

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

April 4, 2017 at 1:30 p.m.

---

1.	<a href="#">17-21214</a> -C-13	LICHELLE WALTON	MOTION FOR RELIEF FROM
	SMR-1	PRO SE	AUTOMATIC STAY AND/OR MOTION
			FOR RELIEF FROM CO-DEBTOR STAY
			3-6-17 [ <a href="#">12</a> ]

LUIS FRAGA VS.  
DEBTOR DISMISSED: 03/20/2017

\*\*\*\*

**Final Ruling:** No appearance at the April 4, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 6, 2017. Twenty-eight days' notice is required.

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

**The Motion for Relief From the Automatic Stay is denied as moot.**

Luis Fraga seeks relief from the automatic stay with respect to the real property commonly known as 7621 Telfer Way, Sacramento, California. The moving party has provided the Declaration of Luis Fraga to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Fraga Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$2,033.33 in post-petition payments past due. The debtors are tenants at the property which is owned by Luis Fraga.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in

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

The court notes that on March 20, 2017, the case was dismissed. As a result, the property is no longer protected by the automatic stay. Therefore, the motion will be denied as moot.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the Automatic Stay is denied as moot as the case was dismissed on March 20, 2017.

No other or additional relief is granted.

\*\*\*\*\*

2. [16-26822](#)-C-13 NORMAN WILLIAMS  
NLG-1 Stacie Power

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-28-17 [[85](#)]

ARVEST CENTRAL MORTGAGE  
COMPANY VS.

\*\*\*\*\*

**Final Ruling:** No appearance at the April 4, 2017 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2017. Twenty-eight days' notice is required.

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

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

Arvest Central Mortgage Company seeks relief from the automatic stay with respect to the real property commonly known as 360 North 1st Street, Dixon, California. The moving party has provided the Declaration of Chris Moore to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Moore Declaration states that the Debtor has not made 4 post-petition payments, with a total of \$6,054.84 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$201,458.48 (including \$201,458.48 secured by movant's first trust deed), as stated in the Moore Declaration, while the value of the property is determined to be \$285,321.00, as stated in Schedules A and D filed by Debtor.

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

The court notes that no response was filed by the debtor. The Trustee filed a response indicating that the debtor is delinquent on plan payments and that the trustee has made no disbursements to this creditor.

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

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

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Arvest Central Mortgage Company, 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 360 North 1st Street, Dixon, California.

No other or additional relief is granted.

\*\*\*\*

3. [17-20738](#)-C-13 IRIS ROBERSON  
MET-1 Harry D Roth

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
2-14-17 [[10](#)]

COMMUNITY FUND, LLC VS.

\*\*\*\*\*

**Tentative Ruling:** The Motion to Value 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 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 14, 2017. 14 days' notice is required.

The Motion for Relief from 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.

**The Motion for Relief from the Automatic stay is granted.**

Community Fund, LLC, Movant, seeks relief from the automatic stay in order to continue proceedings in Superior Court of California, County of Solano, Case No. FCM152835. Movant filed an unlawful detainer complaint on December 23, 2016 in the Superior Court of California, County of Solano for restitution and possession of the real property located at and commonly described as 418 Salisbury Circle, Vacaville, California. Further, Movant requests that the court enter its order waiving Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Movant purchased the property on November 29, 2016 and recorded the Deed Upon Sale on December 13, 2016. The Debtor has no right, title, or interest in the subject property and is forcibly detaining the property.

#### **Trustee's Response**

Trustee responds that there is no basis to oppose the motion. The

Trustee points out that the debtor has a pending Motion to Extend Automatic Stay set for February 28, 2017.

The court acknowledges the motion to extend automatic stay also set for hearing on February 28, 2017. The automatic stay was not extended. Cause exists under 11 U.S.C. § 362(d)(1) to grant the motion for relief from stay as the debtor has no right, title, or interest in the subject property.

The court, on February 28, 2017 set a briefing schedule with respect to the instant motion. The opposition was to be filed by March 13, 2017, and reply was to be filed by March 20, 2017. No opposition has been filed. As a result, cause exists to grant the motion.

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

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

The Motion for Relief From the Automatic Stay filed by the Elaine Wang Fong having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the Automatic Stay is granted to allow the Movant, Community Fund, LLC, to proceed in litigation in the Superior Court of California, County of Solano for restitution and possession of the real property located at and commonly described as 418 Salisbury Circle, Vacaville, California.

\*\*\*\*\*

4. [16-25445](#)-C-13 CAMMY WOOD  
ME-3 Jeffrey Guyton

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
3-7-17 [[159](#)]

FRANK LEDESMA VS.

\*\*\*\*\*

**Tentative Ruling:** The Motion to Value 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 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 7, 2017. 14 days' notice is required.

The Motion for Relief from 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.

<b>The Motion for Relief from the Automatic stay is continued to April 18, 2017 at 2:00 p.m.</b>
--

Frank Ledesma seeks relief from the automatic stay with respect to the real property commonly known as 8121 Hammonton-Smartsville Rd., Smartsville, California. The moving party has provided the Declaration of Michael Ecker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Creditor asserts a total of \$6,963.82 in post-petition payments past due. The loan matured and is payable January 12, 2016. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$235,726.16 (including \$235,726.16 secured by movant's first trust deed), as stated by the creditor, while the value of the property is determined to be \$220,000, as stated in Schedules A and D filed by Debtor. Creditor states that the value of the property is \$300,000.00.

Debtor filed a response requesting that the motion be continued to allow for enough time to file a response. Although debtor requested 45-60 days, the court will continue the matter to April 18, 2017 to give the debtor more time to prepare a response than if the motion had been set on Local Rule 9014-1(f)(1) notice.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from Automatic Stay is continued to April 18, 2017 at 2:00 p.m.

\*\*\*\*\*