

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

May 9, 2017 at 1:30 p.m.

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1.	<a href="#">14-21304</a> -C-13	CHARLIE/LAURA BALANGUE	MOTION FOR RELIEF FROM
	EAT-1	Peter Macaluso	AUTOMATIC STAY
			3-31-17 [ <a href="#">113</a> ]

WELLS FARGO BANK, N.A. VS.

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**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, and Office of the United States Trustee on March 31, 2017. Twenty-eight days' notice is required. That requirement was met.

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. 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.**

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 9008 Allbritton Way, Elk Grove, California. The moving party has provided the Declaration of Landis Benjamin Martin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Martin Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$4,667.74 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 \$279,393.21 (including \$279,393.21

secured by movant's first trust deed), while the value of the property is determined to be \$350,000.00, as stated in Schedules A and D filed by Debtor.

The confirmed plan specifically contemplated that the debtor would file for approval of a loan modification, and, failing to receive court approval, would file an amended plan. No loan modification has been approved and no amended plan has been filed.

### **Debtors' Opposition**

Debtors assert that they are not in default in the amount represented by the creditor, and in any case, equity exists in the property. Debtors do not address the argument that they are in material default under the plan by failing to file an amended plan after not receiving court approval on a loan modification.

### **Trustee's Response**

Chapter 13 Trustee believes that the motion should be granted based on the failure of the debtors to amend the plan after notice of the motion for relief.

### **Discussion**

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion provides enough protection to the creditor, moving party's contention that relief from stay be granted simply due to missed payments is not enough to warrant relief from stay. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

However, 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 confirmed chapter 13 plan specifically contemplated that the debtor would file for approval of a loan modification. No loan modification was filed. As the debtors had knowledge of this, at least from the time that they received notice of the impending motion for relief from stay, by failing to file an amended plan, the debtors are in material default of the terms of the confirmed plan. Therefore, cause exists to vitiate the stay with respect to the above-referenced property.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., 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.

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 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 Wells Fargo Bank, N.A., 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 9008 Allbritton Way, Elk Grove, California.

No other or additional relief is granted.

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2. [15-24006](#)-C-13 MICHELE BLAIR  
AID-1 Mary Ellen Terranella

CONTINUED AMENDED MOTION FOR  
RELIEF FROM AUTOMATIC STAY,  
AMENDED MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
12-28-16 [[28](#)]

HOUSING GROUP FUND, INC. VS.

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**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).**

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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, parties requesting special notice, and Office of the United States Trustee on December 28, 2016. 14 days' notice is required. That requirement is met.

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 hearing on Motion for Relief from the Automatic stay is denied as moot.**

Housing Group Fund, Inc. seeks either relief from the automatic stay with respect to a post-petition state court action for partition or against the state court entering an interlocutory judgment ordering the real property located at 100 Seneca Way, Vacaville, CA to be sold and its proceeds equitably distributed between Movant and debtor or a declaratory judgment that the stay does not apply.

The Movant and debtor each half own the property and debtor has been refusing to allow Movant physical access to the property. Movant requests relief from the stay "for cause." The Movant asserts that all claims asserted in the underlying state court action are for post-petition activities by the debtor, and as a result the automatic stay should not apply to stay any proceedings in the state court on this issue.

The Chapter 13 Trustee does not oppose the motion.

At the hearing Debtor's counsel represented to the court that opposition to the motion is based on the purported sale to Movant being invalid as a matter of law. This opposition is simply that as a matter of California law, a transfer of title cannot occur while an action for the partition of real property is pending.

Though the court does not determine the underlying rights of the parties in the context of a motion for relief from the stay, this opposition asserted is a basic issue of law which can be readily presented to the court of the court to determine whether there is a colorable interest in the Property for Movant to assert.

## **DISCUSSION**

The parties filed supplemental briefs in order to address the issue of whether or not a transfer of title cannot occur while an action for the partition of real property is pending. Debtor's argument that relates to this issue is that because HGF represented that it intended to pursue the Partition Action at the time of the assignment, the transfer of the 50% interest not owned by the debtor is a violation of the automatic stay.

The court is not persuaded by this bare assertion. The debtor does not introduce any authority to support this claim. Furthermore, the court finds that a purchase of a non-debtor's interest in real property, which as the Creditor points out was not never owned by the debtor or estate, is valid and does not violate the automatic stay. As a result, cause exists to grant the motion for relief from the automatic stay.

The court finds unpersuasive Debtor's arguments that the filing of this bankruptcy case somehow voids Debtor's sister selling the sister's interest 50% interest in the Property. While Debtor may prefer to have her sister as the co-owner (which sister had commenced the partition action which Movant is seeking to now pursue), Debtor cannot defuse Movant of their rights and interests in the Property.

Debtor's contentions of a violation of the stay by buying the property and the sister "assigning" the partition action to Movant is disingenuous and improperly tries to conflate two different actions by the sister. Debtor is outraged that Movant is asserting the ownership of the 50% interest and having received an "assignment" of the partition action because sister commenced the partition action after Debtor commenced this bankruptcy case. While outraged, Debtor has taken no action against the sister for such a violation of the automatic stay.

Though the partition action may be void, having been filed after the automatic stay went into effect, such void litigation does not limit the sister's right to sell her property - the 50% interest. There is no contention that Movant has acted to prosecute the partition action, other than filing this Motion for relief from the stay so Movant can prosecute the partition action. It may be, as addressed at the hearing, Movant may need to commence a new partition action because the sister's action, which was "assigned" by sister, appears to be void.

## **Continuance of Hearing**

While the Opposition lacks merit on the law, the court addressed with the Parties the practical aspect of this situation. Debtor has not shown the court any basis under which in bankruptcy Debtor can deprive Movant of its right to the enjoyment and use of its 50% interest in the property, or the economic value thereof. However, sending the parties to state court for a partition action, when the Debtor can quickly and easily market the property and sell it for fair market value (not for an apparent distress court forced sale) appears to be to everyone's advantage. Debtor can, if providing adequate protection, reasonably accommodate Movant's rights and interests, while maximizing the value for all parties – at a much lower legal fee cost.

The court continued the hearing to allow Debtor's counsel to address the realities of this case, her 50% interest, and the rights of Movant. Additionally, to allow Movant's counsel to address with Movant the realities of bankruptcy and the ability to now have the Debtor use this process to maximize the recovery for all.

The court heard this matter again on March 7, 2017. At that time, the parties represented to the court that the property was in the process of being sold. On April 20, 2017 the court granted the sale motion regarding the property. As a result, the motion will be denied as moot.

The court shall issue a minute order to the effect that the automatic stay does not act to stay the state

court proceeding and/or partitioning of the property.

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 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 for relief from automatic stay is denied as moot, the property being the subject of a sale motion approved by the court pursuant to order issued on April 20, 2017, Dckt. 95.

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3. [17-21120](#)-C-13 YVETTE PATTERSON  
CDC-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-11-17 [[27](#)]

UNITED STATES OF AMERICA VS.

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**Final Ruling:** No appearance at the May 9, 2017 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 13 Trustee, and Office of the United States Trustee on April 11, 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.**

The United States of America seeks termination of the automatic stay to permit the setoff of any debt the United States may owe to the debtor against the United States' claim against the debtor, pursuant to the terms of the Treasury Offset Program. Additionally, creditor requests annulling the automatic stay to validate the post-petition Treasury Offset Program setoff of the debtor's federal tax refund against the United States' claim against the debtor.

Creditor asserts that cause exists to lift the automatic stay as the creditor (a) has setoff rights and (b) the case was filed in bad faith for the sole purpose of frustrating collection attempts by the United States of America.

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 due to the fact that the creditor has valid setoff rights and the case was filed with the sole intention of frustrating collection by the United States of America.

The court shall issue a minute order terminating and vacating the automatic stay to allow the United States of America to exercise its setoff rights pursuant to the Treasury Offset Program.

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 the United States of America to setoff any debt the United States may owe the debtor against the United States' claim against the debtor, pursuant to the terms of the Treasury Offset Program.

**IT IS FURTHER ORDERED** that the automatic stay is annulled retroactively as to the United States of America's post-petition Treasury Offset Program setoff of debtor's 2016 federal tax refund against the United States of America's claim against the debtor.

No other or additional relief is granted.

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BRANDON DIXON VS.

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**Final Ruling:** No appearance at the May 9, 2017 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 13 Trustee, and Office of the United States Trustee on April 10, 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.**

Brandon Dix seeks relief from the automatic stay with respect to the real property commonly known as 4131 12th Avenue, Sacramento, California.

The debtor previously filed a chapter 13 case on March 13, 2017, case number 17-21611 that was dismissed on March 31, 2017, for failure to file documents. Therefore, absent a motion to extend the automatic stay in the current case, the automatic stay will terminate on the 30th day after the filing of the case. 11 U.S.C. § 362(c)(3)(A). Therefore, at the time of hearing, the automatic stay will no longer be in effect.

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief under 11 U.S.C. § 362(d)(2).

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).

Although the automatic stay will expire as to the debtor, the property is still property of the estate. As a result, the court shall issue a minute order granting the motion for relief from stay.

The court shall issue a minute order terminating and vacating the automatic stay to allow Brandon Dix, 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 Brandon Dix, 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 4131 12th Avenue, Sacramento, California.

No other or additional relief is granted.

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SCHOOLS FINANCIAL CREDIT  
UNION VS.

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**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).**

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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, parties requesting special notice, and Office of the United States Trustee on April 25, 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 for Relief from the Automatic stay is granted.**

Schools Financial Credit Union seeks relief from the automatic stay with respect to a 2015 Ford Mustang.

The Boyce Declaration states that the debtors have not made 5 post-petition payments with \$1,809.67 remaining unpaid in arrears. The value of the property appears to be approximately \$22,074.00 while the debt owned by the creditor appears to be approximately \$22,062.13.

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 shall issue a minute order terminating and vacating the automatic stay to allow Schools Financial Credit Union, and its agents, representatives and successors, to exercise their applicable non-bankruptcy rights.

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.

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 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 Schools Financial Credit Union, its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents and successors to exercise all of their non-bankruptcy rights with respect to the 2015 Ford Mustang.

No other or additional relief is granted.

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6. [16-27279](#)-C-13 JACK/REBECCA ELDER  
DM-1 Patricia Wilson

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-11-17 [[41](#)]

QUEENA MAGGIORA VS.

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**Final Ruling:** No appearance at the May 9, 2017 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 13 Trustee, and Office of the United States Trustee on April 11, 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.**

Queena Maggiora, Movant, seeks relief from the automatic stay in order to continue proceedings in Superior Court of California, County of Solano, Case No. FCM 151917. Movant filed an unlawful detainer complaint on October 18, 2016 in the Superior Court of California, County of Solano for restitution and possession of the real property located at and commonly described as 172 East D Street, Benicia, California. Further, Movant requests that the court enter its order waiving Federal Rule of Bankruptcy Procedure 4001(a)(3).

On January 1, 2009, the landlord and debtor entered into a Commercial Lease and Deposit Receipt agreement whereby the debtor agreed to lease the property through December 31, 2013. Debtors have been a holdover tenants since that time. Debtors have not made payments since August 2016.

Debtors have no interest in the property. Movant is informed and believes that the debtors do not occupy the property.

**Trustee's Response**

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

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 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 Movant, Queena

Maggiora 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, Queena Maggiora, 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 172 East D Street, Beneicia, California.

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