

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**April 16, 2015 at 10:00 a.m.**

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1. [15-90103-E-7](#) RANDAL/PAULA GILGO MOTION FOR RELIEF FROM  
JCW-1 James P. Mootz AUTOMATIC STAY  
3-11-15 [[12](#)]  
NATIONSTAR MORTGAGE, LLC VS.

**Final Ruling: No appearance at the April 16, 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 *pro se*, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 3, 2015. By the court's calculation, 44 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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Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2022 Buena Vista Drive, La Grange, 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 Patrick Valliere Declaration states that there are 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,495.99 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$4,487.97.

**April 16, 2015 at 10:00 a.m.**

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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 \$232,236.76 (including \$227,770.42 secured by Movant's first deed of trust), as stated in the Patrick Valliere Declaration and Schedule D filed by Paula Marie Gilgo and Randal Neal Gilgo ("Debtors"). The value of the Property is determined to be \$171,634.00, 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).

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 2022 Buena Vista Drive, La Grange, 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.

No other or additional relief is granted.

2. 11-94410-E-7      **SAWTANTRA/ARUNA CHOPRA**      **MOTION FOR RELIEF FROM**  
**RPM-3**           **AUTOMATIC STAY**  
           **3-19-15 [[1215](#)]**  
**DAIMLER TRUST 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 - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 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). 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 without prejudice.**

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Mercedes-Benz CLS550C, VIN ending in 5578 (the "Vehicle"). The moving party has provided the Declaration of Davone Phommavong to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

A review of the Proof of Service shows that the Movant failed to serve the Chapter 7 Trustee as well as the Debtors' current attorney, Robert Yaspan. The Movant appears to have served the Debtors former attorney and are serving parties as if the case was still one under Chapter 11. Unfortunately, because the Movant has failed to properly serve the Debtors' current counsel and the Chapter 7 Trustee, the Motion is denied without prejudice.

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

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

The Motion for Relief From the Automatic Stay filed by Daimler 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** the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING  
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED  
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

#### **ALTERNATIVE RULING**

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Mercedes-Benz CLS550C, VIN ending in 5578 (the "Vehicle"). The moving party has provided the Declaration of Davone Phommavong to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Phommavong Declaration provides testimony that the lease to the Debtors has matured as of December 2014 and that the Debtors remain in possession of the Vehicle in violation of Movant's rights as owner of the Vehicle. The Phommavong Declaration further states that the Debtors have not exercised the purchase option of the lease and is therefore holding the Vehicle in violation of the lease agreement.

Exhibit A, Dckt. 1219.

## OPPOSITION TO MOTION

Debtors have not filed an opposition to the instant Motion.

## 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).

A review of the attached lease agreement states that the lease was set to expire December 23, 2014. Exhibit A, Dckt. 1219. The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not turned over the Vehicle after the maturing of the lease agreement. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Daimler Trust, 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 Daimler 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** 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 2012 Mercedes-Benz CLS550C, VIN ending in 5578 ("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.

3. [14-90716-E-7](#) CHERYL DURBIN  
BN-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-19-15 [[16](#)]

THE GOLDEN 1 CREDIT UNION  
VS.

**Final Ruling: No appearance at the April 16, 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 *pro se*), Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 19, 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). 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.**

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 617 W. Granger Avenue, Apart 5, Modesto, California (the "Property"). Movant has provided the Declaration of Shirley Giroux to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Shirley Giroux Declaration states that there are 10 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,895.60 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 \$151.21.

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 \$109,268.88 (including \$33,654.76 secured by Movant's second deed of trust), as stated in the Shirley Giroux Declaration and Schedule D filed by Cheryl Ann Durbin ("Debtor"). The value of the Property is determined to be \$135,803.00, 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).

Furthermore, the Debtor indicated that she intends to surrender the Property which is further cause to grant the instant relief from stay.

Eric Nims, the Chapter 7 Trustee, did not file a response to the instant Motion. A review of the Debtor's schedules show that not only does she intend to surrender the Property, but she also claims an exemption in the Property pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$8,471.98. It appears to the court that the reason for this lack of response is that the Property holds no benefit or equity for the estate and provides further evidence of cause.

Furthermore, Debtor was granted a discharge in this case on September 16, 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.

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 The Golden 1 Credit Union ("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 The Golden 1 Credit Union, 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 617 W. Granger Avenue,

Apartment 5, Modesto, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Cheryl Durbin ("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.



4. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
DMW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-18-15 [[539](#)]

G STREET INVESTMENTS, LLC  
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 11 Trustee, parties requesting special notice, and Office of the United States Trustee on April 1, 2015. By the court's calculation, 15 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 -----.

<p><b>The Motion for Relief From the Automatic Stay is denied without prejudice.</b></p>
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G Street Investments, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 900 G Street, Modesto, California (the "Property"). Movant has provided the Declaration of Therese C. Tuttle to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Tuttle Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of

\$12,750.00 in post-petition payments past due.

#### **DEBTORS' OPPOSITION**

Mark Anthony Garcia and Angela Marie Garcia ("Debtors") filed an objection to the instant Motion on April 2, 2015. Dckt. 563.

The Debtors first request that the court continue the hearing on the instant Motion to 10:30 a.m. on May 21, 2015 to be heard in conjunction with their Objection to the claims of Movant.

As to the instant Motion, the Debtors object stating that the Chapter 11 Trustee has sequestered rental income received from the Debtors commercial property that adequately protects the Movant. The Debtors also state that the Movant has collected over \$100,000.00 in rental income without obtaining appropriate and required orders from the court.

The Debtors also object on the grounds that the Debtors "and/or" their tenants have made all required post-petition payments on the secured claim held by Movant. Debtors also object stating that an account of rents received by Movant has been requested and non has been received or provided.

Lastly, the Debtors object to the Motion on the basis that the Property is integral part of the Debtors' business and is essential for reorganization.

#### **MOVANT'S RESPONSE**

The Movant filed a response on April 9, 2015. Dckt. 566. The Movant responds to the Debtors' objections as follows:

1. The Debtors pending claim objection has no merits nor is it responsive to the instant Motion.
2. The Chapter 11 Trustee recently stopped paying cash collateral to Movant and is, therefore, per se, not receiving adequate protection. The Movant states that the even if the Trustee had paid Movant its rental cash collateral, the Movant's position would still be eroding as a consequence of the stay given the fully matured status of the secured debt without any 2015 payments and the fact that the Trustee has not paid the April 2015 installment of real property taxes.
3. The Debtors do not explain what order would be necessary for the Movant to receive cash collateral payments of rents. The Movant has consensually and voluntarily been paid the rental income since prior to the commencement of the case.
4. The Debtors are in serious default of the loan. Furthermore, the Movant states that even if they were not delinquent, that fact has nothing to do with the absence of cause for relief from stay on a fully matured undersecured loan.
5. Movant provides a detailed analysis of all rents that were received and how they were applied in the Movant's Declaration.
6. The Debtors do not adequately show that the Property is necessary

for a reorganization. The Debtors cannot file a plan because the 300 days has expired pursuant to 11 U.S.C. § 1121(e)(2). The Trustee has not filed a plan. The Property does not generate sufficient income to pay the secured debt and taxes. The Movant argues that the Trustee's Monthly Operating Report (Dckt. 538) shows substantial losses.

## **TRUSTEE'S OPPOSITION**

John Bell, the Chapter 11 Trustee, filed an opposition to the instant Motion on April 10, 2015. Dckt. 575. The Trustee makes the following arguments:

### Admission of Movant Regarding the Underlying Notes

On or about November 30, 2004, Community Banks of Northern California provided a loan to the Debtors in the amount of \$1,040,000.00 evidenced by the promissory note. Dckt. 543, Exhibit 1. The note is secured by a deed of trust on the Property. Dckt. 543 Exhibit 6. The original note was then amended to lower the principle amount from \$1,040,000.00 to \$825,000.00, and a new promissory note was executed on March 24, 2011 in the amount of \$180,054.27. Dckt 543 Exhibits 5 and 8. Community Banks of Northern California was closed and the FDIC was appointed receiver, and subsequently sold the amended note and the deed of trust to LSC Realty California, LLC. Dckt. 543 Exhibits 9, 10, and 11.

### Motion to Value Collateral and Proofs of Claim

On December 13, 2012, the Debtors filed a Motion to Value Collateral of LSC Realty California, LLC, specifically the Property. On February 4, 2013, the court entered a Civil Minute Order granting the Motion to Value Collateral against the Property in the amount of \$650,000.00 on the first deed of trust. Dckt. 74. On the same day, the court also granted the Motion to Value Collateral against the Property in the amount \$0.00 on the second deed of trust. Dckt. 75. Therefore, the court held that the claims of LSC Realty California, LLC was secured in the total amount of \$650,000.00 and the obligation of the amended note was under secured and the obligation of the note was completely unsecured.

On February 14, 2013, LSC Realty California, LLC filed two Proofs of Claim (12-1 and 13-1) in the instant case. The Proof of Claim No. 12-1 relates to the new note amount of \$180,054.27, and reflects the court's order that it is not secured. The Proof of Claim 13-1 claim relates to the amended note in the amount of \$767,864.75, and reflects the Court's order that \$650,000.00 is secured and the rest of the \$117,864.75 is unsecured. On or about April 8, 2013, LSC Realty California, LLC supposedly sold the amended note, the new note, and the deed of trust to Movant.

### Movant had no Legally Cognizable Existence as of April 8, 2013.

Movant filed its organizational documents with the Secretary of State of California on April 19, 2013. Dckt. 577 Exhibit 5. The Sale and Assignment of the Promissory Notes Secured by Deed of Trust transferring the amended note, new note and the deed of trust to Movant was dated April 8, 2013. Dckt. 543 Exhibit 10. Therefore, Trustee argues that Movant purchased the above items from LSC Realty California, LLC prior to its existence.

### Movant Lacks Standing to Prosecute the Instant Motion

The Trustee argues that Movant does not have standing because it was not formed until its organizational documents were filed with the Secretary of State of California on April 19, 2013. Therefore, prior to that day the April 8, 2013 purchase of the amended note, new note, and deed of trust from LSC Realty California, LLC was not allowed and invalid.

### There is Equity in the Property

Even if the court finds standing, the Trustee contends that there is no equity in the Property. Movant states that their total claim is \$947,919.02 and appears to be from adding the 12-1 and 13-1 Claims. Movant further admits that they received 25 post-petition rental payments from the tenants at the Property, each in the amount of \$4,250.00 of a total of \$106,250.00. The Trustee argues that if Movant has a claim it is not secured in the amount of \$947,919.02 and could not possibly exceed the value of the Property (\$650,000.00) pursuant to the court's Order. Furthermore, any amount exceeding the \$650,000.00 is unsecured, and the \$106,250.00 in payments should have been applied to the secured portion of Movant's alleged claims. Therefore, the Trustee holds that there is sufficient equity cushion when applying the \$106,250.00 to the secured portion of \$650,000.00 and reduces the secured amount to \$543,750.00.

### Movant had Admitted to Violating the Court's Civil Minute Orders

Movant has been improperly applying payments to its unsecured claims in violation of the Court's Civil Minute Orders. Movant admits that the \$106,250.00 in payments were applied to the unsecured portions of its alleged claim of \$180,054.27. The Court's order required such payments on the unsecured portion to be paid through a confirmed plan. Therefore, Movant violated the court's Civil Minute Orders.

### Rent Payments Maintained by the Trustee

Previously the rent amount of \$4,250.00 from the tenants at the Property were being collected by LSC Realty California, LLC pursuant to a term that expired on May 30, 2013. Dckt. 15 and 17. The Trustee is now collecting the rents and has not turned over the rental payments since there is no approved cash collateral stipulation and lack of an accounting. Furthermore, the rents are being sequestered in a blocked account, are not being spent, and are reported in the Monthly Operating Reports.

### **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 \$650,000.00, based upon the court's orders valuing the collateral and as stated in Schedule D filed by Mark Anthony Garcia and Angela Marie Garcia ("Debtor"). The value of the Property is determined to be \$650,000.00, as stated in Schedules A and D filed by Debtor.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides

adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

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). However, in the Motion, the only grounds in which the Movant asserts relief under 11 U.S.C. § 362(d)(2) is the statement that "Relief from stay under 11 U.S.C. section 362(d)(2) is also warranted." Dckt. 539. While the Movant does provide some conclusory grounds in the Memorandum of Points and Authorities, the Movant has not met the burden that there is no equity, particularly in light of the alleged rent payments to the Movant. The Movant does not provide explanation how the rents that may or may not have improperly been turned over to Movant does not adequately protect Movant's interest. Particularly, if the rents were turned over to the Movant, they would be applied to the Movant's secured claim in the Property, here being the \$650,000.00 based on the court's order. By applying the rents to that secured claim, there is, in fact, equity in the Property. The Movant has not met the threshold burden under 11 U.S.C. § 362(d)(2) that there is no equity.

Therefore, the Motion is denied without prejudice.

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 G Street Investments, 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.

5. [15-90076](#)-E-7      WALTER DIAZ AND ARACELI      MOTION FOR RELIEF FROM  
JHW-1                      GALVAN                      AUTOMATIC STAY  
3-2-15 [[14](#)]  
TD AUTO FINANCE, LLC VS.

**Final Ruling: No appearance at the April 16, 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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 45 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.

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

Walter I. Canas Diaz and Araceli Galvan ("Debtors") commenced this bankruptcy case on January 30, 2015. TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 GMC Acadia, VIN ending in 5750 (the "Vehicle"). The moving party has provided the Declaration of Alexandra Pickard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Pickard Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$407.58 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$1,630.32.

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 \$22,789.22, as stated in the Pickard Declaration, while the value of the Vehicle is determined to be \$16,000.00, as stated in Schedules B and D filed by Debtor.

#### **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 TD Auto Finance, LLC, 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 TD Auto Finance, 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** 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 2009 GM Acadia ("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.

6. [15-90198-E-7](#) RICALYN CADIZ  
APN-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-17-15 [[9](#)]

WELLS FARGO BANK, N.A. VS.

**Final Ruling:** No appearance at the April 16, 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, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 30 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.

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

Ricalyn Caguiat Cadiz ("Debtor") commenced this bankruptcy case on February 27, 2015. Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 BMW 328i, VIN ending in 7642 (the "Vehicle"). The moving party has provided the Declaration of Carina Olivares to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Olivares Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$351.84 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 \$373.42.

From the evidence provided to the court, and only for purposes of this

April 16, 2015 at 10:00 a.m.

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Motion for Relief, the debt secured by this asset is determined to be \$18,911.60, as stated in the Olivares Declaration, while the value of the Vehicle is determined to be \$21,575.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the 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 report states that the clean retail value of the Vehicle is \$21,575.00.

#### **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).

Furthermore, as indicated by the Movant, the Debtor has indicated in her Statement of Intention that she will be surrendering the Vehicle to Movant, providing additional "cause" for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, 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 Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, ("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 2011 BMW 328i ("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.