UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 31, 2018, at 1:30 p.m.

---

1. **18-20115-E-13** **DOUGLAS SCOTT** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
MSK-1 **Robert Huckaby** **6-19-18 [57]**

THE GOLDEN 1 CREDIT UNION
VS.

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

This Contested Matter was assigned to the Hon. Christopher M. Klein for review, hearing, and ruling.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 19, 2018. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to Douglas Scott's ("Debtor") real property commonly known as 2210 Dana Court, South Lake Tahoe, California ("Property"). Movant has provided the Declaration of Jodi Reisch to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Reisch Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of $4,955.15 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Response on July 17, 2018. Dckt. 67. The Chapter 13 Trustee asserts that Debtor is current with plan payments, having paid $3,819.00 so far. From those payments, the Chapter 13 Trustee states that he has disbursed two payments to Movant, one on May 31, 2018, in the amount of $991.00 and the other on June 29, 2018, in the amount of $991.00.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 17, 2018. Dckt. 70. Debtor states that he has filed an amended plan that includes payment to Movant in Class 1, covering ongoing payments and arrearages.

DISCUSSION

A review of the docket shows that an amended plan was filed on May 16, 2018, and was denied confirmation at the July 17, 2018 hearing.

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 $153,291.98, secured by Movant's first deed of trust, as stated in the Reisch Declaration. The value of the Property is determined to be $420,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

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 The Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2.	**17-25221-E-13** **PGM-3**	**TOMMIE RICHARDSON** **Peter Macaluso**	**SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF SENECA LEANDRO VIEW, LLC, CLAIM NUMBER 7** **4-13-18 [87]**

No 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.

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 13, 2018. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7 is xxxxxxxx.

JULY 31, 2018 SCHEDULING CONFERENCE

Debtor's Scheduling Conference Report

Debtor filed a Scheduling Conference Report on July 20, 208. Dckt. 139. Debtor reports that the parties are negotiating a settlement agreement and that once an agreement is reached, Debtor will present an amended plan.

At the July 31, 2018 Conference, xxxxxxxxxxxxxxxxxxxxxx.

OBJECTION TO CLAIM

Tommie Richardson, Chapter 13 Debtor, ("Objector" or "Debtor") requests that the court disallow the claim of Seneca Leandro View LLC ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $195,000.00. Objector asserts that there is no evidence to support the claim, especially not for Objector being liable for a property being foreclosed upon while also in escrow. Objector admits to receiving $15,000 from Creditor, but Objector asserts that there is no basis for liability for any higher amount.

The Objection itself states with particularity the following grounds upon which it is based and why the claim should not be allowed:

A. No documentation for a security interest is included with the Proof of Claim.

B. There is no "Declaration" providing testimony to authenticate the exhibits attached to the Proof of Claim. FN.1.

FN. 1. This is a curious "grounds," in that proofs of claim are not pleadings for which declarations, points and authorities, and briefs are filed in support. Everyday documentation underlying the claim, such as notes and deeds of trust, are filed with proofs of claim, without "declarations" or other supporting pleadings. Objector has not provided a points and authorities in support of the Objection for the legal proposition that attachments to proofs of claim must be authenticated as provided in Federal Rule of Evidence 901 et seq.

C. There is no recorded lien attached to the Proof of Claim.

D. There is no "evidence" of the amount asserted to be owed by Debtor. FN.2.

FN. 2. *See* FN.1.

E. There are no equitable liens on the funds held by the foreclosure trustee.

F. The first objection is that "admissible evidence" is not attached to Proof of Claim No. 7.

G. The second objection is that Creditor has not presented admissible evidence to support Proof of Claim No. 7. FN.3.

FN. 3. Debtor directs the court to *Atwood v. Chase Manhattan Mortgage, Co. (In re Atwood)*, 293 B.R. 277, 233 (B.A.P. 9th Cir. 2003), for the proposition that Creditor cannot rely on the prima facie presumption of validity of the claim when the objecting debtor has presented evidence countering the prima facie effect. However, in making this argument, Objector asserts that since evidence is not authenticated with the Proof of Claim, the Proof of Claim must fail. This ignores the well-established law in this case and appears to cut out the burden that "[o]bjector is then called upon to produce evidence and show facts tending to defeat the

claim by probative force equal to that of the allegations of the proofs of claim themselves." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Id.* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992). Here, Objector cannot merely argue "I don't agree so you lose" in countering the *prima facie* presumption.

H. Objector argues that the prima facie presumption is dependent upon Creditor first presenting evidence of reasonableness, without any evidence offered by Objector to rebut the presumption.

Objector has provided his Declaration in Opposition. Dckt. 89. In it, Objector testifies that with respect to the Proof of Claim:

A. In December 2016, Objected entered into the Purchase and Sale Agreement with Creditor.

B. He identifies the "Liaison" between Creditor and Objector, and several people were "responsible" for the escrow. Objector does not provide testimony as to what the "Liaison" and people "responsible" for the escrow were supposed to do in connection with the Purchase and Sale Agreement.

C. Objector testifies that he was told by one of the "responsible" persons that another person "would be handling the paperwork" for the sale. No declaration by such "responsible" person to whom the statement is attributed is provided.

D. Objector testifies that some of the liens being reported on the property were "questionable." He does not state why he believed they were "questionable." Objector further testifies that he investigated and told the person handling the "paperwork" what liens should be paid.

E. On January 26, 2017, escrow was opened. On February 24, 2017, Creditor advanced $15,000 for payment through escrow for the sale of the property.

F. On March 7, 2017, a notice of default and election to sell was filed.

G. Objector concludes that "I did everything said by escrow, and do not owe anything to the creditor as the failure to complete escrow was not my fault, but that of First American Title Company, ..."

The above is the sum total of the evidence presented to rebut the prima facie effect of the Proof of Claim.

CREDITOR'S RESPONSE

Creditor filed a Response on May 22, 2018. Dckt. 103. Creditor argues that it and Objector entered into a purchase agreement for real property on December 27, 2016. Creditor argues that Objector did not disclose being in default on a second deed of trust on the property, leading to a Notice of Default being issued on March 2, 2017, which was also not disclosed to Creditor. Creditor states that it was not informed of a Notice of Trustee's Sale recorded on June 9, 2017, before the property was sold on July 6, 2017.

Creditor argues that escrow had not closed on its purchase agreement because Objector had not required one tenant on the property to vacate the premises. That tenant is identified as Objector's sister.

Creditor argues that it was ready to purchase at any time while the sale was pending and would have waived the requirement for the tenant to be removed if it had known about the pending foreclosure.

With respect to damages, Creditor first asserts that this property was listed on Debtor's Schedule A under penalty of perjury as having a value of $1,000,000 by Objector. Further, the property had been appraised (Creditor's appraiser) to have a value of $940,000 as of July 6, 2017. Using the $940,000 value and the $760,000 contract price, Creditor computes the damages to be $195,000 (which includes the $15,000 advanced by Creditor through escrow). Creditor argues that Objector breached the purchase agreement and now owes Creditor at least $195,000.00, as reflected in Proof of Claim 7-3 filed as an unsecured claim.

As legal grounds, Creditor asserts that its breach of contract claim against Objector is determined by California law, and Creditor points to California Civil Code §§ 3300 and 3306 to determine how contract breach damages are calculated.

JUNE 5, 2018 HEARING

At the hearing, the court announced that it was setting a Scheduling Conference for this matter to be heard at 10:30 a.m. on June 14, 2018. Dckt. 118. The court ordered Objector and Creditor to file and serve on each other's counsel their Scheduling Conference Reports on or before 12:00 p.m. on June 11, 2018. The parties were ordered to identify the applicable California laws upon which they rely and the witnesses and documentary evidence in support of their positions.

JUNE 14, 2018 HEARING

At the hearing, the court noted that on June 11, 2018, the court entered an order resetting the matter for 1:30 p.m. on June 26, 2018. Dckt. 121, 125.

Creditor's Scheduling Conference Report

On June 11, 2018, Creditor filed its Scheduling Conference Report. Dckt. 119. In it, Creditor recounts various asserted facts which it intends to present in support of its breach of contract claim.

Debtor's Scheduling Conference Report

No Scheduling Conference Report has been filed by Debtor.

JUNE 28, 2018 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on July 31, 2018, for a scheduling conference to set an evidentiary hearing. Dckt. 132. The court ordered the parties to file scheduling conference reports on or before July 20, 2018. Dckt. 134.

DISCUSSION

A review of the docket shows that an amended plan has not been filed, a settlement has not been proposed, and this matter does not appear to be resolved.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Unless otherwise covered by the Bankruptcy Code, state law applies to determine the existence and validity of a claim. *Cossu v. Jefferson Pilot Securities Corp. (In re Cossu)*, 410 F.3d 591, 595 (9th Cir. 2005) ("The validity of a creditor's claim is determined by the rules of state law . . . ."). Furthermore, if all of the events for a breach of contract claim occurred pre-petition, even though liability has not yet been affixed, then the claim is not contingent upon a future determination of liability. *In re Keenan*, 201 B.R. 263 (Bankr. S.D. Cal. 1996).

The court has reviewed the purchase agreement that Creditor attached as Exhibit 1. Dckt. 107. Creditor directs the court to Paragraphs 9(G) & 10. Dckt. 103 at 2. Paragraph 9(G) states in its entirety:

> SELLER REPRESENTATION: Seller represents that Seller has no actual knowledge: (I) of any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property or the right to use and occupy it; (ii) of any unsatisfied mechanic's or materialman lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy. If Seller receives any such notice prior to Close Of Escrow, Seller shall immediately notify Buyer.

Exhibit 1, Dckt. 107 at 6.

Paragraph 10 states in its entirety:

> SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure of notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.

Id.

The Purchase Agreement defines "Buyer" as Seneca Leandro View, LLC, and "Seller" as Tommie Richardson. "Close Of Escrow" is stated to mean "2/28/17 or sooner." *Id.* at 3. The original Purchase Agreement was signed by Creditor/Buyer on November 29, 2016, and by Objector/Seller on December 27, 2016. *Id.* at 11.

No declaration is provided by Creditor or Creditor's Managing Member responsible and with personal knowledge of this transaction. No testimony is provided as to Creditor having the money in place to perform the contract, the cost of such money (points, fees), or the ability to complete the purchase.

A declaration is provided by Steven Geller, the appraiser providing his testimony as to value of the Property as of July 6, 2017. Dckt. 104. His appraisal report is stated to be provided as Exhibit 2 to the Declaration. Dckt. 105.

Setting Scheduling Conference

Creditor has provided the court with a brief citation to California Civil Code §§ 3300 and 3306 as the legal authorities for the court to determine what the contract between the parties was, if the contract existed who breached it, and the damages to the breaching party. Creditor asserts that it is per se the aggrieved party and its damages are the difference between the gross value of the property as set by its appraiser and the liens.

Creditor has not provided the court with any evidence of its efforts to perform the contract, that it could perform the contract, or what it did in connection with reviewing the title report and acting with respect to the reported liens against the property. This contract is purported to have arisen in December 2016 when it was signed by Objector. Creditor offers no explanation of what it was doing to perform its part of the contract in:

> January 2017,
>
> February 2017,
>
> March 2017,
>
> April 2017,

May 2017,

June 2017, and

July 2017,

to assert its alleged rights under the Purchase and Sale Agreement. The Agreement states that it was to close on or before February 28, 2017. Exhibit 1, Dckt. 107 at 3. Though February 28, 2017, came and went, there is no evidence of Creditor doing anything for the rights it now so stridently demands should be enforced.

Objector's pleading (Dckt. 87) does not provide any California law or treatise materials as to how this court makes a determination as to what the contract was, how to determine if it was breached, and how to correctly compute damages. The "legal basis" for the contention that only $15,000 could be owed as damages is—Objector says so.

Though the court could research the law, develop the arguments that it believes the respective parties could present, organize the legal analysis, and prosecute this Contested Matter for the respective parties, the court declines such assignment of work. It is clear that the court needs to set a scheduling conference and from there a discovery schedule for this Contested Matter. The parties need to assemble their evidence, which supports their state law legal arguments for whether there is an enforceable contract, and if so, what damages may flow therefrom.

~~**Conclusion of Scheduling Conference and Setting of Evidentiary Hearing**~~

~~The Scheduling Conference having been concluded, the court shall issue its Evidentiary Hearing Scheduling Order.~~

~~A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.~~

~~B. The Witnesses and Evidence presented for Objector Debtor's Case in Chief for the Objection to Claim are:~~

~~1. None - No Witnesses or Evidence identified. No Scheduling Conference Report filed by Debtor.~~

~~C. The Witnesses and Evidence presented for Creditor Seneca Leandro View, LLC are:~~

~~1. Witnesses~~

~~a. Alvin Cox~~
~~b. Wendy Stewart~~
~~c. Custodian of Records for First American Title Company~~
~~d. Steven Geller~~
~~e. Donna Pekarsky~~
~~f. Tommy Richardson (adverse witness)~~

g. "Billie" Robinson (adverse witness)

2. Documentary Evidence

a. Residential Income Property Purchase Agreement and Joint Escrow Instructions Including Extension Addendums
b. First American Title Company Preliminary Title Report No. OSA-5380095 (bdaa) Dated January 17, 2017
c. Check from Seneca Leandro View LLC to First American Title in the amount of $15,000
d. Check from First American Title to Tommie Richardson in the amount of $15,000
e. First American Title's Escrow File and Provisions
f. Second Amended Escrow Instructions
g. Notice of Default
h. Notice of Trustee's Sale
i. Trustee's Deed Upon Sale
j. Debtor's Schedule "A" Valuing the 1902-1904 Filbert Property in Oakland, California at $1 ,000,000
k. Appraisal Report by Stephen Geller and Curriculum Vitae
l. Pre-Approval Letter and all related documents from Lending One to Seneca Leandro View, LLC as to the loan from Lending One.

D. Discovery, including the hearing of discovery motions, shall close on xxxx, 2018.

E. Objector Debtor, shall lodge with the court and serve their Testimony Statements and Exhibits on or before **xxxxx, 2018**.

F. Respondent Creditor, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **--------, 2018**.

G. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **----------, 2018**.

H. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **----------, 2018**.

I. The Evidentiary Hearing shall be conducted at **------.m. on ---------, 2018**.

3. **18-23941-E-7** **SHONA JAMES** **CONTINUED MOTION FOR RELIEF**
PRK-1 **Pro Se** **FROM AUTOMATIC STAY**
6-29-18 [11]

RC CONSULTING, INC. VS.

Final Ruling: No appearance at the July 31, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion— Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 29, 2018. By the court's calculation, 18 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). Debtor, creditors, the Chapter 13 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 defaults of all parties, except the Chapter 7 Trustee, were entered at the July 17, 2018 hearing.

The Motion for Relief from the Automatic Stay is granted.

RC Consulting, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8669 Tea Leaf Court, Sacramento, California ("Property"). The moving party has provided the Declaration of Raul Chavez to introduce evidence as a basis for Movant's contention that Shona James ("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. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 3, 2018. Dckt. 17. The Chapter 13 Trustee states that he does not oppose the Motion regarding the rental property.

JULY 17, 2018 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on July 31, 2018, to afford the Chapter 7 Trustee time to review the Motion and to respond. Dckt. 37, 38.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

This case was converted on July 16, 2018, to one under Chapter 7. On July 18, 2018, Kimberly Husted ("the Chapter 7 Trustee") filed a statement of Non-Opposition to the Motion.

DISCUSSION

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

The court shall issue an order terminating and vacating the automatic stay to allow RC Consulting, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8669 Tea Leaf Court, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3).

Due to the eve-of-hearing conversion of this case to one under Chapter 7, though stating no opposition to the Motion, the court continued the hearing to afford the Chapter 7 Trustee the opportunity to review and respond to the Motion. The continuance of the hearing is sufficient cause to waive the fourteen-day stay of enforcement.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in

existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by RC Consulting, Inc., and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted RC Consulting, Inc., and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 RC Consulting, Inc., ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow RC Consulting, Inc., and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8669 Tea Leaf Court, Sacramento, California.

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

No other or additional relief is granted.