

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

June 30, 2015 at 1:30 p.m.

1. [15-24113](#)-E-13 DANIEL MCALLISTER
RCO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-15 [[10](#)]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 1, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the benefit of the certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2004-6 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2227 West Ridge Drive, Sutter, California (the "Property"). The moving party has provided the Declaration of Rosemary Hong to introduce evidence as a basis for Movant's contention that Daniel K. McAllister ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the

June 30, 2015 at 1:30 p.m.

owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on September 26, 2014. 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 Sutter, Case No. CVCN 14-1994 on October 27, 2014. Dckt. 14, Exhibit C.

Movant has provided a properly authenticated copy of the recorded Trustee's 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).

Pursuant to 11 U.S.C. § 362(c)(2) "the stay of any other act under subsection (a) of this section continued until the earliest of - ... (B) the time the case is dismissed." Here, the case was dismissed on June 8, 2015. Dckt. 16. Therefore, the automatic stay is no longer effective as a matter of law, as to any other act except acts against property of the estate, pursuant to 11 U.S.C. § 362(c).

The court shall issue an order terminating and vacating the automatic stay to allow the Bank of New York Mellon FKA the Bank of New York, as Trustee for the benefit of the certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2004-6, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2227 West Ridge Drive, Sutter, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. In fact, the Movant merely suggests attorney fees in the prayer. No specific amount of fees or evidence in support of any amount of attorneys' fees has been provided. This is insufficient. Therefore, Movant is not awarded any attorneys' fees.

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).

As to the request for termination of the co-debtor stay, as discussed supra, the dismissal of the bankruptcy case terminated the stay to any acts other than those acts against property of the estate. Therefore, the dismissal terminated the co-debtor stay of 11 U.S.C. § 1301(a).

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by the Bank of New York Mellon FKA the Bank of New York, as Trustee for the benefit of the certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2004-6 ("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 the Bank of New York Mellon FKA the Bank of New York, as Trustee for the benefit of the certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2004-6 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2227 West Ridge Drive, Sutter, California.

IT IS FURTHER ORDERED that the co-debtor stay of Jennifer L. McAllister pursuant to 11 U.S.C. § 1301(a) is vacated as a matter of law due to the dismissal of the underlying bankruptcy case as provided by 11 U.S.C. § 362(c)(2)(B).

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.

IT IS FURTHER ORDERED that the request for attorney's fees is denied without prejudice.

No other or additional relief is granted.

2. [14-21319](#)-E-13 MARK/SARAH ANN HANSEN
GW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-15 [[114](#)]

LANCE HANSEN VS.

Final Ruling: No appearance at the June 30, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 5, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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Lance Hansen ("Movant") seeks retroactive relief from the automatic stay to continue litigation in State Court for personal injuries suffered as a result of the negligence of Mark Hansen ("Debtor"). The case is in Shasta County Court Case No. 14-21319-E-13C, set for trial June 30, 2015. Movant states that he is willing to limit his recovery against the Debtor to the policy limits of Defendant's insurance such that he will only be seeking to recover from a non-debtor, Debtor's insurance company.

The Chapter 13 Trustee has filed a statement of non-opposition.

Based upon the evidence submitted, the court determines that there is no equity in the potential insurance coverage for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Additionally, proceeds of liability insurance policies are generally not property of the bankruptcy estate. *In re Endoscopy Ctr. Of S. Nev., LLC*, 451 B. R. 527, 544 (Bankr. D. Nev. 2011). In such situations, "the debtor will not have a cognizable interest in the proceeds of the policy" because the "proceeds will normally be payable only for the benefit of those harmed by the debtor under the terms of the insurance contract." *Id.* at 545 (quoting *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 56 (5th

Cir. 1993)).

Movant has presented a colorable claim for damages covered by Debtors' insurance. 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 may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the state court personal injury case warrants relief from stay for cause. It appears the case has undergone discovery and is set for trial. Further, Movant contends that he will only be seeking to recover from a non-debtor, Debtor's insurance company.

Additionally, the Movant seeks retroactive relief of the automatic stay for the state court action to July 3, 2014 pursuant to *In re National Environmental Waste Corp.*, 129 F.3d 1052 (9th Cir. 1997) and *In re Fjeldsted*, 293 B.R. 12 (B.A.P. 9th Cir. 2003). Movant alleges he was unaware of the bankruptcy prior to the state court action being prepared and filed. The Debtor did not list Movant as a creditor in their schedules. It was not until Debtor's counsel contacted Movant two months ago that he learned about the bankruptcy. The underlying state court action was filed on March 6, 2015 and the bankruptcy was filed on February 13, 2014. The Movant argues that the balancing test of *In re National Environmental Waste Corp.* supports retroactive relief since the Movant was not aware of the filing, given the fact that he was not listed as a creditor, and because the Debtor will not suffer any harm since the relief in the state court action is for the insurance company. The court agrees and finds that retroactive relief is justified in the instant case.

The court shall issue an order terminating and vacating the automatic stay, effective as of July 3, 2014, to allow Lance Hansen, and his agents, representatives and successors, to exercise its rights to pursue her state court action, as well as appropriate judicial proceedings and remedies limited by the terms of Debtors' insurance coverage.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

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 Lance Hansen ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified effective as of July 3, 2014 to allow Lance Hansen, his agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue Shasta County Court Case No. 14-21319-E-13C to final judgment, including all appeals, to assert claims for injury stated therein, for which Debtors have insurance coverage, and to enforce such judgment to the extent of, and to recovery money from, such insurance.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

3. [15-23031](#)-E-13 WILLIAM HAMILTON
JDM-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-10-15 [[28](#)]

TRAVIS CREDIT UNION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on June 10, 2015. 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.
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William K. Hamilton ("Debtor") commenced this bankruptcy case on April 14, 2015. Travis Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Honda Accord, VIN ending in 5487 (the "Vehicle"). The moving party has provided the Declaration of Janet Prosser to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Prosser Declaration provides testimony that Debtor has not made 1 post-petition payment, with a total of \$337.16 in post-petition payments past due.

The Declaration also provides evidence that there are 10 pre-petition payments in default, with a pre-petition arrearage of \$3,708.24.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$16,421.00, as stated in the Prosser Declaration.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The value of the Vehicle is determined to be \$13,092.00. FN.1.

FN.1. The court is relying on the valuation provided by the Movant in light of the fact that the Debtor failed to list the 2008 Honda Accord in his Schedule B and D.

RULING

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Travis Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

In light of the Movant already having possession of the Vehicle, the Movant has plead 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 granted.

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2008 Honda Accord, VIN ending in 5487 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

4. [15-23662](#)-E-13 JUAN FLORES
PP-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-26-15 [[18](#)]

TRAVANCORE PACIFIC, 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, Debtor's Attorney, and Chapter 13 Trustee on May 26, 2015. 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.

The Motion for Relief From the Automatic Stay is granted.
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Travancore Pacific, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California (the "Property"). The moving party has provided the Declaration of Ramakrishna Hari Pillai to introduce evidence as a basis for Movant's contention that Juan Flores ("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 Sacramento,

but Debtor filed this case before the hearing scheduled May 4, 2015. Exhibit 1, Dckt. 23.

The Pillai Declaration further states that there is one post-petition default in the payments, with a total of \$4,825.17 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 \$21,335.37.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion.

Movant has provided a properly authenticated copy of the unlawful detainer complaint in the Superior Court for Sacramento County. 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).

Debtor appeared at the hearing, arguing that the property is essential to any plan and that there is a disagreement (possibly) about the amount of the monthly rent. There remain only several more months on the lease (to the extent that it has not been terminated pre-petition).

Debtor asserts that he paid \$4,500.00 toward the post-petition rent on June 5, 2015. This was for the June 2015 rent. Debtor failed to pay anything for the May 2015 rent, this bankruptcy case having been filed on May 2, 2015.

JUNE 9, 2015 HEARING

The court continued the hearing to 2:30 p.m. on June 11, 2015 to (1) allow Movant to confirm that the personal check for \$4,500.00 will be honored by Debtor's bank and (2) for Debtor to pay an additional \$4,354.00 in certified funds or cashier's check to be applied to the May 2015 rent. The court does not determine the amount of the rent, but requires the payments as adequate protection.

At the continued hearing the court stated that it shall consider the opposition which is presented, if the required \$8,854.00 in adequate protection payments are made, and whether further briefing of this Motion is warranted.

JUNE 11, 2015 HEARING

At the hearing, the parties confirmed that the two adequate protection payments have been made and the matter may be set for final hearing. The court set the final hearing for 1:30 p.m. on June 30, 2015. Any opposition was ordered to be filed and served on or before June 16, 2015 and any reply on or before June 23, 2015.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on June 16, 2015. Dckt. 41. The Debtor argues that the Debtor has paid Movant a total of \$9,000.00 in post-petition rent payments, which the Debtor asserts is 100% of the post-petition rent due under the lease. Additionally, the Debtor argues that the property is necessary because the operation of the restaurant is the Debtor's sole source of income. If the Motion is granted, the Debtor will have to close his business which will prevent him from completing the plan.

MOVANT'S REPLY

The Movant filed a reply on June 23, 2015. Dckt. 44. The Movant begins by arguing that the Debtor has not addressed the issue of whether the case was filed in bad faith. The Movant asserts that the following events evidence bad faith:

1. The case filed the weekend before the unlawful detainer trial.
2. Movant is the only creditor listed on the schedules.
3. Debtor proposes in his plan to pay nothing to any of his creditors.
4. The Debtor failed to list his business income and expenses.
5. The Debtor failed to attend the Meeting of Creditors.
6. Debtor failed to provide tax returns to the Trustee.
7. Debtor failed to include his business on Schedule B.
8. The Chapter 13 plan was filed too late to qualify for a court-set hearing date and the Debtor has not set a hearing date.

The Movant also points out that at the hearing the Debtor's attorney stated that the Debtor had signed a lease on another premises and will be moving there in 90 days. The Movant argues that while the Debtor asserts in the opposition that the lease is essential, the Debtor proposes to reject the lease in the schedules. Additionally, since the hearing, the Debtor has not filed an supplemental schedules listing more creditors.

The Movant further alleges that the Debtor is not in fact current under the lease and has not provided any evidence to show otherwise. The Movants argues that the current rent is \$4,825.17.

The Movant concludes by asserting that, pursuant to 11 U.S.C. § 362(g), the Debtor has not provided any evidence that the premise is essential for reorganization outside of merely stating it in the opposition.

DISCUSSION

After reviewing the opposition and the reply, the court finds that the Debtor has not met his burden of proof. The Movant has established that the Debtor has no equity in the Property. According to 11 U.S.C. § 362(g) "the party opposing such relief has the burden of proof on all other issues." Unfortunately, merely stating that the Property is necessary does not meet this burden of proof. While the court is sympathetic to the Debtor's predicament, the Movant has met his burden for relief from the automatic stay.

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).

Review of Court's File

The court begins with Debtor's Schedules. Dckt. 14. On Schedule A Debtor states that he has no interests in any real property. *Id.* at 3. On Schedule B Debtors lists \$10,000 in kitchen tools and equipment. *Id.* at 6. There are no other assets that appear to be business assets.

On Schedule D Debtor states under penalty of perjury that he has no creditors with secured claims. *Id.* at 14. On Schedule E Debtor states under penalty of perjury that he has no creditors with priority unsecured claims. *Id.* at 9. On Schedule F Debtor states that he has only one creditor with unsecured claims - Travancore Pacific, LLC for \$15,000.00. *Id.* at 10.

On Schedule I Debtor states under penalty of perjury that his net income from the business is \$3,632. *Id.* at 14. Debtor has no other income. The court cannot find the required attachment to Schedule I for Debtor's business showing the gross income and expenses. See Schedule I, Question 8; *Id.*

On Schedule J Debtor computes under penalty of perjury that he has only \$132 in monthly net income. *Id.* at 16. However, this computation appears highly questionable. Debtor states that he has no expenses for: (1) health insurance, (2) medical or dental expenses, (3) no income taxes, and (4) self-employment taxes. It is possible that some of these, such as medical expenses may be in the undisclosed business expenses, but the court does not so assume.

The court shall issue an order terminating and vacating the automatic stay to allow Travancore Pacific, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof. FN.1.

FN.1. The court finds it interesting that this matter has not been resolved. From the evidence presented, it appears that this bankruptcy case has been filed just to derail the unlawful detainer proceeding. That, in and of itself, is neither shocking or improper. However, it also appears that Debtor is not intending to proceed with any attempt to prosecute this Chapter 13 case.

In such a situation, one would expect the Debtor to reach an agreement with the landlord to stipulate to entry of a judgment for possession on a date certain, the entry of such judgment would be delayed so long as the Debtor made the current rent payments. The landlord could obtain the certainty of the judgment for an unlawful detainer, as well as current rent, without incurring significant attorneys' fees and delay. The Debtor would avoid landlord incurring those significant attorneys' fee and then having them added to the judgment obtained in the unlawful detainer proceeding.

The fact that the court is granting relief from the stay does not preclude the Debtor and Travancore Pacific, LLC from striking such an economically rational deal.

Furthermore, the court shall issue an order that the automatic stay provisions of 11 U.S.C. § 362(a) are further modified to allow the Movant to obtain from the state court a determination of the damages, if any, arising from the breach of the lease. Any determinations of damages by the state court are without prejudice as to objections to such lease breach damages that may be proper under the Bankruptcy Code.

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 Travancore Pacific, 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 vacated to allow Travancore Pacific, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California.

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are further modified to allow the Movant to obtain from the state court a determination of the damages, if any, arising from the breach of the lease. Any determinations of damages by the state court are without prejudice as to objections to such lease breach damages that may be proper under the Bankruptcy Code.

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.

5. [15-21869](#)-E-13 ELIAS OLGUIN
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-28-15 [[36](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 28, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Elias Olguin ("Debtor") commenced this bankruptcy case on March 10, 2015. Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Nissan Frontier, VIN ending in 0423 (the "Vehicle"). Movant also seeks relief of co-debtor stay for the non-filing co-debtor, Eva Olguin ("Co-Debtor"). Movant is currently in possession of the Vehicle. The moving party has provided the Declaration of Elena Schultz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schultz Declaration provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,507.91.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$26,324.92, as stated in the Schultz Declaration. Dckt. 38.

The value of the Vehicle is less clear. Debtor's Schedules B and D list only a "2009 Ford Ranger" valued at \$25,000.00 with a debt secured by Wells Fargo Dealer Services, account number ending in 8990. Dckt. 12. The Claim filed by Movant appears to be for the same debt listed on Debtor's Schedules, with a debt similarly secured by Wells Fargo Dealer Services, account number ending in

8990. Proof of Claim. 2. Because the Security Agreement, attached as Exhibit A, describes a 2013 Nissan Frontier, the court finds that to be the actual vehicle secured by Movant. Dckt. 39.

While Debtor values the Vehicle at \$25,000.00, Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Dckt. 39. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). According to the NADA valuation, the Vehicle has a clean retail value of \$22,800.00. Although the court finds the NADA valuation to be a truer value here, with the secured claim of \$26, 324.92, there exists no equity in the Vehicle under either valuation.

Debtor filed a statement of non-opposition on May 29, 2015. Trustee subsequently filed a statement of non-opposition as well on June 3, 2015.

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, the opposition of the Debtor, 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.

Pursuant to 11 U.S.C. § 362(c)(2) "the stay of any other act under subsection (a) of this section continued until the earliest of - ... (B) the time the case is dismissed." Here, the case was dismissed on June 8, 2015. Dckt. 16. Therefore, the automatic stay is no longer effective as a matter of law, as to any other act except acts against property of the estate, pursuant to 11 U.S.C. § 362(c).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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).

As to the request for termination of the co-debtor stay, as discussed supra, the dismissal of the bankruptcy case terminated the stay to any acts other than those acts against property of the estate. Therefore, the dismissal terminated the co-debtor stay of 11 U.S.C. § 1301(a).

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 Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Nissan Frontier, VIN ending in 0423 (the "Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the co-debtor stay of Eva Olguin pursuant to 11 U.S.C. § 1301(a) is vacated as a matter of law due to the dismissal of the underlying bankruptcy case as provided by 11 U.S.C. § 362(c)(2)(B).

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.

6. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN
[14-2004](#)
G & K HEAVEN'S BEST, INC. V.
MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-4-14 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: C. Anthony Hughes
Adv. Filed: 1/4/14
Answer: 2/5/14

Crossclaim Filed: 2/5/14
Answer: 2/24/14
Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:

Continued from 6/24/15. The court terminated the permission to make telephonic appearances in this Adversary Proceeding, and ordered lead counsel for each party to personally appear at the continued Status Conference and all further Status Conferences and hearings in this Adversary Proceeding.

7. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN
[14-2027](#)
MCQUEEN ET AL V. G & K
HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-21-14 [[1](#)]

Plaintiff's Atty: C. Anthony Hughes
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14
Answer: 2/17/14

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - preference

Notes:

Continued from 6/24/15. The court terminated the permission to make telephonic appearances in this Adversary Proceeding, and ordered lead counsel for each party to personally appear at the continued Status Conference and all further Status Conferences and hearings in this Adversary Proceeding.