

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 28, 2016 at 1:30 p.m.

1. [16-23615](#)-E-13 TATYANA MOLITVENIK
CPG-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-14-16 [[14](#)]

ALDEA HOMES INC. VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

Aldea Homes Inc. and TKR Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as

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2004 Two Towers Way, Rocklin, California (the "Property"). The moving party has provided the Declaration of Cary P. Greisen to introduce evidence as a basis for Movant's contention that Tatyana Molitvenik ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on March 24, 2016. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer and received a judgment for possession, with a Writ of Possession having been issued by that court on June 7, 2016. Exhibit 3, Dckt. 19.

Response has been filed by David Cusick ("Trustee") asserting that Debtor has not performed under the Courts Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are not Timely Filed. Trustee states that he has no basis for objection.

Movant has provided a copy of the Writ of Possession. Debtor failed to list a secured creditor for the Property in the most recently filed schedules even though the property was completely under-collateralized when the Debtor filed for bankruptcy in 2012. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

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

The court shall issue an order terminating and vacating the automatic stay to allow Aldea Homes Inc. and TKR Properties, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2004 Two Towers Way, Rocklin, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Annulment of the Automatic Stay

Movant requests that the court annul the automatic stay as it would apply to the unlawful detainer proceedings in which Movant has sought to obtain possession of the Property. Movant directs the court to the fact that Movant obtained relief from the stay and annulment of the automatic stay in the Alexander Molitvenik bankruptcy case. Bankr. E.D. Cal. 16-20274. In granting annulment of the automatic stay in that case, the court's findings of fact and conclusions of law include the following:

- A. "First, it is undisputed that Movant (who was the purchaser at the sale, not the "creditor") was not aware of the bankruptcy filing when the non-judicial foreclosure

occurred."

- B. "Additionally, it is undisputed that Debtor did not provide the creditor nor the trustee under the Deed of Trust with notice of the bankruptcy filing. Debtor instead chose to wait until days after the sale, and only after a representative of Movant went by Debtor's house, to attempt to contact that representative (who spoke to someone else at Debtor's house)."
- C. "Next, there is a long trail of dysfunctional bankruptcy filings by Debtor which span over the past three years. In the prior and current bankruptcy cases, Debtor has never made one plan payment, while obtaining the benefits of the automatic stay and other protections. In the prior bankruptcy cases, Debtor insured that no effective examination could be conducted by the Chapter 13 Trustee or creditors at a First Meeting of Creditors by failing to appear at those meetings. In the current case, Debtor and his counsel (though counsel has not substituted in to replace Debtor who has been prosecuting this case in pro se) precluded the meeting from occurring by counsel failing to appear at the First Meeting of Creditors. Instead, Debtor appeared with another attorney who stated that she was only "special appearance." The "special appearance" by counsel is not permitted in the District Court or Bankruptcy Court in the Eastern District of California - with the only exception being as a "courtesy appearance" may be allowed in a criminal matter in District Court. E.D. Cal. L.R. 182(a)(1); E.D. Cal. L.B.R. 2017-1(b).
- D. "Debtor's statements under penalty of perjury in Schedules and Statements of Financial Affairs in the prior two Chapter 13 cases and the current case are inconsistent and illogical. On the one hand Debtor states under penalty of perjury that he has net income from his business of \$50,000 a year, but then states under penalty of perjury that he has no business. Debtor goes further to state under penalty of perjury that he has no interests in any incorporated or unincorporated businesses."
- E. "To the extent Debtor has a business, he has repeated failed to provide the required gross income and expense statement as part of Schedule I. Debtor also fails to give the business information to the Chapter 13 Trustee. Further, Debtor has repeatedly in the three bankruptcy cases failed to provide the Trustee with his tax returns."
- F. "Additionally, a significant indication of bad faith and inequitable conduct by Debtor is repeating stating on Schedules I and J in the three bankruptcy cases that Debtor owes no income tax, no selfemployment tax, has no withholding, and pays no unemployment insurance. With \$50,000.00 of income and no dependents (as stated on all of his Schedules J filed), Debtor is not a 'tax-free income generator.'"

- G. "Here, Debtor's conduct is akin to one setting a trap, hoping to ensnare an innocent party in a "bankruptcy mess" from which they will then capitulate. In his opposition, Debtor states that he is going on the offensive, attacking Movant and others for violating the stay of which they were not aware. Debtor ignores in his opposition that Movant filed the present Motion on February 9, 2016, within two weeks of Debtor stating that he told Movant's agent about the bankruptcy filing. This issue has been promptly put before the court with the present Motion."
- H. "The discussion of the Debtor's conduct above and this financial illogic are not the only indices of bad faith by Debtor. In his Opposition, Debtor asserts that he will provide adequate protection, but not by making the current mortgage, tax, and insurance payments. Instead, he will make only a 'reasonable rental value.' In saying this as the 'adequate protection,' Debtor further shows that he has no intention of owning the property and paying for it, but instead, wants to have the luxury of being a tenant."
- I. "Debtor's further lack of good faith is evidence by his explanation of an inability to "fax" information of the bankruptcy filing until January 25, 2016. In his declaration, Debtor states that on January 25, 2016, he found a FedEx Service Center which would "allow" him to use their fax. In this bankruptcy case and the prior cases, Debtor states that he works as the "administrator" for Country Oaks Manor. Schedule I, Dckt. 19 at 15. For this he reports he is paid \$4,200.00 a month. As an administrator, he has a management job and is working in an office. There is no explanation as to why, from his administrative office, he could not fax, email, or text a copy of the bankruptcy petition, or at least the case number, and notify the trustee under the Deed of Trust. Instead, an administrator being paid \$50,000.00 a year waits five days after a foreclosure sale and waits four days after being informed that an agent for the buyer at the foreclosure sale (Movant) was at the house, to (1) actually tell someone that a bankruptcy case was filed on January 19, 2016 (six days earlier) and (2) find a FedEx store to fax information about the bankruptcy case."

16-20274; Civil Minutes, Dckt. 58.

Applicable Law

For the present motion the court begins with the discussion of the Ninth Circuit Court of Appeals in *National Environmental Waste Corp. v. City of Riverside (In re National Environmental Waste Corp.)*, 129 F.3d 1052 (9th Cir. 1997). In determining whether annulment of the stay is appropriate, the court should consider:

"(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable

or inequitable conduct, or prejudice would result to the creditor."

Id., 1055. The Circuit further states that this is not a binary test, but:

"we have never held these two factors to be dispositive; instead, we have engaged in a case by case analysis. See *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990) ("Cause' has no clear definition and is determined on a case by case basis."). Thus, this court, similar to others, balances the equities in order to determine whether retroactive annulment is justified. See, e.g., *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675-76 (11th Cir. 1984) (weighing the facts to find that retroactive relief was reasonable); *In re Murray*, 193 B.R. 20, 22 (Bankr. E.D. Cal. 1996) ("Balancing the equities here," the court denied retroactive relief because the creditor "nonchalantly and continuously acted in violation of the stay"); *In re Siverling*, 179 B.R. 909, 912 (Bankr. E.D. Cal. 1995) ("equity directs the court to grant . . . retroactive relief from stay")."

Id.

As discussed by the Bankruptcy Appellate Panel in *Cruz v. Staruss (In re Cruz)*, 516 B.R. 594, 603-04, the framework of this broader consideration of the equities can include:

- "1. Number of [bankruptcy] filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The [d]ebtor's overall good faith (totality of circumstances test) (citation omitted);
5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring the parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

11. Whether annulment of the stay will cause irreparable injury to the debtor; and

12. Whether stay relief will promote judicial economy or other efficiencies."

Bankruptcy Filings and Information of Debtor

Tatyana Molitvenik, the Debtor in this case, commenced this Chapter 13 case on June 1, 2016. Debtor lists this property on Schedule A. Dckt. 25 at 3. Debtor claims a \$651,700.00 exemption in this Property pursuant to California Code of Civil Procedure § 704.730 (California homestead exemption statutory amount section), as well as a \$248,890.00 exemption in the 7595 Linden Property, also pursuant to California Code of Civil Procedure § 704.730. There is nothing on Schedule C to indicate how Debtor can assert \$860,590.00 in homestead exemptions.

On Schedule A Debtor lists that she only has an interest in the property and there are no other owners. On Schedule D Debtor lists no creditors having any liens against either of the two real properties. On Schedule E Debtor lists only one creditor with a \$345.00 priority claim, and on Schedule E one creditor with a general unsecured claim, a creditor identified as "SPS" with a \$248,890 general unsecured claim. Dckt. 25 at 18 and 20.

On Schedule I Debtor lists self-employed income of \$2,500.00 a month as a "Unitarian," maintaining her business at the Property which is the subject of the Motion. *Id.* at 28. She lists her spouse as having income of \$3,500.00 from operation of a business. No statements showing the gross income and expenses from the Debtor's business and the spouse's business are included with the Schedules as required by Schedule I.

Though self-employed, Debtor shows no income or self-employment taxes for Debtor and spouse on Schedule J. *Id.* at 30-32. Debtor also states under penalty of perjury on Schedule J after paying all of the reasonable and necessary expenses, Debtor (including spouse's income) has only \$159.00 a month of Net monthly Income. *Id.* at 32.

The Statement of Financial Affairs appears to be incomplete, or inaccurate. Debtor states under penalty of perjury that she has not been involved in any lawsuits or foreclosures within one year prior to the commencement of the bankruptcy case. Statement of Financial Affairs Part 4, Questions 9 and 10; *Id.* at 37. This is inconsistent with the evidence presented by Movant.

Debtor has also filed a Chapter 13 Plan. Dckt. 23. Under the Plan the monthly payments are only \$75.00 and will be paid for a period of only thirty-six months. Other than that information, the Plan form is left blank, with no provision for making any payments, whether through the plan or outside the plan, to any creditor - with one exception. For Class 5, unsecured priority claims, Debtor proposes to pay SPS \$1,800.00, which

amount is inconsistent with the Schedules filed under penalty of perjury by Debtor.

In reviewing this bankruptcy case, there appears to be little, if any substance to it. While purporting to have property worth almost \$1,000,000.00 and it being purportedly unencumbered, Debtor does not provide for paying creditor claims. Rather, Debtor's (incomplete) Plan is to make a \$75.00 payment for thirty-six months and make a 0.7% dividend payment to the general unsecured claim listed under penalty of perjury by Debtor on Schedule F.

Debtor fails to disclose the unlawful detainer proceeding, again, under penalty of perjury stating that she is not a party to any litigation.

Based on the Schedules, Statement of Financial Affairs, and Chapter 13 Plan filed in this case, there is not bona fide, good faith Chapter 13 case being prosecuted by Debtor.

In a strategy which appears to be consistent with her husband, Alexander Molitvenik, though this bankruptcy case was filed on June 1, 2016, Debtor did not notify Movant and Movant's counsel until June 9, 2016 - causing the Superior Court and Movant to otherwise waste time, money, and judicial resources if the automatic stay is not annulled. This does not appear to be inadvertent, but part of Debtor's intentional litigation strategy. See Civil Minutes annulling automatic stay in Alexander Molitvenik bankruptcy case. 16-20274, Dckt. 58.

Debtor's conduct hits repeatedly on the various items in the *Cruz* discussion of factors. Debtor (individually and in conjunction with her husband) has engaged in multiple (non-productive) bankruptcy filings that exist for no purpose other than a bankruptcy case being filed. No plan payments have ever been made by the Debtor. The plan payments are a minimal amount and the "plans" filed by Debtor do not provide for making payments to creditors.

Considering the totality of the circumstances, the Debtor has not, and is not in this bankruptcy case, been acting in good faith. From a review of Debtor's legal gymnastics in the prior and the current cases, she is a sophisticated person, well versed in how to "work" the bankruptcy system. Though his prior cases and now, Debtor clearly knows about bankruptcy and the benefits he can get from it. She does not, and did not, need someone to tell her to file a bankruptcy case to stop a foreclosure sale.

Debtor's conduct is not consistent with a good faith debtor, availing him or herself of the protection of the Bankruptcy Code to protect an asset in good faith. Such debtors notify the person conducting the foreclosure sale. Such good faith debtors call, fax, mail, and hand deliver copies of the bankruptcy petition to protect an asset.

Here, nearly identical to her husband, Debtor's conduct is akin to one setting a trap, hoping to ensnare an innocent party in a "bankruptcy mess" from which they will then capitulate.

Annulment of the Stay is Proper in This Case

The Movant seeks annulment as to the proceedings in the state court action for unlawful detainer actions, including the ruling on the demurrer of the Debtor, the entry of default judgment for possession, and issuance of a writ of possession as to the Property. The court finds that annulment of the stay for this purpose is proper.

The Movant reports that Movant commenced an unlawful detainer April 13, 2016 following expiration of a notice to quit. On April 20, 2016, the Debtor filed a demurrer to the unlawful detainer complaint that was initially set for hearing on June 16, 2016 but which was advanced to June 2, 2016. On June 1, 2016, the state court issued a tentative ruling overruling the demurrer and requiring the Debtor file an answer by June 6, 2016. The Debtor's case was filed June 1, 2016.

The discussion of the Debtor's conduct above and this financial illogic are not the only indices of bad faith by Debtor.

In considering the equities, one of the factors restated in *Cruz* is whether the Debtor has complied, and is complying, with the Bankruptcy Code. Debtor has created a clear track record, over multiple cases, of not complying with the Bankruptcy Code. Of not proposing plans in good faith. Of not proposing plans that provide for paying claims. Of allowing bankruptcy cases to linger until they finally get dismissed due to Debtor's inaction. Debtor has not, and does not, act in good faith or make a good faith effort to fulfill a debtor's obligations under the Bankruptcy Code.

As discussed above, Movant, as the owner of the Property, promptly moved to annul the stay. While this Motion has been pending, there are no allegations of any other "violations" of the automatic stay. Movant has recognized the impact of the Bankruptcy Code and acted as permitted by the Code.

Finally, to address another factor stated by the Bankruptcy Appellate Panel, not annulling the stay will not result in any judicial economy. To the contrary, as demonstrated by the Debtor in this case and his prior Chapter 13 cases, it is likely to result in further dysfunctional bankruptcy proceedings. Debtor has shown that the bankruptcy estate does not have the value in the Property to sell it, pay the claim and reimburse Movant, and have any monies for the estate.

Therefore, upon review of the Motion, supporting evident, opposing evidence, the files in this case, and Debtor's prior Chapter 13 cases filed and dismissed in this District, cause exists to annul and terminate the automatic stay, with the annulment effective as of June 1, 2016, as of the filing of this bankruptcy case and for all periods thereafter to allow Aldea Home, Inc., TKR Properties, LLC, their respective agents, representatives, and successors; any trustee under a deed of trust, and any other beneficiary or trustee, and their respective agents and successors under any deed of trust 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 exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2004 Two Towers Way, Rocklin, California.

The Movant has alleged adequate facts and presented sufficient

evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

CHAMBERS PREPARED ORDER

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 Aldea Homes Inc. and TKR Properties, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately annulled and terminated, with the annulment and termination effective on June 1, 2016 as of time this bankruptcy case was filed and for all periods thereafter to allow Aldea Home, Inc., TKR Properties, LLC, their respective agents, representatives, and successors; any trustee under a deed of trust, and any other beneficiary or trustee, and their respective agents and successors under any deed of trust 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 exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2004 Two Towers Way, Rocklin, 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 waived for cause shown by Movant.

No other or additional relief is granted.

2. [15-29555](#)-E-13 DIANNE AKZAM
AP-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-17-16 [[44](#)]

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

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

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

Below is the court's tentative ruling.

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 (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 17, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 802 Ohio Street, Vallejo, California (the "Property"). Movant has provided the Declaration of Tifanee T. Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Movant claims that the Debtor and her brother have filed ten successive bankruptcy cases since 2010 in an effort to thwart Movant's non-judicial foreclosure of the property.

The Tifanee Brown Declaration states that the total amount required to reinstate the Account is estimated at \$204,511.55 and the total amount required to payoff the Account is estimated at \$671,826.70. The declaration also provides evidence that Randy A. Miramontez and Ruth Perrman purported

to transfer an interest in the Subject Property to J. And D. Akzam by executing an unauthorized "Deed Absolute."

DEBTOR'S OPPOSITION

Opposition has been filed by Dianne L. Akzam ("Debtor") on June 14, 2016. Dckt. 67. The Debtor asserts that the Movant has no standing because they have failed to file a proof of claim and because the Movant is not her creditor but rather the creditor of Randy A. Miramontez and Ruth Perrman.

Debtor also makes assertion, without citing any legal authority, as to the admissibility of the Movant's exhibits and declaration.

The Debtor makes the argument that because the Movant has not yet filed a Proof of Claim, that no claim exists so the Movant does not have standing. The Debtor further argues that since the Note is indorsed in blank, there is no real creditor and therefore the Movant does not have standing.

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 \$671,826.70, as stated in the Tifanee Brown Declaration and Schedule D filed by Dianne L. Akzam ("Debtor"). The value of the Property is determined to be \$240,000, 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 does exist 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).

The court maintains the right to grant relief from stay for cause when the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either the transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or multiple bankruptcy filings affecting such real property. 11 U.S.C. § 362(d)(4). Cause exists for terminating the automatic stay because the Debtor transferred ownership of the Property without the consent of the secured creditor or court approval and have filed multiple bankruptcy filings affecting the Property.

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.

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay

where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

History of Debtor's Bankruptcy Filings

The court has previously addressed the Debtor's history in bankruptcy as follows:

Though not grounds in and of itself grounds to deny confirmation, the following is the series of cases filed by the Debtor and Debtor's brother, Jeffrey Azkam and subsequently dismissed:

- A. 11-25844 in *Pro Se*
 - 1. Chapter 13 Filed March 9, 2011
 - 2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.
 - 3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.
 - 4. Discharge entered September 2, 2011.
- B. 13-20155 in *Pro se*
 - 1. Chapter 13 Filed January 7, 2013.
 - 2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*
 - 3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.
 - a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured

claim and alleged violations of the automatic stay.

- b. The court determined that abstention pursuant to 28 U.S.C. § 1334(c), the court finding that there were no issues arising under the Bankruptcy Code or in the bankruptcy case. Civil Minutes, Dckt. 85.

C. 14-30332 in *Pro Se*

1. Chapter 13 Case filed October 17, 2014
2. Case dismissed on July 8, 2015.
3. The case was dismissed due to debtor Jeffrey Akzam's failure to file an amended plan after the court denied confirmation of the proposed plan. Civil Minutes, Dckt. 83.

The six prior bankruptcy cases filed by Debtor are summarized as follows:

14-28272 <i>In Pro Se</i>	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	<p>I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan.</p> <p>II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28.</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
14-23825 <i>In Pro Se</i>	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014
	<p>I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49.</p>	
12-37369 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012

	<p>I. The case was dismissed due to Debtor failing to file Schedules, Statement of Financial Affairs, and Plan. Dckt. 21.</p> <p>II. Motion to Vacate Dismissal Order denied. Order, Dckt. 33</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
11-43187 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2011 Dismissed December 14, 2011
	<p>I. The case was dismissed for failure of Debtor to file Schedules, Statement of Financial Affairs, and Plan. Order, Dckt. 25.</p> <p>II. Case also dismissed due to Debtor failing to pay filing fees. Order, Dckt. 26.</p>	
11-20282 <i>In Pro Se</i>	Chapter 13 Case	Filed January 4, 2011 Dismissed March 18, 2011
	<p>I. Case dismissed due to Debtor's failure to attend First Meeting of Creditors and failure to file motion to confirm Chapter 13 Plan. Motion and Order, Dckts. 22, 27.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
10-45216 <i>In Pro Se</i>	Chapter 13 Case	Filed September 22, 2010 Dismissed December 16, 2010
	<p>I. The bankruptcy case was dismissed due to Debtor failing to file a motion to confirm the Chapter 13 Plan and Debtor being delinquent in Plan payments. Motion and Order, Dckts. 22, 38.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	

Jeffrey Akzam and his sister, the Debtor Diane Akzam, have filed a series of coordinated Chapter 13 cases without either of them engaging in the good faith prosecution of those cases. To the extent that either of them believe they have a bona fide dispute with the lender who asserted a lien against property in which these two debtor believed they had an interest, those issues are outside of bankruptcy.

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive bankruptcy cases. 15-2247.

Dckt.54.

The Debtor makes a transparent attempt to have the Motion denied by making meritless legal arguments, namely that the Movant does not have standing. To have a claim, a creditor is not required to file a proof of claim. Additionally, a note indorsed in blank gives the holder of the note control, and therefore standing. As to the objection to the declaration, the court recognizes that Ms. Brown, as a custodian of records, fits the business records exception. See Fed. R. Evid. 803.

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

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

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

Debtor's Dispute as to Standing

This court has addressed on several occasions Debtor's contentions as to "standing," most recently at the Status Conference in the Adversary Proceeding filed by the U.S. Trustee for a Prefiling Review Injunction to be issued against Debtor. In substance, Debtor disputes that Movant is a creditor who can foreclose on the property. But Debtor does not commence suit in District Court or Superior Court to litigate a quiet title action to have the asserted deed of trust determined void. Instead, Debtor (and her brother) repeatedly file non-productive bankruptcy cases solely for the purpose of delaying Movant (or other asserted creditors) from conducting foreclosure sales.

The bankruptcy filings are a misuse of the automatic stay, using it as a bond free "preliminary injunction" for which Debtor never litigates her

rights, never tries to obtain a final judgement, or to prosecute any litigation to determine the respective rights and interests. Rather, Debtor merely sits safely within the cocoon of the automatic stay, satisfied that "justice is done" by delaying a foreclosure sale.

The court appreciates Debtor's candor and constructive participation in the proceedings when addressing why she has filed so many bankruptcy cases that are not prosecuted. Though she may believe that "it is not right" that Movant asserts to be a creditor, she must fight that fight. A bankruptcy plan is not one in which a debtor may select the "good creditors" who should be paid and toss out the "bad guys pretending to be creditors." Congress did not grant the power to self determine and disallow claims to debtors any more than Congress has allowed one party or the other to dictate the judgment (other than through effective litigation) in District Court civil actions or Bankruptcy Court adversary proceedings.

Firm in her convictions, the time came a while ago for Debtor to bring whatever action she believes proper in the District Court (if federal jurisdictional grounds exist) or the California Superior Court to prosecute her rights and determine the rights and interests in the Property. In *Yvanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919 (2016), the California Supreme Court confirmed that the owner of property can challenge the right of someone to foreclose on property through a non-judicial foreclosure sale - including whether there has been an assignment of the deed of trust and note is void or invalid. The court understands Debtor's contention is that she challenges, and believes any asserted right to is invalid, Movant's right to foreclose. She may do so, and the California Supreme Court has stated that the California Superior Courts are "open for business" to adjudicate that litigation.

The court granting relief from the stay does not determine those issues, but only allows (or requires) Debtor to properly assert her rights. There is nothing being done in the bankruptcy case, or any bankruptcy plan, to adjudicate those rights or to have such done as part of a bankruptcy plan, with proper adequate protection if the automatic stay is being used in lieu of a state court or district court bonded preliminary injunction. See this court's discussion of using the automatic stay as part of a bankruptcy plan providing for such litigation in *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

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 U.S. Bank National

Association, 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 802 Ohio Street, Vallejo, California.

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

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

No other or additional relief is granted.

3. [16-22761](#)-E-13 CHARLTON CURRY
GME-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
5-23-16 [[21](#)]

LEGACY MORTGAGE AND REAL
ESTATE, INC. VS.

Final Ruling: No appearance at the June 28, 2016 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 23, 2016. By the court's calculation, 36 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 to Confirm Termination or Absence of Stay is granted.

Legacy Mortgage and Real Estate Inc. And Majid Mashhadialireza ("Movant") seeks confirmation that the automatic stay did not go into effect upon commencement of the instant case with respect to the real property commonly known as 4208 Woodwillow Lane, Elk Grove, California (the "Property").

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee filed a response to the instant Motion on May 31, 2016. Dckt. 30. The Trustee states that the case remains incomplete. The Debtor has failed to file the missing documents, even after the Debtor was granted an extension.

The Trustee is not opposed to the relief requested.

DISCUSSION

Upon the commencement of a bankruptcy case the bankruptcy estate, into which all property of the debtor is transferred by operation of law, is created. 11 U.S.C. § 541(a). Property of the bankruptcy estate is not

property of the Debtor unless abandoned by the Trustee (either as approved by order of the court, upon dismissal of the case, or closing of the bankruptcy case). 11 U.S.C. §§ 554(a) or (b), 349(b)(3), 554(c).

The Supreme Court has been very clear in reading and applying the "plain language" stated by Congress in statutes. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989). The basic direction is that Congress says in a statute what it means and means in a statute what it says. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992); (quoting *Caminetti v. United States*, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917)); *United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD.*, 484 U.S. 365, 371 (1988).

In 11 U.S.C. § 101 Congress has defined "debtor" as a person, whether living or entity such as a corporation, partnership or limited liability company, (11 U.S.C. § 101(13)); estate and property of the estate (11 U.S.C. § 541(a)); and exempt property (11 U.S.C. § 522). These terms for individuals, entities, estate, and property are all defining different things. The terms "debtor," "estate," "property of the estate," and "property of the debtor" are not terms describing the same thing.

Congress created the automatic stay as specified in 11 U.S.C. § 362(a). The automatic stay applies and stays actions with respect to a number of persons, items, and acts, including:

- A. Commencement or continuation of action **against the debtor** [11 U.S.C. § 362(a)(1)];
- B. Enforcement of a judgment obtained prior to the commencement of the case against,
 - 1. **Property of the Debtor** or
 - 2. **Property of the Estate** [11 U.S.C. § 362(a)(2)];
- C. Any act to obtain possession of **property of the estate, property from the estate**, or exercise control over **property of the estate** [11 U.S.C. § 362(a)(3)];
- D. Any act to create, perfect, or enforce any lien against **property of the estate** [11 U.S.C. § 362(a)(4)]; and
- E. Any act to create, perfect, or enforce a lien, which secures a claim which arose before the commencement of the case, against property of the debtor [11 U.S.C. § 362(a)(5)]

As shown in 11 U.S.C. § 362(a), Congress recognizes that the debtor, property of the debtor, and property of the estate are different.

In 11 U.S.C. § 362(c) Congress provides that the automatic stay terminates, without order of the court, in the following circumstances:

- a. As to property of the estate, when such property is no longer property of the estate [11 U.S.C. § 362(c)(1)];
- b. The stay of any other act until the earlier of:
 - i. The case is closed;
 - ii. The case is dismissed; or
 - iii. The time the debtor is granted or denied a discharge [11 U.S.C. § 362(c)(2)(A), (B), and (C)].

To address a perceived abuse of the Bankruptcy Code by repeat filers, Congress provides in 11 U.S.C. § 362(c)(4) that the automatic stay does not go automatically into effect in a bankruptcy case if there were two or more prior cases filed by the debtor which were dismissed within one year of the bankruptcy case then before the court. The language used by Congress in § 362(c)(4) is that "the stay under subsection [362](a) shall not go into effect upon the filing of the later case [then before the court]." Congress clearly provides that the entire stay provided for in 11 U.S.C. § 362(a) will not go into effect.

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

The Debtor has filed four cases since 2010, two within the past year:

- 1. Case No. 10-49590
 - a. Chapter 7
 - b. Filed November 9, 2010
 - c. Discharged on February 23, 2011
- 2. Case No. 14-23519
 - a. Chapter 7
 - b. Filed on April 4, 2014
 - c. Dismissed on May 18, 2014 for failure to pay fees and file documents
- 3. Case No 15-25602
 - a. Chapter 13
 - b. Filed on July 14, 2015
 - c. Dismissed on August 12, 2015 for failure to pay fees and file documents

4. Case No. 15-28227
 - a. Chapter 13
 - b. Filed October 22, 2015
 - c. Dismissed on December 18, 2015

If a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed...the stay under subsection (a) shall not go into effect upon the filing of the later case. 11 U.S.C. § 362 (c)(4)(A)(i). On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. 11 U.S.C. 362(c)(4)(A)(ii).

The automatic stay did not go into effect upon the filing of the instant case because the Debtor has 2 cases pending and dismissed within the previous year.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Legacy Mortgage and Real Estate Inc. And Majid Mashhadialireza ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that the court confirms that no automatic stay went into effect as of the filing of the instant Chapter 13 case (Case No. 16-22761) on April 29, 2016.

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

No other or additional relief is granted.

4. [16-23677](#)-E-13 SHANNON JOHNSON-WHITE AND MOTION FOR RELIEF FROM
RLC-1 JORDAN WHITE AUTOMATIC STAY
Pro Se 6-10-16 [[10](#)]
DAVID WAGES VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 8, 2016. By the court's calculation, 20 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 -----.

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

David and Cindy Wages ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1911 Aletha Lane, Unit #1. Vacaville, California (the "Property"). The moving party has provided the Declaration of David Wages to introduce evidence as a basis for Movant's contention that Jordan Humberto and Shannon Johnson-White ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano. Exhibit 3, Dckt. 14.

Movant has provided a properly authenticated copy of the recorded Grant Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

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

The court shall issue an order terminating and vacating the automatic stay to allow David and Cindy Wages, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1911 Aletha Lane #1, Vacaville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a) (3).

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by David and Cindy Wages ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow David and Cindy Wages and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1911 Aletha Lane #1, Vacaville, 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.

5. [15-27079](#)-E-13 LANNES SHARMAN
DBJ-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-29-16 [[21](#)]

MICHAEL/LINDA HOLMES 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.

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 29, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief From the Automatic Stay is conditionally denied.</p>
--

Michael and Linda Holmes ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 15071 Pinon Road, Magalia, California (the "Property"). Movant has provided the Declaration of Michael Holmes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Holmes Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,789.41 in post-petition payments past due. The Declaration also provides

evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$4,175.29. The Declaration states further that Debtor has fallen behind on his taxes, and therefore has subject the property to foreclosure.

DEBTOR'S OPPOSITION

Debtor filed an opposition on April 12, 2016, asserting that all post-petition defaults have been accounted for. Dckt. 30. Debtor explains that the payment for January 23, 2016, had become lost in the mail, and was returned to Debtor around April 7, 2016. Debtor attaches as Exhibit "A" a copy of the receipt showing that payment was mailed on April 8, 2016. Dckt. 31. Debtor states further that the other missed payments have already been mailed and received by the Trustee.

TRUSTEE'S RESPONSE

Trustee filed a response on April 12, 2016. Dckt. 27. Trustee provides a history of Debtor's payments. The Trustee states that the Debtor is delinquent \$789.00 in plan payments.

APRIL 26, 2016 HEARING

Prior to the hearing, the parties stipulated to continue the hearing to 1:30 p.m. on May 24, 2016. Dckt. 33. The court authorized the stipulation and continued the hearing to 1:30 p.m. on May 24, 2016. Dckt. 34.

TRUSTEE'S RESPONSE

Trustee filed an updated response on May 10, 2016. Dckt. 38. Trustee provides a history of Debtor's payments. The Trustee states that the Debtor is current under the confirmed plan.

STIPULATION

On May 23, 2016, the parties filed a stipulation to continue the instant hearing to 1:30 p.m. on June 28, 2016. Dckt. 41.

STIPULATION

On June 24, 2016, the parties filed a Stipulation. Dckt. 47. The Stipulation states the following:

1. Debtor shall have until 5:00 p.m. on August 31, 2016 to deliver two money orders in the amount of \$539.97 and \$611.00 for insurance and taxes owed to Movant.
2. Debtor will also make his ongoing \$789.00 plan payments to the Trustee sufficiently in advance of the July 25, 2016 and August 25, 2016 due dates so that they are actually received by those due dates.
3. If Debtor fails to comply with the above, Movant's attorney may submit an ex parte declaration to the court as to the Debtor's failure to comply with the terms of the Stipulation

and that the Movant's relief of stay to be allowed to proceed with foreclosure of the Debtor's residence be granted.

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 \$71,494.99, secured by Movant's first deed of trust, as stated in the Holmes Declaration and Schedule D filed by Lannes Sharman ("Debtor"). The value of the Property is determined to be \$69,259.00, as stated in Schedules A and D filed by Debtor.

In light of the stipulation, the court will conditionally deny the Motion. The condition precedent to denying the Motion is that:

1. Debtor shall deliver two money orders in the amount of \$539.97 and \$611.00 for insurance and taxes owed to Movant on or before 5:00 p.m. on August 31, 2016.
2. Debtor will also make his ongoing \$789.00 plan payments to the Trustee sufficiently in advance of the July 25, 2016 and August 25, 2016 due dates so that they are actually received by those due dates.

If Debtor fails to comply with the above, Movant's attorney shall submit an ex parte declaration to the court as to the Debtor's failure to comply with the terms of the Stipulation and that the Movant's relief of stay to be allowed to proceed with foreclosure of the Debtor's residence be granted and a proposed order granting the Motion.

If the Debtor complies with the conditions precedent, Movant's attorney shall submit an ex parte declaration to the court as to the satisfaction of the terms of the conditions precedent and a proposed Order dismissing the Motion.

The Motion is continued to 1:30 p.m. on August 30, 2016.

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 Michael and Linda Holmes ("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 conditionally denied on the completion of the following conditions:

1. Debtor shall deliver two money orders in the amount of \$539.97 and \$611.00 for insurance and taxes owed to Movant on or before 5:00 p.m. on August 31, 2016.

2. Debtor will also make his ongoing \$789.00 plan payments to the Trustee sufficiently in advance of the July 25, 2016 and August 25, 2016 due dates so that they are actually received by those due dates.

IT IS FURTHER ORDERED that if Debtor fails to comply with the above, Movant's attorney shall file and serve on the Debtor, Debtor's counsel, and Chapter 13 Trustee a declaration attesting to the Debtor's failure to timely comply with the above conditions of the Stipulation and that the Movant's relief of stay to be allowed to proceed with foreclosure of the Debtor's residence be granted and a proposed order granting the Motion. When filed, Movant shall lodge with the court a proposed order granting relief from the stay pursuant to the Stipulation.

IT IS FURTHER ORDERED that if the Debtor timely complies with the conditions precedent, Movant's attorney shall lodge with the court a proposed order dismissing the Motion for Relief From the Stay.

IT IS FURTHER ORDERED that the Motion is continued to 1:30 p.m. on August 30, 2016, which the court shall use as a status conference date if Movant has not lodged the with the court the appropriate order as provided in the Stipulation.

6. [16-22480](#)-E-13 SEAN/JENNIFER PARSONS
JPB-2 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-14-16 [[27](#)]

TRINITY FINANCIAL SERVICES,
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).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 14, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

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

Creditor Trinity Financial Services, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5120 Lotus Pond Way, Elk Grove, California (the "Property"). Movant has provided the Declaration of Don A. Madden III to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Madden Declaration states that there are two post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,219.66 in post-petition payments past due.

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 \$583,477.00 (including \$187,900.00 secured by Movant's second deed of trust), as stated in the Madden Declaration and Schedule D filed by Sean Corey and Jennifer Ann Parsons ("Debtor"). The value of the Property is determined to be \$548,029.00, as stated in Schedules A and D filed by Debtor.

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). [Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

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

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 Trinity Financial Services, 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 Trinity Financial Services, 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 5120 Lotus Pond Way, Elk Grove, 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 for cause shown by Movant.

No other or additional relief is granted.

7. [14-29688](#)-E-13 MARVIN/DARYL GARDNER
APN-1 Julius M. Engel

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-25-16 [[56](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the August 5, 2014 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, parties requesting special notice, and Office of the United States Trustee on May 25, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from 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 and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from Automatic Stay is granted.

Santander Consumer USA, Inc., seeks relief from the automatic stay to may proceed only against the available insurance assets of Marvin K. and Daryl A. Gardner ("Debtor") in the residential construction defect cases *Amrik Sandhu, et al. v. Feather River Construction & Development Co.*, (Sutter County Superior Court Case No.: CV 11-2137); *Madhu Sharma, et al. v. Feather River Construction & Development Co.* (Sutter County Superior Court No.: CV 12-0309); and *Steven and Bobbie McMahan v. Feather River Construction & Development Co., et al.* (Colusa County Superior Court Case No.: CV 23954) ("the Actions"). Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Frank J. Lee to introduce evidence to authenticate the documents upon which it bases its claim.

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be

available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Given that the movant would not seek to enforce any judgements against the debtor and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the movant to prosecute the claims against the debtor, but not enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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 Feather River Construction & Development Company, its agents, representatives, and successors to allow the movant to prosecute the claims against the debtor, but not enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No other or additional relief is granted.

8. [16-90401](#)-E-11 NATIONAL EMERGENCY
DCJ-1 MEDICAL SERVICES
David Johnston

MOTION TO EMPLOY DAVID C.
JOHNSTON AS ATTORNEY(S)
6-12-16 [[30](#)]

**APPEARANCES OF DAVID C. JOHNSTON AND TORREN K. COLCORD
REQUIRED**

No Telephonic Appearances Permitted

No Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(). 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)(3) Motion.

Correct Notice 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 June 19, 2016. By the court's calculation, 9 days' notice was provided.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----.

The Motion to Employ is -----.

National Emergency Medical Services Association ("Debtor-in-Possession") seeks to employ Counsel David C. Johnson, pursuant Bankruptcy Code Sections 328(a) and 330. The instant Motion was filed as an ex parte motion. Debtor-in-Possession seeks the employment of Counsel to assist the Debtor-in-Possession in prosecuting the Chapter 11 case. Mr. Johnston had represented the Debtor-in-Possession in the prior Chapter 11 (Case No. 15-90109) but has never represented any of the officers, directors, or members

of Debtor-in-Possession in any matters.

The parties have agreed that an hourly rate to be charged by Counsel is \$300.00. Periodic applications for interim compensation will be made, and at the conclusion of the case, a final application of allowance will be made.

The Debtor-in-Possession reports to have paid Counsel \$5,000.00 for pre-petition services and \$1,717 for court filing fee in the past year.

ORDER SETTING HEARING

After receiving the instant ex parte Motion, the court issued the following order setting the matter for hearing:

Therefore, a hearing on the Motion is required at which the ΔIP and Counsel explain how this combination will be able to effectively prosecute this case and what is different than in the prior case. Upon review of the Motion, the pleadings in this case, and good cause appearing;

IT IS ORDERED that a hearing on the Motion to Employ Attorney, seeking to employ David C. Johnston as counsel for the Debtor in Possession, shall be conducted at 1:30 p.m. on June 28, 2016, with the hearing to be held in the Sacramento Courthouse for this court, located at 501 I Street, 6th Floor, Courtroom 33, Sacramento, California.

IT IS FURTHER ORDERED that David C. Johnston and Torren K. Colcord, Executive Director for the Debtor in Possession, and each of them shall appear at the hearing on June 28, 2016, to address the issues for the court. No telephonic appearance permitted for David C Johnston and Torren K. Colcord. Telephonic appearances are permitted for all other parties in interest in this bankruptcy case.

IT IS FURTHER ORDERED that Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041 and 9014 are suspended with respect to this Motion, and the Motion shall not be dismissed except upon order of the court.

Dckt. 35.

BACKGROUND

On May 10, 2016, National Emergency Medical Association, the Debtor ("Debtor") and current Debtor in Possession ("ΔIP"), commenced the current voluntary Chapter 11 case. On June 12, 2016, ΔIP filed an ex parte Motion to Employ Attorney, seeking to employ David C. Johnston ("Counsel") to represent the ΔIP. Upon consideration of the filings in this bankruptcy case and the prior case filed by the Debtor, the court orders that a hearing be conducted on the Motion to Employ Attorney.

Debtor commenced its first bankruptcy case on February 6, 2015. Bankr. E.D. Cal. No. 15-90109 ("First Chapter 11 Case"). The Debtor served as the debtor in possession in the First Chapter 11 Case, and Counsel was employed to represent the debtor in possession in that case. The First Chapter 11 Case was dismissed on April 13, 2016. 15-90109; Order, Dckt. 91. The motion to dismiss the First Chapter 11 Case was filed by National Association of Government Employees, Inc. ("NAGE"), Debtor's main protagonist and only active creditor in the First Bankruptcy Case. For the unsecured claims filed in the case, NAGE asserted a claim of \$260,064.00, which was approximately 57% of the total unsecured claims filed.

On March 29, 2016, NAGE filed a motion to dismiss the First Chapter 11 Case. Id.; Motion, Dckt. 82. The ground asserted was that the debtor in possession in the First Chapter 11 Case had not filed a proposed plan and disclosure statement by the March 22, 2016 deadline established by the court (which deadline was more than one year after the commencement of the First Chapter 11 Case). The debtor in possession did not assert any opposition to the motion to dismiss. The court's findings of fact and conclusions of law are stated in the Civil Minutes for the hearing on the motion to dismiss. Id., Dckt. 88. The court's findings include the following:

"The instant case was filed February 6, 2015. Dckt. 1. Since that time, the Debtor-in-Possession [National Emergency Medical Services Association, represented by Counsel] has failed to propose any type of plan or disclosure statement. The Debtor-in-Possession has been benefitting from the protections of the Bankruptcy Code without prosecuting the case in good faith. The Debtor-in-Possession on multiple occasions represented to the court that the Debtor-in-Possession would be filing a Disclosure Statement and plan in the immediate future.

The Debtor-in-Possession has failed to meet this promise. The Debtor-in-Possession does not appear to be prosecuting this case in good faith. Instead, the Debtor-in-Possession appears to be 'dragging their feet' in order to avoid having to fulfill the obligations of a Chapter 11 Debtor-in-Possession fiduciary.

Looking at the February 2016 Monthly Operating Report, untimely filed on March 31, 2016, in the past year this Debtor in Possession has generated \$426,257.00 in cash receipts. Dckt. 85. During that time the Debtor in Possession has disbursed \$359,08.00 as it has continued to operate under bankruptcy protection. The largest expense is for Salary and wages, \$160,211. When the payroll tax and insurance expenses are included, the employee costs are \$241,979. Id. this is 67% of the total disbursements during the year this Debtor has been in bankruptcy.

The court has given Debtor-in-Possession ample opportunity to the Debtor-in-Possession to prosecute this case in good faith and diligently. There is nothing to indicate that there is any reorganization ongoing, but merely the Debtor in Possession continuing to operate the business and pay its

employees, without providing for paying any pre-petition creditors."

Dckt. 88.

While dismissed on April 13, 2016, the Clerk of the Court did not close the file in the First Chapter 11 Case until May 2, 2016. One week later, on May 10, 2016, Debtor commenced the current bankruptcy case. This case was commenced with a "skeletal filing," with Debtor filing only a petition, no schedules or statement of financial affairs. Two weeks later the Schedules and Statement of Financial Affairs were filed.

On Schedule A/B, Debtor lists having only \$5,400.00 in bank accounts and an additional \$53,000.00 in a cashier's check. Dckt. 19 at 3. In response to Questions 3 and 4, Debtor states under penalty of perjury that no payments in excess of \$6,425.00 were made to creditors within 90 days before the filing of the case nor within one year before the filing to insiders. Dckt. 15 at 2. However, in the First Chapter 11 Case, the debtor in possession reported that as of February 29, 2016, there was \$71,754.00 cash in the bank accounts, and the debtor in possession had generated \$28,000.00 in dues revenue in February 2016, and a total of \$426,257.00 of income for the prior 12 months, which averages \$35,521.00 a month. 15-90109, Dckt. 85.

On the Statement of Financial Affairs Question 1 in the current case, Debtor states under penalty of perjury that it had gross dues revenue of \$89,335.00 for the first four months of 2016, which averages \$22,333.75 a month. Notwithstanding having \$71,754.00 in the bank as of February 29, 2016, and two additional months of revenues, the Debtor reports having only \$58,000.00 of monies, and that there were no significant payments to creditors having been made in the ninety days prior to the commencement of this bankruptcy case.

In reviewing the Monthly Operating Report for February 2016, it discloses that the main expense for Debtor is payroll. During the first 12 months of the First Chapter 11 Case, the estate paid \$231,000.00 in wages and payroll taxes, 63.4% of the total expenses. There was an additional \$10,030.00 paid for "part-time contractors" and \$39,508.00 paid for legal and professional services. 15-90109, Dckt. 85. No order authorizing the payment of any fees for attorneys or other professionals has been entered in the First Chapter 11 Case.

NAGE filed a motion to dismiss the current case on May 27, 2016. In addition to asserting that the Debtor has demonstrated that it cannot prosecute a Chapter 11 case, that the Debtor has only two employees who are being paid, citing the court to the February 2016 Monthly Operating Report in the First Chapter 11 Case. NAGE asserts that the current bankruptcy case was filed right after NAGE obtained a writ of execution from the United States District Court to enforce a judgment it has obtained against the Debtor.

APPLICABLE LAW

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in

possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

While a debtor in possession generally may employ whomever it wants as counsel, the employment is permissible only as provided in 11 U.S.C. § 327. Employment is limited to those professionals who: (1) do not hold or represent an adverse interest, and (2) are disinterested. Discretion is given to the court in approving the employment of such professional that the request is consistent with the facts of the specific case and overall objectives of the bankruptcy system. See *In re Harold & Williams Development Co.*, 977 F.2d 906 (4th Cir. 1992); *Official Committee of Creditors v. Harris (In re Southwest Food Distributors, LLC)*, 561 F.3d 1106, 1112 (10th Cir. 2009); and *Elias v. Lisowski Law Firm, CHTD. (In re Elias)*, 215 B.R. 600, 604 (B.A.P. 9th Cir. 1997), *affrm.* 188 F.3d 1160 (9th Cir. 1999).

DISCUSSION

The inability of the Debtor, serving as the debtor in possession in the First Chapter 11 Case, and Counsel to prosecute the First Chapter 11 Case, inability to file a proposed plan and disclosure statement, and not having any opposition to the dismissal of the First Chapter 11 Case raises grave concerns over the ability of the Debtor to serve as the DIP represented by Counsel in this case. The Debtor and Counsel had time to prosecute that case, and did not. There is nothing to indicate that this is a complex business or requires extensive modification to production lines, reduction of hundreds of employees, or other dramatic restructuring of the business operations. It may be that the Debtor and Counsel are the wrong mix of business and legal attributes to successfully prosecute a Chapter 11 case.

At the hearing, ~~xxxxxx~~

~~———— Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ David C. Johnson as counsel for the Debtor-in-Possession on the terms and conditions set forth in the [Agreement] filed as Exhibit xx, Dckt. Xx. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 to Employ filed by the Debtor-in-Possession 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 to Employ is XXXXX

~~**IT IS ORDERED** that the Motion to Employ is granted and the Debtor-in-Possession is authorized to employ David C. Johnson as counsel for the Debtor-in-Possession on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit xx, Dckt. Xx.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~

9. [16-90139](#)-E-7 AJAVA SYSTEMS, INC.
BJ-2 David Johnston

CONTINUED MOTION TO SELL FREE
AND CLEAR OF LIENS
5-26-16 [[88](#)]

Tentative Ruling: The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Petitioning Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 -----.

The Motion to Sell Property is granted.
--

The Bankruptcy Code permits the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Movant proposes to sell the personal property specifically listed in Exhibit B of Dckt. 90 ("Property").

The proposed purchaser of the Property is 680D, LLC and the terms of the sale are:

1. Purchase Price of \$230,000.00.
 - a. Upon execution of the agreement, Buyer will deposit with the Trustee the sum of \$20,000.00 in immediately available funds to be credited against the Purchase Price at Closing. The deposit will serve as liquidated damages in the event of default by the purchaser.
2. The sale will be free and clear of interest in the purchase assets represented by:
 - a. The UCC Financing Statement in favor of Turlock Business Services, Inc. Db a Express Employment Professionals filed January 13, 2016.
 - b. The Notice of Attachment Lien in favor of New Century Transport LLC filed January 7, 2016.
 - c. The Notice of Attachment Lien in Favor of Pacific Gold Milk Producers, Inc. filed January 4, 2016.

The bankruptcy case was filed on February 8, 2016.

3. The sale will be as is, where is, with all faults.
4. The successful purchaser shall be deemed a good faith purchaser entitled to the protection of 11 U.S.C. § 363(m), provided such purchaser provides admissible evidence sufficient to support such a finding.
5. The closing shall be at the office of the Trustee on or about the 22nd day after entry of the order approving sale.
6. At the closing, Buyer shall deliver to the Trustee the balance of the purchase price, after application of: (1) deposit and (b) the credit of \$50,000.00 in immediately available funds. Any successful purchaser other than Buyer shall be required to deliver to the Trustee the balance of the purchase price after application of the deposit in immediately available funds.
7. If Buyer is the successful purchaser, the Trustee will pay the Settlement Amount to Buyer from the Purchase Price.

JUNE 16, 2016 HEARING

At the time of the hearing, the Trustee reported that several creditors (identifying New Century Transport, which asserts a writ of attachment) with secured claims have appeared, but were not provided notice of this Motion. The court continued the hearing to allow the Trustee to serve the pleadings on the parties whose rights may be impacted by the sale free and clear of liens.

TRUSTEE'S SUPPLEMENTAL PROOF OF SERVICE

On June 17, 2016, the Trustee filed Proofs of Service indicating that the Trustee had served all necessary parties. Dckt. 109 and 110.

SALE FREE AND CLEAR OF LIENS

The Motion seeks to sell Property free and clear of the liens of UCC Financing Statement of Turlock Business Services, Inc., New Century Transport LLC, and Pacific Gold Milk Producers, Inc. ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

"(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f) (1).

For this Motion, the Movant has established that as to the Notice of Attachment liens of New Century Transport and Pacific Gold Milk Producers are terminated pursuant to California Code of Civil Procedure § 493.030(b) which provides

(a) The making of a general assignment for the benefit of creditors terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the making of the general assignment.

(b) The filing of a petition commencing a voluntary or involuntary case under Title 11 of the United States Code (Bankruptcy)¹ terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the filing of the petition.

(c) Subdivisions (a) and (b) do not apply unless all liens of attachment on the defendant's property in other states that were created within 90 days prior to the making of a general assignment for the benefit of creditors or the filing of a petition commencing a case under Title 11 of the

United States Code (Bankruptcy) have terminated.

Cal. Civ. Proc. Code § 493.030 (West). The Movant argues that the instant case was filed February 8, 2016 which is within 90 days prior to the filing of the petition. As such, as a matter of non-bankruptcy law, the Movant asserts that the assets can be sold free and clear pursuant to 11 U.S.C. § 363(f)(1).

As to the UCC Financing Statement of Turlock Business, the Movant argues that because the Financing Statement was filed on January 13, 2016, well within the 90 days prior to filing the petition date, that pursuant to 11 U.S.C. § 547 the lien may be avoidable. As such, and due to the apparent avoidability, the Movant asserts that the Property can be sold free and clear pursuant to 11 U.S.C. § 363(f)(4). Additionally, the Movant argues that because the creditor failed to file an opposition to the instant Motion, that this can be construed as consent under 11 U.S.C. § 363(f)(2).

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. Given the unique facts of the instant case and the unknown nature of certain pieces of the Property being construed as fixtures and the possible administrative storage expense, the terms of the sale are in the best interest of the parties. The sale contemplates a set off from the settlement amount between the parties for the purchase price of the property. As discussed by the Movant, the Property are currently being stored at the Plant leased by the Debtor from the Buyer. The Debtor, prior to filing, closed the food processing business at the plant and kept the equipment there. The proposed sale allows for the Trustee to liquidate the field-specific equipment in order to bring equity into the estate while settling potential administrative concerns.

Additionally, the Movant has made a sufficient showing under 11 U.S.C. § 363(f) that the Property can be sold free and clear. Both under nonbankruptcy law and bankruptcy law, the liens appear to either be terminated by state law or raise to the level of a bona fide dispute. The liens attach to the sales proceeds, pending entry of further order or judgment.

Therefore, the Motion is 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 to Sell Property filed by Michael D. McGranahan the Trustee 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 Michael D. McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f) to 680D, LLC or nominee ("Buyer"), the Property specifically listed on Exhibit B, Dckt. 90, on the following terms:

1. The Property shall be sold to Buyer for \$230,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 90, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Property is sold free and clear of the lien of UCC Financing Statement of Turlock Business Services, Inc., New Century Transport LLC, and Pacific Gold Milk Producers, Inc., creditor asserting a secured claim, pursuant to 11 U.S.C. §363(f), with the lien of such creditor attaching to the proceeds. The Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; with the liens of the above creditors attaching to the sales proceeds pending further order or judgment of the court.
4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

10. [16-90139](#)-E-7 AJAVA SYSTEMS, INC.
CDH-5 David C. Johnston

MOTION FOR ORDER DIRECTING
PRITHVI RAJ CHAUHAN TO FULFILL
DUTIES AS RESPONSIBLE PERSON
FOR DEBTOR AND ORDER TO APPEAR
6-14-16 [[98](#)]

**APPEARANCE OF DAVID C. JOHNSTON, PRITHVI RAJ CHAUHAN, AND
CHRISTOPHER HUGHES REQUIRED**

No Telephonic Appearance Permitted

No Tentative Ruling: The Motion for Order Directing Prithvi Raj Chauhan to file the Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 18, 2016. By the court's calculation, 10 days' notice was provided.

The Motion for Order Directing Prithvi Raj Chauhan to file the Documents 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 -----
-----.

The Motion for Order Directing Prithvi Raj Chauhan to file the Documents is -----.

On June 14, 2016, Schreiber Foods, Inc., Agri-Dairy Products, Inc., and Ball Metal Food Container, LLC, the original Petition Creditors for the Involuntary Petition, filed a Motion for Order Directing Prithvi Raj Chauhan to file the Documents required by the court's March 9, 2016 Order. Dckt. 98. The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013), Dckt. 98, include the following:

- A. Prithvi Raj Chauhan is the individual responsible for Debtor complying with its obligations under the Bankruptcy Code and orders of this court.
- B. Debtor has not complied with the March 9, 2016 Order and none of the required Documents have been filed.
- C. On March 21, 2016 the court issued an order for the Petitioning Creditors to prepare the Documents, in light of Debtor's failure.
- D. On May 2, 2016, the court ordered that Prithvi Raj Chauhan was the responsible person for the Debtor to perform all acts required of Debtor. Order, Dckt. 74.

In issuing said order, the court's findings of fact and conclusions of law include,

"The court finds that Prithvi Raj Chauhan operated in a manner consistent with that of the controlling member and owner of Ajava Systems, Inc. and, therefore, pursuant to Rule 9001 of the Federal Rules of Bankruptcy Procedure, the court designates Prithvi Raj Chauhan as the individual responsible to perform acts required of the Debtor."

Civil Minutes, Dckt. 71.

- E. Debtor has failed to appear at the continued May 3, 2016, and continued June 7, 2016 First Meeting of Creditors.

ORDER SETTING HEARING

The present Motion was filed ex parte, but served on the Debtor, Prithvi "Chouchan," the U.S. Trustee, and several attorneys. It is clear that before issuing yet another order for the Debtor to fulfill this basic obligation, the court needs to bring Prithvi Raj Chauhan and the Debtor's counsel to court, as well as counsel for the Petitioning Creditors to address these issues. There is an outstanding order for the Debtor, which acts through its responsible person Prithvi Raj Chauhan which must comply with the court's orders.

At this juncture, the court wanted to make sure that Prithvi Raj Chauhan appreciates that compliance with the court's orders as the responsible person for the Debtor is not optional. To the extent that the court issues another order for Mr. Chauhan, as the responsible person for the Debtor, to fulfill the obligations of the Debtor, Mr. Chauhan will fully appreciate the civil sanction power of this court, which includes

incarceration until a person complies with an order of the court.

As such, the court issued the following order:

IT IS ORDERED that a hearing on the Motion For Order Directing Prithvi Raj Chauhan, as the responsible person for the Debtor, to prepare and have filed for the Debtor: (1) a Master Address List containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H; (2) Schedules of Assets and Liabilities; (3) Statement of Financial Affairs; (4) Statement of Corporate Ownership; and (5) Chapter 11 Statement of Current Monthly Income shall be conducted at 1:30 p.m. on June 28, 2016, with the hearing to be held in the Sacramento Courthouse for this court, located at 501 I Street, 6th Floor, Courtroom 33, Sacramento, California.

IT IS FURTHER ORDERED that David C. Johnston and Prithvi Raj Chauhan, the responsible person for the Debtor, and Christopher D. Hughes (counsel for Petitioning Creditors), and each of them shall appear at the hearing on June 28, 2016, to address the issues for the court. No telephonic appearance permitted for David C Johnston, Prithvi Raj Chauhan, and Christopher D. Hughes. Telephonic appearances are permitted for all other parties in interest in this bankruptcy case.

IT IS FURTHER ORDERED that Christopher D. Hughes, as counsel for Movant, shall serve a copy of this Order and a Notice of Hearing on all parties in interest listed on the certificate of service (Dckt. 99) filed for the Motion by depositing it in the U.S. Mail, First Class Postage Prepaid, by 5:00 p.m. on Friday June 17, 2016.

IT IS FURTHER ORDERED that Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 7041 and 9014 are suspended with respect to this Motion, and the Motion shall not be dismissed except upon order of the court.

Dckt. 102.

BACKGROUND

On February 8, 2016, an Involuntary Bankruptcy Petition was filed by three creditors of Ajava Systems, Inc., dba World Grocer ("Debtor"). Dckt. 1. On March 2, 2016, Debtor filed its consent to the entry of an order for relief under Chapter 7 of the Bankruptcy Code in this case. Dckt. 32. Debtor is represented by counsel in this case, who filed the consent to the entry of order for relief. On March 8, 2016, the Order for Relief in this case was entered by the court. Dckt. 38.

On March 9, 2016, the court issued an Order to Involuntary Debtor, which ordered the Debtor to do the following:

- A. Within seven (7) days after entry of the March 8, 2016 order for relief the Debtor shall file with the Clerk a Master Address List containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H.
- B. Within fourteen (14) days after entry of the Order for Relief the Debtor shall file with the Clerk Schedules of Assets and Liabilities, a Statement of Financial Affairs and, if applicable, a Statement of Social Security number(s), Statement of Corporate Ownership, and Chapter 11 Statement of Current Monthly Income or Chapter 7 Statement of Current Monthly Income and Means Test Calculation.

Order, Dckt. 40.

APPLICABLE LAW

In relevant part, Fed. R. Bankr. P. 7007 states:

(k) Preparation of list, schedules, or statements on default of debtor. If a list, schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

DISCUSSION

To date, no supplemental papers have been filed by the Debtor.

At the hearing, xxxxx

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 Order Directing Prithvi Raj Chauhan to file the Documents filed by Creditors 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 xxxx.

11. [13-24610](#)-E-13 DAX/TINA CHAVEZ
DPC-5 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE
5-25-16 [[76](#)]

Tentative Ruling: The Motion to Dismiss 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.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 76. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Debtors filed an opposition to the instant Motion on June 8, 2016. Dckt. 80. The Debtors respond and state that Debtors will be current on or before the hearing on this matter.

JUNE 22, 2016 HEARING

At the hearing, the court issued the following order:

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 1:30 p.m. on June 28, 2016.
(Specially set.)

IT IS FURTHER ORDERED that Debtors Dax Chavez and

Tina Chavez, and each of them, and Peter Macaluso, their counsel, appear in person at the 1:30 p.m. hearing on June 28, 2016. No telephonic appearances are permitted.

The court ordered Debtors Dax Chavez and Tina Chavez, and each of them, orally on the record at the June 22, 2016 hearing. Tina Chavez was present in court and Peter Macaluso, attorney for Dax Chavez and Tina Chavez was present at the June 22, 2016 hearing on behalf of each of his two clients.

Dckt. 84.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,718.00 delinquent in plan payments, which represents multiple months of the \$2,377.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been completely cured. A promise to be current on or before the hearing is not evidence that the delinquency has been cured.

At the hearing, Debtor Tina Chavez appeared with her attorney, falling on the mercy of the court. No good explanation was given for the continuing defaults in this bankruptcy case. Debtor's counsel had already saved this case from dismissal, obtaining an order vacating the dismissal in January 2016, with payments being reported as current at that time.

Debtor offers no explanation as to why Debtor is able in some months to make double and triple plan payments, and in other months just not make a plan payment.

Co-Debtor Dax Ruandi was not at the hearing, and counsel intimated that he had addressed with Mr. Ruandi the failure to make timely payments. It appeared to the court that counsel was attempting to blame the empty chair in the courtroom.

Grounds exist to dismiss this Chapter 13 case. Debtor, and each of them, have shown a repeated disregard for their obligations under the Bankruptcy Code and Plan. Debtor makes a plan payment when ever they want, and skip months whenever Debtor wants. Debtor appears to have significant extra money each month that when caught, Debtor is able to double or triple up on the payment amount and keep the case going - on Debtor's terms - not as required by the confirmed Plan or the Bankruptcy Code.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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 to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee 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 to Dismiss is granted and the case is dismissed.

12. [15-27785-E-7](#) LATANYA MOORE CONTINUED MOTION TO DISMISS
DPC-4 Peter G. Macaluso CASE
5-20-16 [[78](#)]

No Tentative Ruling: The Motion to Dismiss 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.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is xxx

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 20, 2016. Dckt. 63. The Trustee seeks dismissal due to the Debtor's delinquency and failure to file a proposed modified plan.

DEBTORS OPPOSITION

LaTanya Moore ("Debtor") filed opposition to the instant motion on June 6, 2016 Dckt. 82. The Defendant states that the Debtor will file, set, serve, and be current under a modified plan prior ro the hearing on this matter.

JUNE 22, 2016 HEARING

At the hearing, the court continued the hearing to 1:30 p.m. on June 28, 2016 to allow the Debtor the opportunity to determine how to exercise her right to convert to a case under Chapter 7.

JUNE 22, 2016 CONVERSION

The Debtor's case was converted to one under Chapter 7 on June 22, 2016. Dckt. 84.

DISCUSSION

At the hearing, xxxx

~~The case having previously been converted, the Motion is dismissed 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 to Dismiss having been presented to the court, the case having been previously converted, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~dismissed as moot,~~
~~the case having been dismissed.~~