

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 24, 2014 at 10:00 a.m.

1. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA** **CONTINUED STATUS CONFERENCE RE:**
 Evan D. Smiley **VOLUNTARY PETITION**
 12-30-11 [1]

Debtors' Atty: Robert S. Marticello

The Status Conference is xxxx.

MARCH 27, 2014 STATUS CONFERENCE

The Trustee is moving forward in an alternative direction, as well as continuing to work with the Debtors on their attempting to move a plan forward. The Trustee will be seeking to employ a broker for the property which the Debtors are attempting to build a plan around.

The Medcalf and Relhm buyers have not put the money up to move forward with the deal.

The Debtors are not sure if the Relhm buyers are still a possible a "real player." The Debtors are in discussions with another buyer group, with knowledge of these properties, about another proposal.

The Creditors commented that the case has been proceeding for more than two years, but the buyer has not materialized. Trustee appointed in October 2012.

Notes:

Continued from 3/27/14 to be heard in conjunction with other matters on calendar.

Operating Reports Filed: 4/15/14, 5/14/14, 6/13/14, 7/14/14

[RMY-2] Debtors Second Amended Plan of Reorganization, Dated July 3, 2014 (With Clerical Corrections) filed 7/10/14 [Dckt 888], set for hearing 8/21/14 at 3:30 p.m.

[RMY-2] Disclosure Statement to Debtors Second Amended Plan of Reorganization, Dated July 3, 2014 (With Clerical Corrections) filed 7/10/14 [Dckt 889], set for hearing 8/21/14 at 3:30 p.m.

HSM-21 Application for Order Authorizing Trustee to Employ Real Estate Agent (Dale Road, Modesto) filed 4/3/14 [Dckt 845]; Order granting filed 4/4/14 [Dckt 851]

July 24, 2014 at 10:00 a.m.

- Page 1 of 47 -

RPM-3 Motion for Relief from Automatic Stay [Daimler Trust] filed 4/15/14 [Dckt 857]; Order granting filed 5/24/14 [Dckt 874]

[RMY-1] Substitution of Attorney [for Debtors] filed 5/1/14 [Dckt 864]; Order granting filed 5/21/14 [Dckt 868]

Substitution of Attorney [Mid Valley Services, Inc.] filed 5/23/14 [Dckt 872]; Order granting filed 5/28/14 [Dckt 876]

2. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION FOR RELIEF
MG-3 Evan D. Smiley FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
DAVID ARTERBURN, ET AL. VS. 12-4-13 [[684](#)]

Tentative Ruling: The Motion for Relief from 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 Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. 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). 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.

The court decision is to xxxx.

JULY 22, 2014 HEARING

At the hearing,

MARCH 27, 2014 HEARING

On March 18, 2014, the court approved the Trustee's request for authorization to employ PMZ Real Estate for the marketing of the properties commonly known as 1907 East F Street, Oakdale, California and 1317 Oakdale Road, Modesto, California. Orders to Employ, Dckts. 824, 825.

Order for Adequate Protection

Movants direct the court's attention to the fact that it has not yet recorded and served a Notice of Default under the Deed of Trust. While the Debtors and their attorneys have represented that they are trying to close a sale of this property, it has not been forthcoming. The Trustee is hiring real estate brokers to list properties of the estate, but has not generated a sale.

Modifying the automatic stay to allow for the recording and serving the Notice of Default affords reasonable adequate protection for the Movants, but does not impair the ability of the Debtors or trustee to move forward with a Plan, or for the Trustee to begin selling the properties. Further, the Movants and Trustee can continue their discussions and coordinate the administration of the assets which secure Movants' claim.

The court finds that cause exists to modify the automatic stay to allow Movants to record, serve, and take all actions necessary to properly and effectively issue a Notice of Default under the Deed of Trust, based on:

- A. The Chapter 11 case has been pending two years and four months that this Chapter 11 case has been pending without a confirmed plan;
- B. The Chapter 11 Trustee having been appointed by order filed on October 18, 2013 (Dckt. 370);
- C. Notwithstanding the Trustee working in good faith with the Debtors and their counsel no disclosure statement has been approved or plan presented for confirmation;
- D. No properties of the estate have been listed for sale;
- E. The Plan advanced by the Debtors is one which seeks to sell properties of the estate as part of a "development package" which would be sufficient to pay claims and generate a profit for Debtors;
- F. The court questions whether such a "profit for the Debtors" plan is reasonable;

- G. The Movants are involved in a lien priority dispute with another group of creditors based on alleged fraud (which is the subject of a federal criminal prosecution) of one of the Debtors;
- H. The Motion for Relief was filed on December 4, 2014 (Dckt. 684);
- I. The creditors with the competing lien in the priority dispute filed their motion for relief from the automatic stay on September 26, 2013 (Dckt. 597, DCN: SSA-4);
- J. The value of the Properties securing the deeds of trust for Movants and the competing priority creditors is asserted to be less than that of the claims secured by the two liens.
- K. The Debtors and Trustee believe that the use of the Properties securing the two claims as part of a larger sale for the development of multiple properties increases the value of not only the collateral over what is asserted, but the other properties of the estate to be sold for that development.
- L. The inability of the Movants and the competing creditor to begin the running of the 90 day Notice of Default periods under the respective deeds of trust causes them a "lack of adequate protection" in light of the long term of this case without a plan being confirmed or the active marketing of the Properties (other than the Debtors' efforts to include them in a larger development project).
- M. Modifying the automatic stay does not allow the Movants or competing creditors to take the asset from the estate, the Debtors and Trustee to proceed with a Plan, or the Trustee recovering value from the Properties, if any, for the benefit of the estate. The Trustee and Debtors may also continue in their negotiations with the Movants and competing lien priority creditor to have a collective moving forward to realize the value of the Properties for the benefit of the estate and to provide for Movants' and competing creditors' secured claims.

The court also continues the hearing on the Motion to address whether the stay should be terminated or continue in effect to 10:00 a.m. on July 24, 2014. The stay is modified effective April 30, 2014.

MARCH 6, 2014 HEARING

The parties agreed to continue the hearing to March 27, 2014.

JANUARY 16, 2014, HEARING

It is not clear whether the December 10, 2013 taxes have been paid. The Debtors argue in their opposition that they are attempting to make

arrangements to pay the taxes but that the taxes will be paid at the sale closing from the net proceeds of the \$9,000,000.00 due at that time.

DECEMBER 19, 2013 HEARING

Lucille E. Arterburn, Trustee of Trust A established under the Jessie O. and Lucille E. Arterburn Trust dated March 7, 1984; Sylvan J. Farrell, Trustee of the Trust A established under the Sylvan J. Farrell & Marie E. Farrell Family Trust dated September 6, 1984; David J. Arterburn and Edith A. Arterburn (Watters), Trustees of Arterburn & Watters, LLP Profit Sharing Plan & Trust; John A & C Jeanie Miller, Trustee of the Miller Family Trust dated November 1, 2000; Thomas A. Miller and Judith A. Miller, husband and wife; Pensco Trust Company Custodian FBO James Wilson IRA Pensco Account #W1240; Pensco Trust Company Custodian FBO Frederick J. Dotzler IRA Pensco Account #70002038; Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; George H. Lehman, Trustee of the George H. Lehman Family Trust (collectively, "Movants" or "Bledsoe Fisher") seek relief from the automatic stay with respect to the real property commonly known as 4754 Dale Road, Modesto, California, providing adequate protection to Movants by requiring payment of real property taxes, and waiving the 14-day stay.

On or about December 3, 2009, Mid Valley Services Inc. ("Mid Valley") funded a \$550,000 loan to Aruna Chopra secured by a deed of trust on the Dale Road Property. Based on representations of Mrs. Chopra, the deed of trust securing the \$550,000 loan was to be in first priority on Lot C. A year later on or about December 17, 2010, Mid Valley funded two additional loans to Mrs. Chopra secured by deeds of trust on the Dale Road Property Lot B. The first of the two loans was in the amount of \$1,250,000 and the second was in the amount of \$700,000. Based on representations of Mrs. Chopra, the deed of trust securing the \$1,250,000 loan was to be in first priority and the deed of trust securing the \$700,000 loan was to be in second priority on Lot B.

Currently, there is a priority lien dispute based on Mrs. Chopra's alleged fraud.

Movant state the delinquent real property taxes on the Dale Road Property have been paid; however, Movant states the first installment of real property taxes for 2013-2014 is due on December 10, 2013 and the second installment will be due on April 10, 2014. The real property taxes are a lien senior to the consensual liens of the Bledsoe Fischer Plaintiffs and the Mid Valley Assignees. Movant argues that as adequate protection, the Court should require the current real property taxes to be paid.

DEBTOR'S OPPOSITION

Debtors oppose the motion stating they are selling the Dale Road Property as part of their plan of reorganization. Debtors argue a foreclosure sale of one-half of the Dale Road project would destroy the

value that could be realized for all parties involved. Debtors state that even if the stay relief motions are granted, the Mid Valley Assignees and the Bledsoe/Fisher Plaintiffs cannot collect on their respective asserted claims until after the lien priority dispute among the parties is resolved.

Debtors argue that they are attempting to make arrangements for the payment of the real property taxes for the Dale Road Property from a non-estate source. If they are unable to do so, Debtors state the accrued and unpaid real property taxes will be paid at the sale closing from the net proceeds of the \$9,000,000.00 due at that time and the payment at closing will not affect the payment in full of the claims. Debtors state the court could grant Mid Valley Assignees and the Bledsoe/Fisher Creditors replacement liens against the Dale Road Properties behind existing encumbrances only if and to the extent that real property taxes accrue on the properties and the accrual of taxes causes a diminution in value.

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 Lucille E. Arterburn, Trustee of Trust A established under the Jessie O. and Lucille E. Arterburn Trust dated March 7, 1984; Sylvan J. Farrell, Trustee of the Trust A established under the Sylvan J. Farrell & Marie E. Farrell Family Trust dated September 6, 1984; David J. Arterburn and Edith A. Arterburn (Watters), Trustees of Arterburn & Watters, LLP Profit Sharing Plan & Trust; John A & C Jeanie Miller, Trustee of the Miller Family Trust dated November 1, 2000; Thomas A. Miller and Judith A. Miller, husband and wife; Pensco Trust Company Custodian FBO James Wilson IRA Pensco Account #W1240; Pensco Trust Company Custodian FBO Frederick J. Dotzler IRA Pensco Account #70002038; Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; George H. Lehman, Trustee of the George H. Lehman Family Trust (the "Mid Valley Assignees), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx.

3. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA
SSA-4 Evan D. Smiley

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
9-26-13 [[597](#)]

JOANN BLEDSOE, ET AL. VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, all creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The court decision is to xxxx.

JULY 24, 2014 HEARING

At the hearing,

MARCH 27, 2014 HEARING

On March 18, 2014, the court approved the Trustee's request for authorization to employ PMZ Real Estate for the marketing of the properties commonly known as 1907 East F Street, Oakdale, California and 1317 Oakdale Road, Modesto, California. Orders to Employ, Dckts. 824, 825.

Order for Adequate Protection

Movants direct the court's attention to the fact that it has not yet recorded and served a Notice of Default under the Deed of Trust. While the Debtors and their attorneys have represented that they are trying to close a sale of this property, it has not been forthcoming. The Trustee is hiring real estate brokers to list properties of the estate, but has not generated a sale.

Modifying the automatic stay to allow for the recording and serving the Notice of Default affords reasonable adequate protection for the Movants, but does not impair the ability of the Debtors or trustee to move forward with a Plan, or for the Trustee to begin selling the properties. Further, the Movants and trustee can continue their discussions and coordinate the administration of the assets which secure Movants' claim.

The court finds that cause exists to modify the automatic stay to allow Movants to record, serve, and take all actions necessary to properly and effectively issue a Notice of Default under the Deed of Trust, based on:

- A. The Chapter 11 case has been pending two years and four months that this Chapter 11 case has been pending without a confirmed plan;
- B. The Chapter 11 Trustee having been appointed by order filed on October 18, 2013 (Dckt. 370);
- C. Notwithstanding the Trustee working in good faith with the Debtors and their counsel no disclosure statement has been approved or plan presented for confirmation;
- D. No properties of the estate have been listed for sale;
- E. The Plan advanced by the Debtors is one which seeks to sell properties of the estate as part of a "development package" which would be sufficient to pay claims and generate a profit for Debtors;
- F. The court questions whether such a "profit for the Debtors" plan is reasonable;
- G. The Movants are involved in a lien priority dispute with another group of creditors based on alleged fraud (which is the subject of a federal criminal prosecution) of one of the Debtors;
- H. The Motion for Relief was filed on September 26, 2013 (Dckt. 597);
- I. The creditors with the competing lien in the priority dispute filed their motion for relief from the automatic stay on December 4, 2014 (Dckt. 684, DCN: MG-3);
- J. The value of the Properties securing the deeds of trust for Movants and the competing priority creditors is asserted to be less than that of the claims secured by the two liens.

- K. The Debtors and Trustee believe that the use of the Properties securing the two claims as part of a larger sale for the development of multiple properties increases the value of not only the collateral over what is asserted, but the other properties of the estate to be sold for that development.
- L. The inability of the Movants and the competing creditor to begin the running of the 90 day Notice of Default periods under the respective deeds of trust causes them a "lack of adequate protection" in light of the long term of this case without a plan being confirmed or the active marketing of the Properties (other than the Debtors' efforts to include them in a larger development project).
- M. Modifying the automatic stay does not allow the Movants or competing creditors to take the asset from the estate, the Debtors and Trustee to proceed with a Plan, or the Trustee recovering value from the Properties, if any, for the benefit of the estate. The Trustee and Debtors may also continue in their negotiations with the Movants and competing lien priority creditor to have a collective moving forward to realize the value of the Properties for the benefit of the estate and to provide for Movants' and competing creditors' secured claims.

The court also continues the hearing on the Motion to address whether the stay should be terminated or continue in effect to 10:00 a.m. on July 24, 2014. The stay is modified effective April 30, 2014.

MARCH 6, 2014 HEARING

The parties agreed to continue the hearing to March 27, 2014.

PRIOR HEARINGS

Movants Joanne Irene Bledsoe; Carl R. Fischer, Jr. and Sandy Fischer, as trustees of the Carl R. Fischer, Jr. and Sandy Fischer Revocable Trust UDT dated September 25, 2000; Amy C. Sherman, formerly known as Amy C. Fischer, as Trustee of the Amy C. Fischer Revocable Trust UDT dated November 14, 2005; and Robert Daniel Fischer (collectively "Bledsoe-Fischer Creditors" or "Movants") seek relief from the automatic stay with respect to the real property commonly known as 4754 Dale Road, Modesto, California. The moving party has provided the Declaration of Joann Irene Bledsoe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movants contend that the property has no equity, as the market value is \$2,490,000.00 and are owed \$8,395,557.47 in principal and interest. In addition, the Mid-Valley Creditors assert a lien on the real property in the amount of \$2,691,949.04. Additionally, Movant states there is accrued property taxes on the property owed in the amount of \$99,256.16. Movants also argue that the property is not necessary for an effective

reorganization.

In the alternative, Movant argues that causes exists for terminating the stay where the debtors have not made post-petition payments. Movants state Debtors have failed to make any payments on the note, either pre- or post-petition.

TRUSTEE'S OPPOSITION

Chapter 11 Trustee opposes the Motion for Relief because the subject parcels are necessary to an effective reorganization in prospect, which the Trustee believes to have a reasonable likelihood of confirmation within a reasonable time period. Trustee states the plan of reorganization is built around the Dale Road Project, of which the subject parcels are a part. Trustee is also informed that the Debtors have obtained a fully executed purchase and sale agreement, pursuant to which the Dale Road Property will be sold for approximately \$17,000,000.00.

Trustee also states that the Debtors recently arranged for payment of \$99,256.16 in property taxes assessed against the subject parcels, which demonstrates their seriousness in attempting to confirm a plan or reorganization around this property.

The Trustee contends that the subject parcels are necessary to an effective plan of reorganization and believes the Debtors should be given a reasonable amount of time to attempt to confirm their plan or reorganization and that the motion should be denied or continued with the confirmation hearing.

DEBTOR'S OPPOSITION

Debtors oppose the motion on the basis that the Dale Road properties are necessary to an effective reorganization. The Debtors have negotiated an agreement for the sale of the properties for \$17,000,000.00, which will be consummated through confirmation of a chapter 11 plan. Debtors state the granting of this motion will destroy the proposed sale and eviscerate the value for the other creditors of this estate. The Debtor states the amended plan will pay creditors 100% of their allowed claims from the proceeds of the sale.

Debtors state the Bledsoe-Fischer Creditors have failed to show they are entitled to adequate protection because they are undersecured creditors and have not shown that their collateral is depreciating post-petition.

Debtors also state that the \$99,256.16 in accrued real property taxes related to the property have been paid. Debtors state that Movant has not provided any evidence that their collateral is declining in value post-petition.

Debtors request that the motion be denied so they can proceed with their proposed 100% plan.

MOVANT'S REPLY

Movant concedes that the Dale Road property is necessary to an effective reorganization. Movant states that it remains to be seen whether the prospective buyer will actually perform and pay the estate \$17 million. Movant states the Agreement for Purchase and Sale of Real Property is contingent upon several conditions, including confirmation of a Chapter 11 plan, list pendens removal, recordation of a parcel map, and Trustee approval.

Movant also concedes that Debtors have filed a multitude of documents, including a Amended Disclosure Statement and First Amended Plan, but the actual efficacy of the documents filed is still a critical issue.

Lastly, the Movant states that it is unwilling to remove the Lis Pendens, which impedes the Debtor's reorganization.

Movant requests that its motions be granted, but that if the court deny its motions, then continue them rather to be hearing with plan confirmation.

DISCUSSION

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor 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).

The party seeking stay relief has the burden of demonstrating the lack of equity; the party opposing stay relief bears the burden of proof on all other issues. 11 U.S.C. § 362(g); see also, *In re Bonner Mall Partnership*, 2 F.3d 899, 902 (9th Cir. 1993).

The parties appear to agree that there is no equity in the subject real property parcels. While Movant, in its reply, concedes that the property appears to be necessary for an effective reorganization, the true concern lies in the confirmation of the Chapter 11 plan of reorganization and the related sale.

It appears equitable to continue the hearing on the Motion for Relief from Stay to the Amended Disclosure Statement hearing date to follow confirmation.

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 Joanne Irene Bledsoe; Carl R. Fischer, Jr. and Sandy Fischer, as trustees of the Carl R. Fischer, Jr. and Sandy Fischer Revocable Trust UDT dated September 25, 2000; Amy C. Sherman, formerly known as Amy C. Fischer, as Trustee of the Amy C. Fischer Revocable Trust UDT dated November 14, 2005; and Robert Daniel Fischer (collectively "Bledsoe-Fischer Creditors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx.

4. **14-90612-E-7** **STEVEN JANNICELLI** **MOTION FOR RELIEF FROM**
 BHT-1 **Steven B. Sievers** **AUTOMATIC STAY**
 7-7-14 [12]

BANK OF AMERICA, N.A. 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 July 7, 2014. 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.

Bank of America, National Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3388 Bald Mountain Road, West Point, California (the "Property"). Movant has provided the Declaration of Javier Rivera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rivera Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$828.22 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 \$4,132.14.

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 \$87,375.73, as stated in the Rivera Declaration and Schedule D filed by Steven Allen Jannicelli ("Debtor"). The value of the Property is determined to be \$80,000.00, 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 waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue 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 Bank of America, National Association 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 Bank of America, National Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3388 Bald Mountain Road, West Point, California.

No other or additional relief is granted.

5. 14-90618-E-7 ROBERT VAN TUINEN
APN-1 Scott J. Sagaria

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-9-14 [12]

FORD MOTOR CREDIT COMPANY
VS.

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2014. 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.

Robert Lucas Van Tuinen ("Debtor") commenced this bankruptcy case on April 30, 2014. Ford Motor Credit Company ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Ford Fusion, VIN ending in 6844 (the "Vehicle"). The moving party has provided the Declaration of Danielle Walker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Walker Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$966.12 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$1,504.44.

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 \$20,627.30, as stated in the Walker Declaration. while the value of the

Vehicle is determined to be \$15,050.00, as stated in Schedules B and D filed by Debtor.

Movant has provided a copy of the NADA Valuation Report for the Vehicle to establish the value as \$15,050.00. 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).

RULING

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

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

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

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

No other or additional relief is granted by the court.

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

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

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

No other or additional relief is granted.

July 24, 2014 at 10:00 a.m.
- Page 17 of 47 -

The Motion for Relief From the Automatic Stay is granted.

Frank Candito ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1128 McGuire Drive, Modesto, California (the "Property"). The moving party has provided the Declaration of Frank Candito to introduce evidence as a basis for Movant's contention that Candace Christine Honcell and Alexander Jay Honcell ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that he is the owner of the Property and that he leased the subject property to Debtor. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant asserts that no post-petition rental payments have been made since filing the petition. Movant wishes to commence an unlawful detainer action in California Superior Court.

Debtor's Opposition

Counsel for Debtors states that Creditor informed them of his intent to sell the property on June 27, 2014 and that Debtors have not paid the entire rent amount due for June 2014 based on Creditor's recommendation to save funds for relocation costs. Counsel for Debtors states that they have paid \$150 for the month of June. Counsel for Debtor states that Debtor has no outstanding rent payments pre-petition, and Creditor has not initiated an unlawful detainer action. FN.1.

FN.1. The opposing party filed the Opposition and Declaration in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

Creditor's Response

Creditor responds, stating that Debtor did make a partial payment of the June 2014 rent, but did not tender the balance of June or pay the July rent payment. Creditor states that since Debtors filed the case, he has been unable to issue a three day notice when Debtors failed to pay rent. Creditor states that he did not inform the Debtors to not pay the rent and to instead save their money.

DISCUSSION

Debtors wish to continue to pay rent and remain on the premises through the bankruptcy, which is why Debtors request the Motion be denied. However, Creditor's alleged recommendation not to pay rent for June was premised on

the idea that Debtors would relocate, which, according to their Declaration, they no longer intend to do. Furthermore, Debtor has not provided evidence that the remainder of the rent for June was paid or the rent for July has been paid. Debtor has not provided sufficient grounds to deny the Motion for Relief From the Automatic Stay.

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 Frank Candito, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1128 McGuire Drive, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Frank Candito 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 Frank Candito and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1128 McGuire Drive, Modesto, California.

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

No other or additional relief is granted.

7. [14-90833](#)-E-7 LANISHA MCCLURE
ADR-1 Carl E. Combs
DONOVAN VON LINDERN VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-18-14 [[17](#)]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Donovan Von Lindern Jr. and Denise Von Lindern ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3513 Thistlewood Way, Modesto, California (the "Property"). The moving party has provided the Declaration of Donovan Von Lindern Jr. to introduce evidence as a basis for Movant's contention that Lanisha Ann McClure ("Debtor") does 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 and Debtor rented the real property pursuant to a written rental agreement. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant states he commenced an unlawful detainer action in California Superior Court, but Debtor filed the present action and Movant has been unable to proceed.

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 Donovan Von Lindern Jr. and Denise Von Lindern, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3513 Thistlewood Way, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Donovan Von Lindern Jr. and Denise Von Lindern 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 Donovan Von Lindern Jr. and Denise Von Lindern and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3513 Thistlewood Way, Modesto, California.

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

No other or additional relief is granted.

8. [14-90436-E-7](#) DEREK/LESLIE VANN
MBB-1 Patrick B. Greenwell

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-18-14 [[24](#)]

BANK OF AMERICA, N.A. VS.

DISCHARGED 7-8-14

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Derek W. Vann and Leslie M. Vann ("Debtor") commenced this bankruptcy case on March 27, 2014. Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Keystone Cambridge, VIN ending in 0349 (the "Vehicle"). The moving party has provided the Declaration of Paul Burrill to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Burrill Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$310.69 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$260.84.

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

\$36,211.79, as stated in the Burrill Declaration, while the value of the Vehicle is determined to be \$28,000.00, as stated in Schedules B and D filed by Debtor. Creditor accepts the valuation of the Vehicle as stated in Debtor's filed Schedule B, attached as Exhibit 3, Dckt. No. 27.

RULING

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

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

Debtor was granted a discharge in this case on July 8, 2014. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of America, N.A. ("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 2006 Keystone Cambridge ("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 to the extent the Motion seeks relief from the automatic stay as to Derek W. Vann and Leslie M. Vann ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

No other or additional relief is granted.

9. 14-90538-E-11 REYES DRYWALL, INC.
PP-1 David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-26-14 [47]

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND VS.

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Tricorp Construction, Inc. And Fidelity and Deposit Company of Maryland ("Movants") seek relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow them to continue litigation in *Reyes Drywall, Inc. v. Tricorp Construction, Inc. et al*, Case No. 677296. The Lisa Nicolls Declaration states that Debtor has filed the state court action against Tricorp Construction (Creditor) seeking payments of amounts owed on a public works construction contract. Tricorp filed a cross-complaint in the action seeking disgorgement of amounts previously paid to Debtor on the grounds that Debtor was not licensed to perform the type of work performed. Movants have attached Debtor's second amended complaint filed on October 31, 2013 as Exhibit 1, and Movant's cross-complaint filed on August 27, 2013 as Exhibit 4 (Dckt. No. 52). The Declaration further states that all discovery on the state court case has been completed, and that the bankruptcy case was filed on April 14, 2014, eight days before the scheduled trial in the state court action. Movants assert that judicial economy would necessitate the state court action to proceed, so it can be decided whether Debtors owe Movants money and vice versa.

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 shall issue a minute order modifying the automatic stay as it applies to the Debtors, and each of them, to allow Tricorp Construction, Inc. And Fidelity and Deposit Company of Maryland to continue the state court action *Reyes Drywall, Inc. v. Tricorp Construction, Inc. et al*, Case No. 677296.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, 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 a minute order substantially in the following form holding that:

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow Tricorp Construction, Inc. And Fidelity and Deposit Company of Maryland, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the state court action *Reyes Drywall, Inc. v. Tricorp Construction, Inc. et al*, Case No. 677296.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, 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.

10. [12-93039](#)-E-7 **DAVID MCCOY** **MOTION FOR RELIEF FROM**
CLH-1 **Steven S. Altman** **AUTOMATIC STAY**
7-8-14 [[34](#)]
DIANE MCCOY VS.

DISCHARGED 5-14-13

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, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. 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.

Movants seek relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow them to continue litigation in *Diane Eugnia McCoy v. David Kenneth McCoy*, filed in San Joaquin County, Case No. FL 368327. The Diane McCoy Declaration states that after Movant and Debtor's separation Debtor maintained exclusive management and control of two of the community property businesses: "David K. McCoy, an accounting corporation", and "Anderson McCoy & Co. CPA." During the dissolution of marriage action Debtor served Movant with a Schedule of Assets valuing David McCoy, CPA at \$260,000 and Anderson McCoy & Co. CPA at \$208,000. Movant had the two business valued by a professional, and as of December 31, 2010 their alleged worth was \$405,000 for David McCoy, CPA, Inc. and \$98,000 for Debtor's interest in Anderson McCoy & Co. CPA. Movant seeks relief from the automatic stay to allow her to continue to pursue the dissolution of marriage action and obtain an equalization payment from Debtor, based on the valuation of his businesses on December 31, 2010.

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 dissolution of marriage case warrants relief from stay for cause in order for the parties to determine equalization payments from the Debtor based on his businesses. The court shall issue a minute order modifying the automatic stay as it applies to the Debtors, and each of them, to allow Diane McCoy to continue the case *Diane Eugnia McCoy v. David Kenneth McCoy*, filed in San Joaquin County, Case No. FL 368327.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, 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.

Debtor was granted a discharge in this case on May 14, 2013. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow Diane McCoy, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the action *Diane Eugenia McCoy v. David Kenneth McCoy*, filed in San Joaquin County, Case No. FL 368327.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Debtor, the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, 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. The stay is not modified to allow for the adjudication of any rights of the Bankruptcy Estate for which the Chapter 7 Trustee would have to be made a party.

No other or additional relief is granted.

11. [14-90544-E-7](#) JOSE/IRIS RUIZ
JCW-1 Ashley R. Amerio

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-18-14 [[14](#)]

M & T BANK VS.

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

M & T Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 317 Knutson Street, Patterson, California (the "Property"). Movant has provided the Declaration of Courtney Isbrandt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Isbrandt Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,775.16 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$2,662.74.

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 \$146,489.33 (including \$113,202.33 secured by Movant's first deed of trust), as stated in the Courtney Isbrandt Declaration and Schedule D filed by Jose L. Ruiz and Iris R. Ruiz ("Debtor"). The value of the Property is determined to be \$134,000.00, 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 waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue 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 M & T Bank 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 M & T Bank, 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 317 Knutson Street, Patterson, California.

No other or additional relief is granted.

12. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
KDG-9 Jacob L. Eaton

APPROVAL OF DISCLOSURE
STATEMENT FILED BY DEBTOR
6-12-14 [[257](#)]

Tentative Ruling: 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.

Correct Notice Provided. The Proof of Service states that the Disclosure Statement and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 42 days' notice was provided.

The Approval of Disclosure Statement is -----.
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REVIEW OF THE DISCLOSURE STATEMENT

Case filed: August 7, 2013

Background: Lima Brothers Dairy, a California partnership has operated its business in Merced County as a dairy milking Holstein cows. The business operates about 1,050 cows with 2,330 head of livestock on approximately 540 acres of real property owned by the partners and brothers, Jose Lima and Filipe Lima. The business also grows grains year round on the real property for forage and silage for its livestock. The dairy industry has faced significant economic challenges in the last several years with the volatility in feed costs and milk prices, which caused Debtor-in-Possession to fall behind in payments to its creditors. The Chapter 11 case was initially filed to liquidate, but it now believes it can reorganize after a holistic view of its business and financial affairs.

Creditor/Class	Treatment	
Class 1: Administrative Expenses	Claim Amount	
	Impairment	Unimpaired

	<p>Class One Claims incurred through the Effective Date will be paid in cash on or before the Effective Date, or after Court order if necessary, unless such claimants agree to a different treatment. Those Claims payable after allowance by the Court will be paid within 20 days after such allowance is granted. Except as provided below, any application for approval of a Class One Claim arising prior to Confirmation of the Plan will be filed and served no later than thirty days after LIMA gives notice of said requirement to the affected creditors, except that application for allowance and payment of any Professional Fee Claims may be made at any time during the Term of the Plan.</p>	
Class 2: Priority Claims	Claim Amount	\$3,232.00
	Impairment	Unimpaired
	The Class Two Claimant will be paid in full within 30 days of the Effective Date.	
Class 3: Secured Claim of American AG Credit, PCA Cow Loan	Claim Amount	\$2,447,515.48
	Impairment	impaired
	<p>Debtor and PCA will enter into the New Loan Documents which will effectively incorporate the Pre-Petition Loan Documents and will document the treatment of the Class Three Claim. Filipe and Joe are required to personally guarantee the New Loan Documents in connection with confirmation of the plan and execution of the New Loan Documents.</p> <p>The Reorganized Debtor will make monthly principal and interest payments to PCA on account of the Class Three Claim beginning on the twentieth day of the month following the Effective Date and continuing each month until the Class Three Claim is paid in full. The estimated amount of the initial payment is \$28,000.00 per month. Interest will accrue at a variable rate of interest.</p>	
Class 4: Secured claim of American AgCredit, PCA - Feed Loan	Claim Amount	\$113,612.66
	Impairment	Unimpaired
	The Class Four Claim was paid in full after the Petition Date.	
Class 5: Secured Claim of American AgCredit, FLCA - 2010 Loan	Claim Amount	\$2,321,623.40
	Impairment	impaired

	<p>FLCA and the Reorganized Debtor will retain all rights and responsibilities set forth in the Pre-Petition Loan Documents, except that the Reorganized Debtor will replace LIMA as guarantor and the holder of personal property collateral. The Reorganized Debtor will execute a guarantee with respect to the Class Five Claim.</p> <p>The amount of the Allowed Class Five Claim will be \$2,321,623.40, plus non-default interest accrued but not paid on the Effective Date and reasonable costs including attorneys' fees and consultant expenses, as provided by the Pre-Petition Loan Documents, less any principal payments made toward the Class Five Claims.</p> <p>Interest will accrue at the rate provided by the Pre-Petition Loan Documents. The Reorganized Debtor will make fixed principal and interest payments to FLCA on account of the Class Five Claim in the estimated amount of \$16,593.16 per month based on the Pre-Petition Loan Documents. The monthly payment to FLCA shall be made by assignment from NFO, or other creamery to which the Reorganized Debtor may ship milk in the future, from the Reorganized Debtor's milk check.</p>	
Class 6: Claim of America AgCredit, FLCA - 2012 Loan	Claim Amount	\$933,681.15
	Impairment	Impaired

	<p>FLCA and the Reorganized Debtor will retain all rights and responsibilities set forth in the Pre-Petition Loan Documents, except that the Reorganized Debtor will replace LIMA as guarantor and the holder of personal property collateral. The Reorganized Debtor will execute a guarantee with respect to the Class Six Claim.</p> <p>The amount of the Allowed Class Six Claim will be \$933,681.15, plus non-default interest accrued but not paid on the Effective Date and reasonable costs including attorneys' fees and consultant expenses, as provided by the Pre-Petition Loan Documents, less any principal payments made toward the Class Six Claims.</p> <p>Interest will accrue at the rate provided by the Pre-Petition Loan Documents. The Reorganized Debtor will make fixed principal and interest payments to FLCA on account of the Class Six Claim in the amount of \$6,186.00 per month as required by the Pre-Petition Loan Documents. The monthly payment to FLCA shall be made by assignment from NFO, or other creamery to which the Reorganized Debtor may ship milk in the future, from the Reorganized Debtor's milk check.</p> <p>FLCA's liens shall extend to its collateral, in the same order of priority that existed on the Petition Date, after the assets of LIMA are contributed to the Reorganized Debtor. FLCA may file and record appropriate documents to perfect its liens.</p>	
Class 7: Claim of Merced County Tax Collector	Claim Amount	\$59,583.00
	Impairment	Unimpaired
	The Class Seven Claimant will retain its lien and the Class Seven Claim will be paid in full by the Reorganized Debtor within 30 days of the Effective Date. This payment will cure all arrears in the month-to-month lease for real property with the Brothers.	
Class 8: Claim of Cargill, Inc.	Claim Amount	\$823,221.45
	Impairment	Impaired

	<p>The amount of the Allowed Secured Class Eight Claim will be \$823,221.45 plus non-default interest accrued but not paid on the Effective Date and reasonable costs including attorneys' fees and consultant expenses, as provided by the pre-petition loan documents between Cargill and LIMA, less any principal payments made toward the Class Eight Claims.</p> <p>Interest will accrue at 5% per annum from and after the Petition Date. The Reorganized Debtor will make fixed principal and interest payments to Cargill on account of the Class Eight Claim in the amount of \$15,535.20 per month beginning on the twentieth day of the month following the Effective Date and continuing each month until the Class Eight Claim is paid in full. Payments are based on a standard principal and interest amortization of the Class Eight Claim over 60 months.</p>	
Class 9: Claim of Naeda Financial	Claim Amount	\$28,502.34
	Impairment	Impaired
	<p>The Class Nine Claimant will retain its lien against the manure pump and the Class Nine Claim will be paid according to the terms of its contract. Naeda and the Reorganized Debtor will retain all rights and responsibilities set forth in the prepetition contract between Naeda and LIMA, except that the Reorganized Debtor will replace LIMA as the borrower and the owner of collateral. The Reorganized Debtor will make fixed principal and interest payments to Naeda on account of the Class Nine Claim in the amount of \$656.00 per month as required by the terms of its contract. Naeda will retain its purchase money security interest in the manure pump in the same order of priority that its lien existed on the Petition Date. The Class Nine Claimant will reconvey its security interest after the Class Nine Claim is paid in full.</p>	
Class 10: Claim of Stanislaus Farm Supply Co., Inc.	Claim Amount	\$263,951.87
	Impairment	Impaired
	<p>LIMA and Farm Supply entered and filed a stipulation regarding the value of Farm Supply's collateral that provides that the value of Farm Supply's interest in its collateral is \$0.00 because the Class Ten Claimant's lien is junior to the Class Three, Five, Six, and Eight Claims. Therefore, the amount of the Allowed Secured Class Ten Claim will be \$0.00. The Allowed Claim held by Farm Supply will be a general unsecured Class Twelve Claim. Farm's Supply's lien shall be invalid upon confirmation of the Plan.</p>	

Class 11: Executory Contract and Unexpired Leases	Claim Amount	
	Impairment	
	<p>LIMA was party to a Membership and Marketing Agreement with NFO on the Petition Date. LIMA ships the majority of its milk to NFO and NFO markets and sells LIMA's milk and pays LIMA for its milk under the Membership and Marketing Agreement. LIMA hereby assumes the Membership and Marketing Agreement with NFO. LIMA was and is party to a month-to-month agreement with the Brothers wherein it leases the Real Property owned by the Brothers on which it operates its dairy and grows crops in exchange for the payment of real property taxes, payment of debt service, irrigation assessments, and maintenance of the Real Property and all improvements on the Real Property. LIMA will be current on the payments required by the oral month-to-month lease upon payment of the Class 7 Claim as described herein. The Reorganized Debtor will assume the lease of the Real Property under the same terms. Any Unexpired Lease or Executory Contract that is not specifically treated herein is rejected to the extent other Unexpired Leases or Executory Contracts were existing on the Petition Date. Any general unsecured claims arising out of the rejection of executory contracts and unexpired leases by LIMA will be treated as a Class Eleven Claim.</p>	
Class 12: Allowed Claims of General Unsecured Creditors	Claim Amount	\$1,920,968.48
	Impairment	Impaired
	<p>Class Twelve Claimants will be paid 100% of their Allowed Claims over 60 months. The Reorganized Debtor will make payments totaling \$32,016.14 per month to the Class Twelve Claimants commencing on the 5th day of the month following the Effective Date, and continuing each month for 60 months, or until the Class Twelve Claims are paid in full.</p> <p>All Class Twelve Claimants will receive a pro-rata share of each distribution made by the Reorganized Debtor under this Plan based upon the amount of their Allowed Claims. Amounts recovered by LIMA or the Reorganized Debtor for any preference or fraudulent conveyance actions, after reduction for costs of recovery, will be paid to the Class Twelve Claimants on a pro-rata basis. This payment will be in addition to the payments described above if, at the time of the recovery, the Class Twelve Claimants have not been paid in full. LIMA or the Reorganized Debtor shall retain any recovery if, at the time of recovery, the Class Twelve Claimants have been paid in full.</p>	

Class 13: Interests of the Partners of LIMA	Claim Amount	
	Impairment	Unimpaired
	The Class Thirteen Claimants will retain their interests in LIMA. However, the Class Thirteen Claimants will cause LIMA to contribute its assets to the Reorganized Debtor which will be a consolidation of LIMA's assets and operations as well as P&M Dairy's assets and operations. The Reorganized Debtor will be a limited partnership named "Lima Brothers & Son Dairy, LP." The Reorganized Debtor will have three limited partners: (1) Filipe, holding a 37.125% ownership interest; (2) Joe, holding a 37.125% ownership interest, and (3) Phillip, Jr., holding a 24.7 5% ownership interest. The Reorganized Debtor shall have one general partner. The general partner will be a limited liability company that will own 1% of the Reorganized Debtor ("the LLC"). The members of the LLC will be (1) Filipe, holding a 37.5% membership interest; (2) Joe, holding a 37.5% membership, and (3) Phillip, Jr., holding a 25% membership interest.	
Class 14: Interest of LIMA	Claim Amount	
	Impairment	
	The Class Fourteen Claims are the claims or interests held by LIMA. LIMA will cause that the Reorganized Debtor be created in accordance with the terms of the Plan before the Effective Date. Upon the Effective Date, LIMA and P&M Dairy will contribute all of their assets to the Reorganized Debtor without further order of the Court. The Reorganized Debtor will assume the duties, obligations, and rights of LIMA including, but not limited to, those duties, obligations, and rights arising under the Plan and those duties, obligations, and rights arising under the Bankruptcy laws. The Reorganized Debtor will also take responsibility for the following business obligations of P&M Dairy, (1) the debt secured by a John Deere Swather owed to Pioneer Equipment in the amount of about \$13,000.00 payable in one installment in May 2015, and (2) the lease obligation associated with the lease of a Bobcat skidsteer loader, payable in the amount of about \$500.00 per month.	

A. C. WILLIAMS FACTORS PRESENT

Y Incidents that led to filing Chapter 11

Y Description of available assets and their value

 Anticipated future of the Debtor

July 24, 2014 at 10:00 a.m.

- Page 37 of 47 -

Y Source of information for D/S

Y Disclaimer

Y Present condition of Debtor in Chapter 11

Y Listing of the scheduled claims

 Liquidation analysis

Y Identity of the accountant and process used

 Future management of the Debtor

Y The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

Ag-Seeds Unlimited

Creditor Ag-Seeds Unlimited filed a late filed opposition to the Disclosure Statement. Local Bankruptcy Rule 9014-1(f)(1)(ii) requires opposition to be in writing and filed with the court at least fourteen (14) days preceding the date of the hearing. Creditor filed their opposition July 16, 2014, eight (8) days before the hearing.

Creditor Ag-Seeds Unlimited objects to the approval of the disclosure statement with respect to the plan of reorganization because it fails to adequately describe the assets of the general partners, who are jointly and severally liable with the partnership for the partnership's debt. Creditor states that because the plan does not include a description of the assets and liabilities of the partners, the plan does not contain an adequate liquidation comparison to a chapter 7 because it does not take into account the rights of the chapter 7 trustee against the assets of the general partners.

RESPONSE:

Debtor-in-Possession responds, stating that the objection of Creditor Ag-Seeds Unlimited is untimely and should not be considered by the court. Debtor-in-Possession also states that the plan provides for 100% payout to holders of allowed general unsecured claims and therefore complies with the best interests of creditors test.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

A review of the disclosure statement reveals that no liquidation and analysis have been provided. This requirement has been included as element in several of the developed lists. See *e.g. In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567; *In re A.C. Williams*, 25 B.R. 173; *In re Malek*, 35 B.R. 443 (Bankr. E.D. Mich. 1983); *In re Ferretti*, 128 B.R. 16 (Bankr. D.N.H. 1991).

However, the plan provides for 100% payout to holders of allowed general unsecured claims and therefore appears to comply with the best interests of creditors test pursuant to 11 U.S.C. § 1129(a)(7).

13. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
WJS-1 Jacob L. Eaton

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-26-13 [[34](#)]

VS. AMERICAN AGCREDIT, PCA

CONT. FROM 4-10-14, 3-6-14, 2-13-14, 1-16-14, 10-31-13, 10-10-13

Tentative Ruling: The Motion for Relief from 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 - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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. The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court issues its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is xxxx.

American AgCredit, PCA ("Movant") seeks relief from the automatic stay with respect to an asset identified as the Dairy Herd and milk pool quota. The moving party has provided the Declarations of Teresa Rose, Eric Capron, and Steve Gallichio to introduce evidence to authenticate the

documents upon which it bases the claim and the obligation owed by the Debtor. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), as cause exists because there is a potential for damage to the dairy herd from insufficient feed.

The Rose Declaration states that Debtor had borrowed total of \$2,561,128.14 from Movant. There have been post-petition payments received by milk check assignment, which may serve to decrease the total debt slightly.

The Capron Declaration states that Debtor had approximately 60 days of feed on hand on August 20, 2013. However, supplements needed to be purchased to generate feed mix with appropriate nutrition level (estimated cost of \$50,000). As of September 4, 2013, Debtor has failed to file a motion to appoint a broker to liquidate the herd.

The Gallichio Declaration states that he performed a Dairy Valuation. He found that additional feed will need to be purchased. Also, the Debtor did not have supplements such as oat hay, straw or corn stalks for supplements with alfalfa. There are 3,403 animals which he valued at \$2,880,500.

Movant argues that it has been in contact with Debtor's Counsel and understood that the herd would be sold, but no motion to sell has been brought forward and then the September 11, 2013 status report by the Debtor also stated that Debtor expected to employ a broker to sell its livestock. However, no such motion has been filed to date.

PRIOR HEARINGS

Stipulation for Relief and Continued Hearing

The parties stated on the record a stipulation to grant the Motion and modifies the automatic stay the hearing to modify the stay to allow Movant to exercise its rights in the "Dry Cows," "bred heifers," "open heifers," "bucket calves (0-6 months)." For this relief, the 14-day stay of enforcement is waived. The hearing is continued as to the balance of the motion and collateral to 10:00 a.m. on October 31, 2013.

No additional documents have been filed to date either arguing for or against further relief from the stay.

DECEMBER 11, 2013 ORDER

On December 11, 2013, the court continued the hearing on the motion for relief from the automatic stay. Dckt. 81.

JANUARY 8, 2014 ORDER

On January 8, 2014, the court ordered that the hearing on the Motion for Relief be continued until February 13, 2013, to be heard at 10:00 am. Dckt. No. 98. It was further ordered that any opposition to the Motion be filed on or before January 30, 2014, and that any reply to opposition to the Motion be filed on or before February 6, 2014.

FEBRUARY 3, 2014 ORDER

On February 3, 2014, the court ordered that the hearing on the Motion for Relief be continued until March 6, 2014 at 10:00 a.m., and trailed to be heard with the Chapter 11 Case Status Conference on the 3:30 p.m. calendar. Dckt. No. 136. It was further ordered that any opposition to the Motion be filed on or before February 20, 2014, and that any reply to opposition to the Motion be filed on or before February 27, 2014.

Nothing has been filed to date in conjunction with this Motion for Relief to date.

MARCH 6, 214 HEARING

The court notes the Status Conference Statement states that the Debtor-in-Possession has requested that Ag Credit agree to continue the hearing on this motion 30 days to give the Debtor-in-Possession time to file a Plan and Disclosure Statement.

The parties filed a stipulation to continue the hearing to April 10, 2014.

APRIL 10, 2014 HEARING

The parties filed a stipulation to continue the hearing to May 22, 2014. Dckt. 190.

MAY 22, 2014 HEARING

The parties filed a stipulation to continue the hearing to June 12, 2014. Dckt. 232.

JUNE 12, 2014 HEARING

At the hearing the parties agreed to continue the hearing to 10:00 a.m. on July 24, 2014, to be heard in conjunction with the hearing on the proposed disclosure statement.

JULY 22, 2014 HEARING

At the hearing,

14. [14-90672-E-7](#) ALBERT/CARMEN AZEVEDO
TDS-1 Hilton A. Ryder

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-14 [[9](#)]

HARWINDER PATTAR VS.

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

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 - No Opposition Filed.

Correct Notice Not Provided. No Proof of Service has been filed in support of the Motion. Therefore, the court is unable to determine if notice or service was properly provided to the parties.

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

The Motion for Relief From the Automatic Stay is denied without prejudice.

Harwinder S. Pattar ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 331 Holland Drive, Turlock, California (the "Property").

However, no Proof of Service has been filed in support of the Motion. Therefore, the court is unable to determine if notice or service was properly provided to the parties.

Furthermore, no declaration was provided in support of the Motion. The Motion is therefore considered to be without evidence and without grounds upon which the Motion could be granted.

Additionally, the moving party filed the information sheet, Motion, and exhibits in this matter as one document. This is not the practice in the

Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Based on these fatal deficiencies, the motion is denied without prejudice.

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 Harwinder S. Pattar having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

15. [11-90581](#)-E-7 RICHARD/REGINA LIPSCOMB MOTION FOR RELIEF FROM
RCO-1 Thomas P. Hogan AUTOMATIC STAY
6-11-14 [[25](#)]

NATIONAL RESIDENTIAL ASSETS
CORP. VS.

DISCHARGED 6-6-11

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 11, 2014. By the court's calculation, 43 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.

National Residential Assets Corp. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1404 Villette Court, Modesto, California (the "Property"). Movant has provided the Declaration of Marie Keys to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Keys Declaration states that there are 39 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$63,713.03 in post-petition payments past due. The Declaration also provides evidence that there are 14 pre-petition payments in default, with a pre-petition arrearage of \$34,479.94.

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 \$630,146.09 (including \$528,076.22 secured by Movant's first deed of

trust), as stated in the Keys Declaration and Schedule D filed by Richard David Lipscomb and Regina Jane Lipscomb ("Debtor"). The value of the Property is determined to be \$300,000.00, as stated in Schedules A and D filed by Debtor. Debtor's Statement of Intention indicates that they intend to surrender the property to Movant.

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).

Debtor was granted a discharge in this case on June 6, 2011. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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

No other or additional relief is granted by the court.

The court shall issue 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 National Residential Assets Corp. 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 National Residential Assets Corp., 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 1404 Villette Court, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Richard David Lipscomb and Regina Jane Lipscomb ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c) (2) (C).

No other or additional relief is granted.