statements from Zillow.com. The Debtors have been residing in the property without paying the mortgage. Since the bankruptcy was filed on the eve of the non-judicial foreclosure, this witness believes that the "sole purpose of the filing [of bankruptcy] was to delay and hinder our foreclosure and thereby defraud us out of more free occupancy time."

The witness offers no competent testimony as to the value of the property. Further, there is little, other than stating that the bankruptcy case was filed on the eve of a non-judicial foreclosure, if any testimony for the stated legal conclusion that the filing of one bankruptcy case is part of a "scheme" to defraud, delay, or hinder Movant.

Possibly, if the Motion had stated with the particularities for each ground, then evidence would have been submitted to support grounds for relief. Rather, it appears that the motion is a shotgun approach of allegations.

Proper grounds, and an evidentiary basis, have not been presented to the court to grant relief. Movant has not followed the required procedure for properly noticing a motion and providing fair notice to the parties. The Motion is denied without prejudice.

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 Motion for Relief from Automatic Stay is denied without prejudice.