

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

July 7, 2016 at 10:00 a.m.

1. [16-90418-E-7](#) DANIEL MILLS MOTION FOR RELIEF FROM
 JFL-2 Mary D. Anderson AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
 5-31-16 [[10](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the July 7, 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, Debtor's Attorney, Chapter 7 Trustee, Chase, and Office of the United States Trustee on May 31, 2016. By the court's calculation, 37 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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Deutsche Bank National Trust Company as Trustee for Residential Asset Securitization Trust Series 2005-AllCB Mortgage Pass-Through Certificates Series 2005-K ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5956 De Los Angeles Road, Campo Seco, California (the "Property"). Movant has provided the Declaration of Jillian Thrasher to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Thrasher Declaration states that there are 44 pre-petition payments

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in default, with a pre-petition arrearage of \$82,420.24.

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 \$602,009.20 (including \$416,111.20 secured by Movant's first deed of trust), as stated in the Thrasher Declaration and Schedule D filed by Daniel Timothy Mills ("Debtor"). The value of the Property is determined to be \$266,920.00, as stated in Schedules A and D filed by Debtor.

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Deutsche Bank National Trust Company ("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 Deutsche Bank National Trust Company, its agents, representatives, and successors, and

trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5956 De Los Angeles Road, Campo Seco, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

2. [16-90521-E-7](#) JESUS MIRANDA
ADR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-17-16 [[10](#)]

JAMKE 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 7 Trustee, and Office of the United States Trustee on June 17, 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.
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JAMKE, a California General Partnership ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2307 Gilbert Road, Ceres, California (the "Property"). The moving party has provided the Declaration of Ken Elving to introduce evidence as a basis for Movant's contention that Jesus Miranda ("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 January 4, 2016. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant seeks to commence an unlawful detainer action.

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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The instant case was dismissed on June 27, 2016 for failure to timely file documents. Dckt. 20.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of June 27, 2016, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on June 27, 2016.

The Movant appears to implicitly request relief under 11 U.S.C. § 362(d)(4). Unfortunately, the Movant fails to properly plead with particularity grounds for relief. Rather, the Movant requests in the prayer request pursuant to § 362(d)(4). The Movant fails to cite the relevant code section or state with particularity what basis there is to issue a § 362(d)(4) ruling. Therefore, this request is denied without prejudice.

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

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

The Motion for Relief From the Automatic Stay filed by JAMKE, a California General Partnership ("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 court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 2307 Gilbert Road, Ceres, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the June 27, 2016 dismissal of this bankruptcy case filed by Jesus Miranda, the Debtor.

3. [16-90424-E-7](#) SANDRA ESPINO-ORTEGA
ADR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-20-16 [[17](#)]

AJIT SINGH 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 7 Trustee, and Office of the United States Trustee on June 20, 2016. By the court's calculation, 17 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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Ajit Singh ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2210 Lauren Circle, Turlock, California (the "Property"). The moving party has provided the Declaration of Ajit Singh to introduce evidence as a basis for Movant's contention that Sandra Lopez Espino-Ortega ("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 Movant served a 3-day Notice with the Debtor which the Debtor failed to comply. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful

detainer action in California Superior Court. Dckt. 19.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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 Jamke, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2307 Gilbert Road, Ceres, 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 Ajit Singh ("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 Ajit Singh and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2210 Lauren Circle, Turlock, 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.

4. [16-90435-E-7](#) JAMES/UEN FREEMAN
MET-2 Christian J. Younger

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-16 [[19](#)]

WESTAMERICA BANK VS.

Final Ruling: No appearance at the July 7, 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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 8, 2016. 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.

<p>The Motion for Relief From the Automatic Stay is granted.</p>

James Alvin Freeman and Uen Freeman ("Debtor") commenced this bankruptcy case on May 20, 2016. Westamerica Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 BMW 650i, VIN ending in 4091 (the "Vehicle"). The moving party has provided the Declaration of Donna Cory to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Cory Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$925.94 in post-petition payments past due. The Declaration also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$6,633.11.

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 \$41,547.16, as stated in the Cory Declaration, while the value of the Vehicle is determined to be \$32,587.00, as stated in Schedules B and D filed by Debtor.

RULING

The court maintains the right to grant relief from stay for cause when a

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

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2009 BMW 650i ("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 for cause.

No other or additional relief is granted.

5. [16-90435](#)-E-7 JAMES/UEN FREEMAN
MET-3 Christian J. Younger

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-21-16 [[37](#)]

WESTAMERICA BANK 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, Chapter 7 Trustee, and Office of the United States Trustee on June 21, 2016. By the court's calculation, 16 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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James Alvin Freeman and Uen Freeman ("Debtor") commenced this bankruptcy case on May 20, 2016. Westamerica Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Mercedes C300, VIN ending in 0379 (the "Vehicle"). The moving party has provided the Declaration of Erikjohn Hewlett to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hewlett Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$487.10 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments

in default, with a pre-petition arrearage of \$994.20.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$22,742.31, as stated in the Hewlett Declaration, while the value of the Vehicle is determined to be \$16,766.00, as stated in Schedules B and D filed by Debtor.

The court previously granted relief from the automatic stay on June 16, 2016. Dckt. 34.

Movant requests that the court annul the automatic stay as it would apply to the Movant's repossession of the Vehicle on May 24, 2016. Movant directs the court to the fact that Movant obtained relief from the stay previously by the court. The Movant states that, prior to repossessing the Vehicle, the Movant's agent ran the Debtor's name through Pacer due to the history of Debtor's repeat filing. The Movant states that the instant case was not reported.

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

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.

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, after realizing that the case was filed on May 20, 2016, 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, even after seeking relief pursuant to § 362(d)(1).

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, it is likely to result in further dysfunctional bankruptcy proceedings.

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 May 20, 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 Westamerica Bank ("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 Westamerica Bank, their respective agents, representatives, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Mercedes C300 ("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 for cause shown by Movant.

No other or additional relief is granted.

6. [16-90083](#)-E-7 VALLEY DISTRIBUTORS,
KS-1 INC.
Iain A. MacDonald

AMENDED MOTION TO APPROVE
STIPULATION FOR RELIEF FROM THE
AUTOMATIC STAY
6-20-16 [[154](#)]

CYPRESS TERRACE ESTATES,
LLC, ET AL., VS.

Tentative Ruling: The Motion to Approve Stipulation 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 19, 2016. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Approve the Stipulation for Relief From the Automatic Stay is granted to modify the automatic stay.</p>

Anderson Homes, Inc., Antherton-Boyce Development Co., LLC, Woodwork Park Development Company, LLC, Bianchi Ranch Building Partners, LLC, Michael D. Atherton, Rose Park LCC and Florsheim Homes, LLC, Ranchwood Residential, Inc., Regency Park Estates 1-4, LCC/Northgate at Regency Park II, LLC, Ranchwood

Homes Corp., Ranchwood Contractors, Inc., Vineyards 14-18, LLC, Orchard Terrace Vineyards, LLC, Tatum Ranch, LLC, Hostetler Investments, LLC, El Capitan Estates, LLC, Mission Village, LLC, Hollywood Park Estates, LLC, and Cypress Terrace Estates, LLC ("Movant") seeks relief from the automatic stay to may proceed only against the available insurance assets of Valley Distributors, Inc. ("Debtor") in the 13 state court actions pending that the Movant seeks to assert cross complaints Debtor. Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Adrienne Nordstrom to introduce evidence to authenticate the documents upon which it bases its claim.

STIPULATION

The Movant and the Trustee filed a stipulation which provided the following:

1. Movant shall be granted limited relief from the stay to pursue and recover the proceeds of any insurance that may cover their claims and causes of action against Debtor as alleged in the state court action.
2. The Trustee for Debtor makes no representation or warranty that Movant's claims are covered by insurance or the scope terms or conditions of any insurance policies.
3. Movant expressly waive any deficiency or other claims against Debtor or Debtor's bankruptcy estate in or related in any way to the state court action.
4. Debtor shall not be responsible for any deductible or self-insured retention required under any insurance policy covering Movant's claims.

Dckt. 93.

APPLICABLE LAW

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 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 Anderson Homes, Inc., Antherton-Boyce Development Co., LLC, Woodwork Park Development Company, LLC, Bianchi Ranch Building Partners, LLC, Michael D. Atherton, Rose Park LCC and Florsheim Homes, LLC, Ranchwood Residential, Inc., Regency Park Estates 1-4, LCC/Northgate at Regency Park II, LLC, Ranchwood Homes Corp., Ranchwood Contractors, Inc., Vineyards 14-18, LLC, Orchard Terrace Vineyards, LLC, Tatum Ranch, LLC, Hostetler Investments, LLC, El Capitan Estates, LLC, Mission Village, LLC, Hollywood Park Estates, LLC, and Cypress Terrace Estates, LLC, 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, to final judgment (including all appeals) in the following state court actions:

- A. *Aguilar, et al. v. Ranchwood Residential, Inc., et al.* in the Superior Court of the State of California, County of Merced, Case No. CV002663; Consolidated with *Zuno v. Regence*, Case No. CVM016059
- B. *Allred, et al. v. Ranchwood Homes Corp., et al.* In the Superior Court of the State of California, County of Merced Case No. CVM019667
- C. *Bella, et al. v. Atherton-Boyce Development Co., LLC, et al.* In the Superior Court of the State of California, County of San Joaquin, Case No. 39-2013-00303647-CU-CD-STK; Consolidated with *Potts v. Atherton-Boyce*, Case No. 39-2013-00303647-CU-CD-STK
- D. *Cortes, et al. v. Ranchwood Homes Corp., et al.* in the Superior Curt of the State of California, County of Madera, Case No. MCV 069761
- E. *Delgado, et al v. Anderson Homes, Inc.* in the Superior Court of the State of California, County of Merced, Case No. CVM015645; Consolidated with *Deffy v. Anderson*

Homes, Case No. CVM016279; Consolidated with *Cesar v. Anderson Homes*, Case No. CVM017831

- F. *Fernandez, et al. v. Tatum Ranch, LLC., et al.* in the Superior Court of the State of California, County of Merced, Case No. 15CV-01168; Consolidated with *Contreras et al. v. Tatum Ranch, LLC. et al.*, Case No. 15CV-01928
- G. *Flowers, et al. v. Rose Park LLC and Florsheim Homes, LLC* in the Superior Court of the State of California, County of San Joaquin, Case No. SRK-CV-UCD-2014-2793; Consolidated with *Romay v. Rose Park LLC, et al.*, Case No. 39-2015-00323110
- H. *Formico, et al. v. Ranchwood Homes Corp., et al.* in the Superior Court of the State of California, County of Merced, Case No. CVM017148
- I. *Linan, et al. v. Ranchwood Homes Corp., et al.* in the Superior Court of the State of California, County of Merced, Case No. CVM017009; Consolidated with *Swiger v. Ranchwood Homes*, Case No. CVM018374
- J. *Mendoza, et al. v. Mission Village, LLC, et al.* in the Superior Court of the State of California, County of Merced, Case No. CVM019371
- K. *Strange, et al. v. Anderson Homes, et al.* in the Superior Court of the State of California, County of San Joaquin, Case No. 39-2013-00302817-CU-CD-STK
- L. *Tito, et al. v. Ranchwood Homes Corp., et al.* in the Superior Court of the State of California, County of Merced, Case No. CVM018396
- M. *Wong, et al. V. Ranchwood Homes Corp., et al.* in the Superior Court of the State of California, County of Merced, Case No. CVM018935

IT IS FURTHER ORDERED that the Trustee is authorized to enter into the Stipulation, Dckt. 93.

No other or additional relief is granted.

7. 15-90893-E-7 FRANCISCO SANCHEZ AND MOTION FOR RELIEF FROM
AP-1 ALMA DOMINGUEZ AUTOMATIC STAY
 Pro Se 5-23-16 [[72](#)]
U.S. BANK, N.A. VS.
DISCHARGED: 1/19/16

Final Ruling: No appearance at the July 7, 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 23, 2016. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.
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U.S. Bank National Association, as Trustee for HarborView Mortgage Loan Trust 2006-4, Mortgage Loan Pass-Through Certificates Series 2006-4 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 11580 English Court, Adelanto, California (the "Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Chastity Wilson Declaration states that Roosevelt Kennedy Grier executed an unauthorized Deed of Trust and Assignment of Rents on or about January 5, 2013 purporting to create a lien on the Property naming Francisco Sanchez ("Debtor") as the beneficiary without consideration. Movant asserts that the purpose transferring a fractional interest in property to Debtor was to hinder and delay Movant from seeking relief against the original borrower.

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.).

Movant's argument's are well-taken. Debtor has not listed the Property on his Schedules, and it is unclear what agreement, if any, there was between him and Maurice Clark for payment. Debtor's failure to list the Property support's Movant's claim that transfer to Debtor of a property interest here was merely a tactic to delay payment or foreclosure. The Movant does not implicate the Debtor as part of the "scheme" but rather asserts that the transfer was without the Debtor's participation or acquiescence, the original transferor seeks to implicate the automatic stay for the transferor's own benefit by purporting to transfer real property into a random bankruptcy by making it appear that such a transfer to the bankruptcy has occurred.

Furthermore, Debtor has not opposed this Motion.

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, as Trustee for HarborView Mortgage Loan Trust 2006-4, Mortgage Loan Pass-Through Certificates Series 2006-4, 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).

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. Movant is not awarded any attorneys' fees.

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 U.S. Bank National Association, as Trustee for HarborView Mortgage Loan Trust 2006-4, Mortgage Loan Pass-Through

Certificates Series 2006-4 ("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 U.S. Bank National Association, as Trustee for HarborView Mortgage Loan Trust 2006-4, Mortgage Loan Pass-Through Certificates Series 2006-4, 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 11580 English Court, Adelanto, 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 to the extent the Motion seeks relief from the automatic stay as to Francisco Sanchez and Alma Dominguez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).]

Requests for attorneys' fees and costs, if any, shall be by post-order timely filed costs bill or motion for attorneys' fees.

No other or additional relief is granted.