

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

March 24, 2015 at 1:30 p.m.

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1. [10-46317](#)-E-13 ROBERTO/MELISSA REGALA MOTION FOR RELIEF FROM  
DVW-1 AUTOMATIC STAY  
3-10-15 [[73](#)]  
U.S. BANK, NA VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 14 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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U.S. Bank, N.A. as legal title trustee for Truman 2012 SC2 Title Trustee ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as **912 Oak ridge Drive, Roseville, California** (the "Property"). Movant has provided the Declaration of Michael Ruiz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ruiz Declaration states that there are **10 post-petition** defaults in the payments on the obligation secured by the Property, with a total of **\$19,722.30 in post-petition payments past due**. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$4,480.78.

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

From the evidence provided to the court, and only for purposes of this Motion for Relief, the **total debt secured by this property is determined to be \$356,270.09 (including \$356,270.09 secured by Movant's first deed of trust)**, as stated in the Ruiz Declaration and Schedule D filed by Robert and Melissa Regala ("Debtor"). The value of the Property is determined to be **\$350,000.00, as stated in Schedules A and D filed by Debtor**.

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.]

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of

Movant's secured claim for all matters relating to this Motion. The Motion does not state a basis for such fees or the amount of any such fees requested.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by U.S. Bank, N.A. as legal title trustee for Truman 2012 SC2 Title Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow U.S. Bank, N.A. as legal title trustee for Truman 2012 SC2 Title Trustee, 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 912 Oak ridge Drive, Roseville, California.

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

**IT IS FURTHER ORDERED** that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, 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. [14-29448](#)-E-13 BILLY GORBET  
PD-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
2-24-15 [[40](#)]

U.S. BANK TRUST, N.A. VS.

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

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

**Below is the court's tentative ruling.**

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

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

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as **7823 Cone Ave., Los Molinos, California** (the "Property"). Movant has provided the Declaration of Jesse Hanak to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Hanak Declaration states that there are **4 post-petition** defaults in the payments on the obligation secured by the Property, with a total of

**\$5,007.56 in post-petition payments past due.** The Declaration also provides evidence that there are **44 pre-petition payments in default**, with a pre-petition arrearage of \$52,909.12.

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on March 2, 2015. Dckt. 52. **The Trustee states that the Debtor is delinquent \$5,460 and the plan has not been confirmed.** The Debtor has paid a total of \$1,356.00 to date. There is a pending Motion to Dismiss set for hearing on April 1, 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$147,644.85, which is Movant's first deed of trust, as stated in the Hanak Declaration. The value of the Property is determined to be \$82,625.00, as stated in Schedules A and D filed by Debtor.

Movant is seeking relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (2), to terminate the co-debtor stay of 11 U.S.C. § 1301(a), and for attorney's fees.

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

#### **RELIEF REQUESTED PURSUANT TO § 1301**

**The court denies, without prejudice, relief pursuant to 11 U.S.C. § 1301. First, Movant fails to state with particularity the grounds for such relief in the Motion. See Fed. R. Bank. P. 9013, "The motion shall stated with particularity the grounds therefore, and shall set for the relief or order sought." The "grounds stated with particularity" in the Motion consist of,**

"Movant also moves the Court to terminate the co-debtor stay of 11 U.S.C. § 1301(a) on the grounds that Movant's interest in the Property will be irreparably harmed by the continuation of the co-debtor stay"

Motion, Dckt. 44. Merely citing a Code section is not stating grounds with particularity. The court does not understand how Movant will be "irreparably harmed" by the continuation of the co-debtor say. Is the co-debtor threatening to store nuclear waste on the property?

Even if the court presumes that the grounds are the same, the Motion does not state the name of the "co-debtor." On the face of the Motion, the Movant provides no identification of the co-debtor.

At best, it is an invitation for the court to peruse the other pleadings filed by Movant, all of the pleadings filed in this case, canvas the court's files to identify other cases filed by the Debtor, and then assemble those grounds for Movant (rather than Movant's attorney stating such grounds with particularity in the Motion). The court does not, and it would be improper for the court to, assemble pleadings and advocate for one party over the other.

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FN.1. The court has previously addressed Movant's counsel about such "minimalist pleadings" and expecting the court to do counsel's work. However, as it seems that enough time has not passed from the last time the court say such inadequate pleading for Movant's counsel to make the necessary institutional changes to prevent such inept pleadings, the court will not reiterate the requirements of Fed. R. Civ. P. 9013 or deem this to be an appropriate situation for sanctions.  
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Therefore, the request of relief under 11 U.S.C. § 1301 as to the co-debtor is denied without prejudice.

#### **ATTORNEY FEES REQUEST**

The Movant has not stated with particularity the grounds in which attorneys fees would be warranted. Looking at the Motion, the Movant fails to provide a prayer for relief at the end of the Motion. In the body of the Motion Movant states:

As Movant has retained counsel to represent it in this matter and is thereby incurring attorneys' fees and expenses in filing this motion, Movant is seeking to recover its reasonable attorneys' fees and costs incurred in prosecuting the instant motion by adding these amounts to the outstanding balance due under the Note, as allowed under applicable non-bankruptcy law.

*Id.*

The Movant fails to state the contractual or statutory grounds, if any, upon which a claim for attorneys' fees is based. The Movant does not seek the allowance of any specific amount of attorneys' fees in the Motion. Movant does not provide any evidence upon which the court can determine the amount of fees requested. If the court were inclined to treat the non-specific grounds request for attorneys' fees as having stated specific grounds, a further motion would be required for Movant to properly plead the grounds and relief (dollar amount) requested for attorneys' fees. Movant would have to prepare new declarations providing the court with testimony of the attorneys' fees sought, reasonableness of the fees, and documentation of the requested fees. It is

likely that such an exercise would be equal to or more than reasonable attorneys' fees for brining a simple motion for relief from the stay. The court will not engage in a series of hearings which exist solely for the purpose of causing more attorneys' fees to be incurred and otherwise unnecessary court hearings. FN.2.

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FN.2. Requesting attorneys' fees as part of a motion for relief is not complex. The motion includes a section in which the basis of the attorneys fees is identified (such as identifying the paragraphs in the note and deed of trust provide for contractual attorneys' fees), a short allegation of the work that was done, and a dollar amount which is requested for the fees (including a projected amount for the hearing). Then the attorney can provide a declaration and a billing sheet exhibit, or the client witness can add a paragraph to his or her declaration testifying to the amount of attorneys' fees paid counsel for the relief from stay motion. Given that this is a routine motion, having such testimony is generally acceptable.  
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The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, 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 7823 Cone Ave., Los Molinos, California.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of 11 U.S.C. § 1301(a) is denied without prejudice.

No other or additional relief is granted.

3. [15-21257](#)-E-13 DAVID SEARS  
SC-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-5-15 [[15](#)]

PARKVIEW EDGE PROPERTIES,  
LLC VS.

**Final Ruling: No appearance at the March 24, 2015 hearing is required.**  
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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 and Chapter 13 Trustee on March 5, 2015. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Parkview Edge Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known **as 1830 Hidden Hills Drive, Roseville, California (the "Property")**. The moving party has provided the Declaration of Olivia Reyes to introduce evidence as a basis for Movant's contention that David Sears ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence **that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on August 20, 2014.** Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer County. Exhibit 2, Dckt. 19.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on March 9, 2015.



## BACKGROUND

Debtor is the prior owner of the Property. Following the Movant filing the unlawful detainer action, the Debtor filed a Chapter 13, case no. 14-31815. The Debtor was pro se in the first bankruptcy case. The Movant filed a Motion for Relief on December 11, 2014, set for hearing on January 21, 2015. Case No. 14-31815, Dckt. 14. The Debtor filed a Request for Dismissal on January 9, 2015, which was granted on January 13, 2015. Case No. 14-31815, Dckt. 31 and 32. Thereafter, the Movant's Motion for Relief was discharged as moot, the bankruptcy case having been dismissed. Case No. 14-31815, Dckt. 43.

Debtor then filed the instant bankruptcy case on February 19, 2015. The Movant filed the instant Motion on March 5, 2015. Dckt. 15. The Debtor once again filed a Request for Dismissal on March 19, 2015. Dckt. 31. The court issued the order granting Debtor's request for dismissal on March 20, 2015. Dckt. 32.

However, the case remains open at this time.

## DISCUSSION

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This 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).

Pursuant to 11 U.S.C. § 554(c), "any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

First, just because the case has been dismissed does not mean that the

instant Motion should be discharged as moot. As 11 U.S.C. § 362(c) provides, the stay continues until "such property is no longer property of the estate" which happens at the time of closing of the case when it is abandoned back to the Debtor. Here, the case has been dismissed but not yet closed, meaning the Property remains part of the estate.

The dismissal has just been terminated as to "any other act" under 11 U.S.C. § 362(a). Therefore, as to the Debtor, the stay has been terminated as an operation of law from the order dismissing the case on March 20, 2015.

Moving onto the instant Motion as to the Property, based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The Movant also seeks relief under 11 U.S.C. § 326(d)(4), stating that the filing of the petition was part of a scheme to delay the Movant's unlawful detainer action. 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

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

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

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule

4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue 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 Parkview Edge Properties, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Parkview Edge Properties, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1830 Hidden Hills Drive, Roseville, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to David Sears ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

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

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

No other or additional relief is granted.

4. [10-44610-E-7](#) JAMES MACKLIN  
[11-2024](#)  
MACKLIN V. DEUTSCHE BANK  
NATIONAL TRUST CO.  
ADV. CASE CLOSED 4/8/14

CONTINUED MOTION TO REOPEN  
ADVERSARY PROCEEDING  
1-22-15 [[374](#)]

**Final Ruling:** No appearance at the March 24, 2014 hearing is required.  
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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 Creditor, parties requesting special notice, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Reopen the Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties 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.

<b>The Motion to Reopen the Adversary Proceeding is granted.</b>
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James Macklin ("Movant") makes the instant Motion to Reopen the Adversary Proceeding. Dckt. 374. The Movant seeks to reopen this adversary proceeding to address two recent cases, *Merritt v. Countrywide Financial Corporation* and *Jesonoski v. Countrywide Home Loans, Inc.* as it concerns the Movant's complaint in the Adversary Proceeding.

The court is empowered to reopen a case to administer assets, accord relief to the debtor, or for other cause. 11 U.S.C. § 350(b). The motion should state facts to satisfy the court that cause exists. *Schofield v. Moriyama*, 24 F.2d 473, 475 (9th Cir. 1928). A motion to Reopen does not decide the underlying subject matter which the moving party seeks to place before the court. *In re Leigh*, 272 F. 678, 679 (7th Cir. 1921). Reopening the case does not undo the consequences of the closing the case; no automatic stay arises, the trustee is not automatically reappointed, and abandoned property does not return to the Estate. *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 913-14 (B.A.P. 9th Cir. 1999).

Here, Debtor argues that the Adversary Proceeding should be reopened

to allow the Movant to file a Motion to Vacate the court's prior orders and judgments. Specifically, the Movant argues that the court erred in dismissing the Movant's complaint based on two subsequent 9th Circuit and Supreme Court decisions that the Movant argues are directly on point with the Movant's complaint.

The motion is granted and the adversary proceeding is reopened.

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 Reopen filed by Debtor 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 granted and the Adversary Proceeding is reopened.

5. [10-44610](#)-E-7 JAMES MACKLIN  
[11-2024](#) JLM-1  
MACKLIN V. DEUTSCHE BANK  
NATIONAL TRUST CO.  
ADV. CASE CLOSED 4/8/14

CONTINUED MOTION FOR RELIEF  
FROM ORDER  
1-22-15 [[380](#)]

No Tentative Posted  
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Due to the length of the court's tentative decision on the instant Motion for Relief from Order Under Federal Rules of Civil Procedure, Rule 60, the tentative has not been posted. The court has provided copies to the parties and their counsel prior to the hearing to afford them the opportunity to review the tentative.

The court notes that James Macklin ("Macklin") failed to properly serve the instant Motion. A review of the Proof of Service shows that Macklin served "by the court via Notice of Electronic Filing (NEF)." Dckt. 392. This is improper in the Eastern District of California.

Eastern District of California Local Bankruptcy Rule 7005-1 provides for the proper means of serving parties electronically. However, the rule only provides for service by an electronic means if the party consents to such service. Service is to be made by the party, not the court. See Fed. R. Civ. P. 5(b)(2)(E), Fed. R. Bankr. P. 7005, and L.B.R. 7005-1(d)(1), (3).

Although the service, on its face, is deficient, stating the court shall provide service for Macklin, the court waives the defect in light of the only defendant in this Adversary Proceeding having filed an opposition.