

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

February 13, 2018, at 1:30 p.m.

1. **17-25403-E-13** **BYLLIE DEE**
JCW-1 **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
TO CONFIRM TERMINATION OR
ABSENCE OF STAY
1-10-18 [54]**

**SHELLPOINT MORTGAGE
SERVICING VS.**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on January 10, 2018. By the court's calculation, 34 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.

MTGLQ Investors, L.P. ("Movant") seeks relief from the automatic stay with respect to Byllie Dee's (aka James Lawson) ("Debtor") real property commonly known as 128 Terrace Drive, Bastrop, Louisiana ("Property"). FN.1. Movant has provided the Declaration of Robbie Poole to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

February 13, 2018, at 1:30 p.m.

- Page 1 of 17 -

FN.1. The Petition discloses that Debtor, in the last eight years, has used the name James Lawsaon, which is different than listed by Movant. Dckt. 1. The name listed on the Petition appears to be a mere scrivener's error, and the court treats Debtor's alias as James Lawson.

The Robbie Poole Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,034.72 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 29, 2018. Dckt. 68. The Chapter 13 Trustee does not oppose the Motion for Relief because no plan payments have been made, though five have come due. He notes that Debtor's Plan is not confirmed and provides for the creditor CHASE in Class 1. Documents filed with Creditor's secured claim show that Chase Manhattan Mortgage Corporation assigned the mortgage to Creditor. Proof of Claim 7-1, at 37.

DISCUSSION

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 \$60,013.26 as stated in the Poole Declaration. FN.2. The value of the Property is determined to be \$75,000.00, as stated in Schedules A and D.

FN.2. Proof of Claim 7-1 lists the total secured debt amount as \$72,537.55, but the Motion does not allege a total debt amount, and the Poole Declaration does not present any evidence as to how much is owed by Debtor. The closest the Declaration comes to presenting a total amount is to state that the unpaid principal balance is \$49,948.53 with accrued interest as of December 29, 2017, of \$10,064.73. Dckt. 56 at 4:1-2. Those two amounts total \$60,013.26.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a 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 the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Movant pleads that Debtor has filed multiple bankruptcies (the first four of which were in the Northern District of California) that have delayed Creditor from acquiring relief, including:

- A. Case No. 11-47631
 - 1. Filed: July 19, 2011, as James Lawson
 - 2. Chapter 13
 - 3. Discharge Date: May 1, 2014
- B. Case No. 15-42180
 - 1. Filed: July 13, 2015, as Byllie Dee
 - 2. Chapter 13
 - 3. Dismissal Date: May 9, 2016
 - 4. Reason for Dismissal: Failure to make plan payments
- C. Case No. 15-43169
 - 1. Filed: October 15, 2015, as Byllie Dee
 - 2. Chapter 13
 - 3. Dismissal Date: November 4, 2015
 - 4. Reason for Dismissal: Failure to file information
- D. Case No. 16-42054
 - 1. Filed: July 22, 2016, as Byllie Dee
 - 2. Chapter 13
 - 3. Dismissal Date: November 17, 2016
 - 4. Reason for Dismissal: Unstated (other reason)
- E. Case No. 17-25403 (the present case)
 - 1. Filed: August 15, 2017, as Byllie Dee
 - 2. Chapter 13

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the multiple cases pending in since 2015 (including overlapping of cases), which Debtor has failed to prosecute. In effect, this is a series of bankruptcy attempts by Debtor. The prior attempts were in the Northern District Bankruptcy Case. In the current case, Debtor has failed to make any of the proposed plan payments.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Debtor filed his Amended Plan on November 7, 2017. Dckt. 33. The proposed monthly plan payments require \$750.00 per month for sixty months. A Class 1 Claim is listed, with a \$12,000 arrearage. Amended Plan, ¶ 2.08(c). No provision is made for paying the arrearage, with a current regular monthly payment of \$378.00 listed for payment through the Plan. For a \$12,000 arrearage, amortized over sixty months, a payment of at least \$200.00 per month would be required.

The Amended Plan further provides for a monthly payment of \$200.00 per month to Appollo Auto Finance, for a \$12,000 secured claim with a 10% interest rate. Amended Plan ¶ 2.09(d). Assuming that the interest rate were more reasonably set at 4.5% in the plan, the \$12,000 repaid over sixty months would require a monthly payment of principal and interest of \$223.72 (not the \$200 stated in the Amended Plan).

The Amended Plan further provides for payment of a priority unsecured claim to Bob's Towing in the amount of \$7,570. Amended Plan ¶ 2.13. No reason is given for Bob's Towing having a priority unsecured claim as provided under the Bankruptcy Code. Looking at the Amended Statement of Financial Affairs, this appears to be an obligation relating to the attachment of Debtor's 1977 Rolls Royce with a value of \$20,680.00. Statement of Financial Affairs, Question 10, Dckt. 42. In reality this may be a secured claim, which will have to be paid in full (oversecured) and may require interest. But on the principal amount alone requires a monthly payment of \$126.00.

The above payments total \$928.00 (rounded), plus there would be an additional \$75.00 per month for Chapter 13 Trustee's fees (estimated at 8%), requiring a monthly plan payment of at least \$1,003.00—\$253.00 per month more than provided for in the Amended Plan.

On Schedule I filed by Debtor, he lists having \$4,450.00 per month in wage income. Dckt. 10 at 25. He lists no withholding for federal income taxes, state income taxes, or Social Security. On Schedule J, no payments for federal and state taxes are provided. *Id.* at 28. On the Amended Statement of Financial Affairs, Question 4, Debtor states having received \$6,700 in income for 2017 year to date (Schedule I stating that he had been employed for two months as of the commencement of this case) and \$10,300.00 in 2016, with no information provided for 2015. Dckt. 42 at 16. Debtor goes further to state that he received \$6,700.00 in “donations” for 2017 and \$10,300 for “donations” in 2016. No donation income is listed on Schedule I.

In light of the series of cases filed; the non-productive prosecution of the prior case and this case; Debtor not setting a hearing for confirmation of the proposed Amended Plan (Notice of Hearing states that date and time “TBD,” Dckt. 47; the financial inadequacy of the Amended Plan; and the financial information provided under penalty of perjury concerning Debtor’s income and expenses (Schedules I and J), the court determines that relief pursuant to 11 U.S.C. § 362(d)(4) is proper. This bankruptcy case is part of a scheme to delay and hinder Movant from enforcing its rights in the Property.

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys’ fees or having any obligation to pay attorneys’ fees. Based on the pleadings, the court would either: (1) have to award attorneys’ fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys’ fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys’ fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys’ fees for the unopposed Motion in which it made reference to wanting attorneys’ fees would well exceed any attorneys’ fees that the court would award for a motion such as this. Movant’s strategic decision not to provide the court with grounds for and evidence of attorneys’ fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys’ fees.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant

requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 MTGLQ Investors, L.P. ("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 vacated to allow MTGLQ Investors, L.P., 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 that 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 to obtain possession of the real property commonly known as 128 Terrace Drive, Bastrop, Louisiana.

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 two 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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

IT IS FURTHER ORDERED that Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

2. [17-28028-E-13](#) NDILE NJENGE
RDW-1 Randall Ensminger

**MOTION FOR RELIEF FROM
AUTOMATIC STAY, MOTION FOR
ADEQUATE PROTECTION AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
1-26-18 [\[43\]](#)**

CAM XVIII VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 26, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----

<p>The Motion for Relief from the Automatic Stay is granted.</p>

CAM XVIII ("Movant") seeks relief from the automatic stay with respect to Ndile Njenge's ("Debtor") real property commonly known as 550 Wilson Avenue, Sacramento, California ("Property"). Movant has provided the Declaration of Brian Sindell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Sindell Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of \$1,946.55 in post-petition payments past due. The Declaration also provides evidence that the pre-petition arrearage is \$331,715.70.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 30, 2018. Dckt. 50. The Chapter 13 Trustee asserts that Debtor is \$2,591.00 delinquent under the proposed plan and has not paid any amount in this case. He notes that a motion to dismiss this case is set for February 21, 2018.

DISCUSSION

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 \$566,328.16, as stated in the Sindell Declaration. The value of the Property is determined to be \$470,000.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a 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 the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Movant argues that there have been a series of six bankruptcy cases filed affecting its rights against the parties, summarized as follows:

- A. Case No. 13-32643
 - 1. Filed: September 28, 2013
 - 2. Chapter 7
 - 3. Date Closed Without Discharge: May 19, 2014
 - 4. Reason for No Discharge: Failure to submit certificate of completion from financial course.
- B. Case No. 15-20164
 - 1. Filed: January 9, 2015
 - 2. Chapter 13
 - 3. Dismissal Date: April 20, 2015
 - 4. Reason for Dismissal: Exceeded debt limit
- C. Case No. 15-25260
 - 1. Filed: June 30, 2015
 - 2. Chapter 7
 - 3. Discharge Date: October 13, 2015
- D. Case No. 16-23267
 - 1. Filed: May 19, 2016
 - 2. Chapter 13
 - 3. Dismissal Date: November 19, 2016
 - 4. Reason for Dismissal: Exceeded debt limit
- E. Case No. 17-25109
 - 1. Filed: August 1, 2017
 - 2. Chapter 13
 - 3. Dismissal Date: January 3, 2018
 - 4. Reason for Dismissal: Failure to amend plan within time limit set by court
- F. Case No. 17-28028 (the present case)
 - 1. Filed: December 11, 2017
 - 2. Chapter 13

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of Debtor and his spouse filing successive cases with little

time between (including the current case overlapping with the prior case). In effect, this is a series of bankruptcy attempts by Debtor.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3). Additionally, this matter was set on short notice, and the requested waiver 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 CAM XVIII (“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 vacated to allow CAM XVIII, 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 that 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 to obtain possession of the real property commonly known as 550 Wilson Avenue, Sacramento, 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 two 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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

IT IS FURTHER ORDERED that Movant is not awarded attorneys’ fees as part of Movant’s secured claim for all matters relating to this Motion.

No other or additional relief is granted.

3. [17-26984](#)-E-13 **MELE VILINGIA**
DWE-1 **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-10-18 [\[38\]](#)**

**NATIONSTAR MORTGAGE, LLC
VS.**

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on January 10, 2018. By the court's calculation, 34 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Mele Vilingia's ("Debtor") real property commonly known as 2941 Gardendale Road, Sacramento, California ("Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on January 22, 2018, for failure to make plan payments, failure to appear at the Meeting of Creditors, and failure to provide tax documents and employer payment advices. Dckt. 51.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of January 22, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order denying the motion without prejudice as moot, confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 22, 2018.

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 Nationstar Mortgage 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 Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on January 22, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Mele Vilingia (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 2941 Gardendale Road, Sacramento, California, by operation of law pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 22, 2018 dismissal of this bankruptcy case filed by Debtor.

4.

[17-25191](#)-E-13
APN-1

RONNIE DAVIS
Yelena Gurevich

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-11-18 [\[35\]](#)**

VW CREDIT, INC. VS.

Final Ruling: No appearance at the February 13, 2018 hearing is required.

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

Sufficient 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 January 11, 2018. By the court’s calculation, 33 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

VW Credit, Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Audi A4, VIN ending in 4208 (“Vehicle”). The moving party has provided the Declaration of Jennifer Clothier to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ronnie Davis (“Debtor”).

The instant case was dismissed on January 22, 2018, for delinquent Plan Payments and failure to file a Plan or Motion to Confirm a Plan. Dckt. 41.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of January 22, 2018, the automatic stay as it applies to the Vehicle, and as it applies to Debtor, was terminated by operation of law. At that time, the Vehicle ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order denying the Motion as moot based on the case being dismissed, and confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 22, 2018.

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 VW Credit, Inc. (“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 Motion is denied without prejudice as moot, the bankruptcy case having been dismissed on January 22, 2018. The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Ronnie Davis (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the asset identified as a 2016 Audi A4, VIN ending in 4208, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 22, 2018 dismissal of this bankruptcy case filed by Debtor.