

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge  
Modesto, California

March 26, 2015 at 10:00 a.m.

1. [14-91528-E-7](#) SABRINA AFIFI

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-9-15 [[27](#)]

HARJIT SANDHU VS.  
CASE DISMISSED 2/19/15

**APPEARANCE OF NARESH CHANNAVEERAPPA,  
ATTORNEY FOR MOVANT REQUIRED. TELEPHONIC  
APPEARANCE PERMITTED.**

**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).

-----  
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) and Chapter 7 Trustee on February 6, 2015. By the court's calculation, 48 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,

March 26, 2015 at 10:00 a.m.

- Page 1 of 11 -

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 -----.

**The Motion for Relief From the Automatic Stay is granted.**

Harjit Sandhu ("Movant") filed the instant Motion for Relief from the Automatic Stay on February 6, 2015. Dckt. 23. The Movant alleges that cause exists for the termination of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) because Sabrina Afifi ("Debtor") has no right to continued occupancy of the property commonly known as 1320 Nadine Ave., Modesto, California ("Property").

#### **REVIEW OF MOTION**

However, the Movant's Motion is deficient on many grounds.

First, the Movant has failed to provide proper notice as required by Local Bankr. R. 9014-1(d). Pursuant to the Local Rule:

(3) Contents of Notice. The notice of hearing shall 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 a written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

Local Bankr. R. 9014-1(d)(3).

Here, the Movant has not stated whether opposition was required nor, if opposition is necessary, where it must be sent.

Second, the Movant has failed to provide any evidence in support of the Motion. The Movant has failed to provide a separate declarations that state, under penalty of perjury, the personal knowledge of the declarant of facts in support of the Motion. See Local Bankr. R. 9014-1(d)(6). While the Motion does have a section in the Motion entitled "Declaration in support of Movant's motion for relief," it is merely statements by the Movant's attorney, not under the penalty of perjury, that restate the allegations in the Motion, which is not sufficient.

Third, the Movant does not state with particularity the grounds under 11 U.S.C. § 362(d)(1) to justify relief from stay. Fed. R. Bankr. P. 9013 requires that a "motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Here, the Movant has merely stated the following grounds with no exhibits or declarations to support such grounds:

1. Debtor has not paid since the date of filing of Chapter 7

petition.

2. Debtor has not paid rent since occupying the property, and therefore no legal right to rightful possession of the Property.
3. Debtor filed her petition after the state unlawful detainer action.
4. Debtor fails to list any creditors in the instant petition.
5. The only purpose of filing the petition is to stall the unlawful detainer action.

The Movant merely makes this conclusory statements without stating with particularity how this is cause under 11 U.S.C. § 362(d)(1).

However, a review of the court's records, including the past filings of the Debtor, shows that the Debtor is a serial filer. Below is a list of cases filed voluntarily by Debtor that were pending and dismissed in the year prior to the filing of the instant case:

Case No.	Date Filed	Date Dismissed
Cases Pending and Dismissed Earlier Than One Year Prior to November 13, 2014		
13-91614	September 4, 2013	September 16, 2013
13-91702	September 20, 2013	October 8, 2013
13-91823	October 10, 2013	October 28, 2013
Cases Pending and Dismissed Within One Year Prior to November 13, 2014 Filing of Instant Case		
14-91457	October 28, 2014	November 10, 2014 for failure to timely file documents. Case No. 14-91457, Dckt. 20.
14-91528	November 13, 2014	Instant Case - Dismissed, Not Closed
Addition Cases Filed After Instant Case		
15-90009	January 6, 2015	January 20, 2015 for failure to timely file documents. Case No. 15-90009, Dckt. 10.
15-90061	January 22, 2015	February 9, 2015 for failure to timely file documents. Case No. 15-90061, Dckt. 11.

15-90113	February 9, 2015	February 20, 2015 for failure to timely file documents. Case No. 15-90113, Dckt. 10.
15-90174	February 25, 2015	Pending

In reviewing the most recent filing by the Debtor, the court notes that the United States Trustee has filed a Complaint for Injunctive Relief and Denial of Discharge in light of the Debtor's repeat filings. Case No. 15-90174, Dckt. 22. FN.1.

-----  
 FN.1. While not implicated in the instant case, Congress addressed issues relating to the automatic stay when multiple bankruptcy cases have been pending and dismissed in a one-year period prior to the commencement of the bankruptcy case at issue. 11 U.S.C. § 363(c)(4)(A) provides that if two or more bankruptcy cases were pending and dismissed within one year of the "current bankruptcy case at issue," then no automatic stay would go into effect in that "current bankruptcy case at issue" by operation of law. Congress empowered the judge to impose the stay in that "current bankruptcy case at issue." This provision does not address the larger structural and judicial process integrity issues as may be raised in the U.S. Trustee's complaint.  
 -----

11 U.S.C. § 362(c)(3)(A) provides [emphasis added]:

"(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor on the 30th day after the filing of the later case;**

Therefore, as to the Debtor, the automatic stay has terminated. The only remaining issue is whether the stay should be terminated as to the bankruptcy estate. The Chapter 7 Trustee, the party in interest, has not asserted any opposition to the Motion. The court takes as grounds for the relief requested as against the estate the same multiple filing grounds as were stated for the Debtor. Additionally, the court notes that the Chapter 7 Trustee has filed a No Asset Report (filed after the current motion was filed), which indicates that there are no assets of value which the Trustee intends to administer. This is consistent with the Trustee not opposing the motion for whatever interests, if any, the estate has in the property which is the subject of the state court action. FN.2.

-----  
 FN.2. The court notes that the Movant nor Movant's counsel should not rely on the instant ruling as an indication that they have properly and sufficiently

pleaded for the relief. The court, only upon its own review of the instant case, the court's files, the Trustee's No Asset Report, and the Debtor's prior and subsequent non-productive bankruptcy filings, has the court in this one contested matter not required the Movant to go back and do a proper job of pleading and presenting evidence.

-----

The court shall issue an order terminating and vacating the automatic stay to allow Harjit Sandhu, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1320 Nadine Ave., Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Harjit Sandhu ("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 Harjit Sandhu, 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 Nadine Ave., Modesto, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Sabrina Afifi ("Debtor"), the automatic stay terminated by operation of law on November 28, 2014 pursuant to 11 U.S.C. § 362(c)(3)(A).

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

No other or additional relief is granted.

2. [14-91460](#)-E-7 JENNA MILLER  
PPR-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
2-19-15 [[14](#)]

NATIONSTAR MORTGAGE, LLC VS.

**Final Ruling: No appearance at the March 26, 2015, hearing is required.**  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 35 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>
--

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1119 Walnut Street, Oakdale, California (the "Property"). Movant has provided the Declaration of Patrick Valliere to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Valliere Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,289.00 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$1,072.25.

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 \$146,042.47 (including \$140,651.47 secured by Movant's first deed of trust), as stated in the Valliere Declaration and Schedule D filed by Jenna Miller ("Debtor"). The value of the Property is determined to be \$105,000.00, 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). 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).

Debtor was granted a discharge in this case on February 25, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.]

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by 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 automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Nationstar Mortgage, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is

recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1119 Walnut Street, Oakdale, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Jenna Miller ("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 the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.



3. [15-90175](#)-E-7 TIMOTHY/VICKIE LIGHT  
SW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-5-15 [[9](#)]

CALIFORNIA REPUBLIC BANK 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).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 5, 2015. By the court's calculation, 21 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>
--

Timothy and Vickie Light ("Debtor") commenced this bankruptcy case on February 25, 2015. California Republic Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Dodge Avenger, VIN ending in 9736 (the "Vehicle"). The moving party has provided the Declaration of Timo Saarela to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Saarela Declaration provides testimony that Debtor has not made 4 pre-petition payments, with a total of \$2,077.54 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 asset is determined to be \$21,050.67, as stated in the Saarela Declaration, while the value of the Vehicle is determined to be \$13,057.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the [Kelly Blue Book/NADA] Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The Kelly Blue Book Valuation Report values the Vehicle at a wholesale value of \$16,751.00 and clean trade-in value of \$13,662.00.

#### **RULING**

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 since the debtor and the estate have 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 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle 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 an order terminating and vacating the automatic stay to allow California Republic Bank, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, 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.

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 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 California Republic Bank ("Movant") 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 Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Dodge Avenger, VIN ending in 9736 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle 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 not waived.

No other or additional relief is granted.