UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 13, 2020 at 10:00 a.m.

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1. 17-26125-E-7 **FIRST CAPITAL RETAIL, LLC** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
Gabriel Liberman
DARLENE JIMENEZ VS. **7-9-20 [611]**

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.

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)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney, Monica Zepeda, on July 9, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was not properly set for hearing.

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to Reason for Hearing, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(c)(l).

Furthermore, the court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). The Notice fails to include statement about viewability of tentative rulings on court website. Counsel is once more reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Motion for Relief from the Automatic Stay is xxxxx.

Darlene Jimenez ("Movant") seeks relief from the automatic stay to allow state court personal injury claim against Debtor, as legal owner of Cinnabon, stemming from a slip and fall on the premises of Cinnabon so that Movant may seek damages in an amount that is not in excess of the insurance policy in place at the time of the incident (the "State Court Litigation").

Before proceeding to consider the pleadings, the court first reviews how Movant is presenting this to the court.

Movant has filed a pleading titled "Notice of Motion and Motion for Relief From Automatic Stay." Dckt. 611. Under the long established Local Rules, the notice, motion, points and authorities (which may be combined with the motion if the document, including caption page, is not more than six pages in length), each declaration, and the exhibits (which may be combined into one exhibit document) are filed as separate pleadings. L.B.R. 9004-2(c)(1), 9014-1(d)(1), (d)(4).

The pleading titled "Notice and Motion" provides notice on page 2 that Movant will move the court "for the issuance of the following Motion for Relief From the Automatic Stay." Ntc and Mtn, p. 2:2-3; Dckt. 611. This appears to be a clerical error as Movant would not be seeking to have the court "issue" a Motion for Relief from the Stay.

Moving on, the Notice states that the Motion will be based on "this notice, the attached memorandum of points and authorities, the attached exhibits and upon the complete court records and filed in this action and such further oral and documentary evidence as may be presented at the hearing on this motion by counsel for the moving party." *Id.*, p. 2:5-2.

First, read literally, there is no actual motion stating with particularity the grounds for relief (Fed. R. Bankr. P. 9013) being filed.

Second, Movant is telling the court that every unidentified document in the court's file are things that Movant is basing the request for relief and it is for the court to scour the court's file and assemble whatever documents the court believes are advantageous for Movant.

Third, Movant appears to be authorizing herself to slip in additional evidence at the hearing, for which possible respondents to the Notice of Motion have been provided no prior notice or Due Process in knowing what is being presented. The Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules do not allow Movant to slip in new and additional evidence the day of a hearing.

The Notice states that a hearing will take place on August 13, 2020, but does not identify whether this hearing has been set using the notice provisions of Local Bankruptcy Rule 9014-1(f)(1) or (f)(2), and whether written opposition is required.

Moving on, beginning on page 3 of the Notice of Motion is the section titled "Memorandum of Points and Authorities." The "Points and Authorities" begins with an Introduction that states factual allegations (which could be "grounds") upon which the relief is based. These in substantive part provide notice that Movant suffered an injury at a Cinnabon, the Debtor owned the Cinnabon, Movant has filed a

lawsuit (the court and case number not disclosed), and that Debtor was insured at the time of the injury. *Id.*, p. 3:4-14. These sound in the nature of grounds that would be stated in the motion, or if less than six pages a pleading filed as a combined motion and points and authorities.

On page 4, a section titled "Basis for Relief" then states the legal arguments why relief from the automatic stay to proceed against insurance proceeds is proper.

On page 5, there is a section titled "Notice of Application." That section states that notice of the motion has been given to "the Debtor, the official committee of Unsecured Creditors, the Office of the United Sates Trustee, and those persons requesting notice under Rule 2002." This being a Chapter 7 liquidation, there is no Committee of Creditors Holding Unsecured Claims. Even for the period during the Chapter 11 phase of this case the court could not identify a Committee of Creditors being appointed.

The Certificate of Service filed in this Contested Matter on July 9, 2020, states that only the Notice of Motion and Motion for Relief From the Automatic Stay were served and that was by mailing it to:

Monica Zepeda, Esq.
Diederich & Associates
P.O. Box 64093
St. Paul, MN 55164

Dckt. 613. The Certificate of Service does not document service on: (1) the Debtor, (2) Counsel of Record for the Debtor, (3) the Chapter 7 Trustee, or (4) counsel of record for the Chapter 7 Trustee. Additionally, the Certificate of Service documents only the serving of the "Notice of Motion and Motion," and not any of the other supporting pleadings.

An internet search by the court for a Monica Zepeda, Esq. with a law firm named Diederich & Associates discloses that a Monica Zepeda is part of a firm located in Diamond Bar, California. The court could not identify a Diederich & Associates in St. Paul, Minnesota.

Additionally, serving the pleadings by mailing them to a post office box is not proper service. Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Federal Rule of Bankruptcy Procedure 9014(b) requires that the motion must be served in the same manner as a summons and complaint under Federal Rule of Bankruptcy Procedure 7004. Here, relief from the stay is requested as to the bankruptcy estate, for which the Trustee is the representative, and the Debtor. Here, the Certificate of Service does not attest to service on either or their attorneys.

The responsible managing member signing the bankruptcy petition for the Debtor is Rameshwar Prasad. Dckt. 1 at 4. The California Secretary of State lists Rameshwar Prasad as the agent for service of process for Debtor. [FN. 1]

FN. 1. https://businesssearch.sos.ca.gov/CBS/Detail

Evidence Presented With Motion

Creditor files a motion making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions. The one exhibit filed is the Relief from Stay Summary Sheet, which is to be filed as a separate pleading, not an exhibit.

Requested Relief

The Notice of Motion and Motion makes, in the middle of the points and authorities, a statement titled "Relief Requested:"

> 3. RELIEF REQUESTED
>
> By this Motion, Ms. Jimenez seeks entry of an Order, pursuant to Section 362(d) of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure granting Ms. Jimenez relief from automatic stay as to her injuries relating to her civil complaint.

Ntc. and Mtn., p. 4:1-7; Dckt. 611.

While the court could speculate as to what relief is requested (and it is obvious what relief should be requested), read literally, Movant only seeks relief from stay as to her injuries that somehow relate to or were caused by a civil complaint.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's July 17, 2020 Docket Entry Statement. This statement is made by the Trustee, in pro se, and not by her counsel. It is not clear what relief, where, and what is being requested.

It could well be that if this court issued an order saying, "relief granted for whatever civil lawsuit has been filed" the Trustee could find herself the defendant in a lawsuit filed in Bangor, Maine, in which damages are sought not only against the Debtor, but the Trustee for how the Trustee handled the case as it relates to Debtor's injuries that relate to the complaint.

DISCUSSION

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 moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the

potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) 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 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, Movant has not provided the court with any relief requested with particularity. Movant has not provided the court with any evidence. Movant has not identified for the court what litigation, in which court, and against what parties the relief is request.

Further, Movant has failed to serve the Debtor, against whom Movant presumably intends to proceed in state court. If the court were to grant the vague relief requested, it would be void as to Debtor given that Debtor was not served and Debtor's Due Process rights were violated. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990); *Winer v. Krueger (In re Krueger)*, 88 B.R. 238 (B.A.P. 9th Cir. 1988), *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950).

Significantly, if the order purporting granting relief from the stay was void, then acting on it against the Debtor would be a violation of the automatic stay, potentially subjecting Movant and counsel in the state court to sanctions for violation of the stay.

The present pleadings require significant work, which cannot be "fixed" through mere supplemental pleadings. The court could deny the present motion without prejudice and Movant start from a clean canvas. Alternatively, the court could strike all of the current pleadings and have Movant file an amended motion and supporting pleadings, and properly serve those.

At the hearing, **xxxxxxxxxx**

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 Darlene Jimenez ("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 for Relief is **xxxxxxxxxx**

FINAL RULINGS

2.	**19-25662-E-7** **JHW-1**	**ELIZABETH ROBINSON** **Rabin Pournazarian**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-14-20 [73]**

FORD MOTOR CREDIT COMPANY LLC VS.

Final Ruling: No appearance at the August 13, 2020 hearing is required.

Ford Motor Credit Company LLC ("Creditor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

3. **19-28015-E-7** **ALIAKSEI FLIAHA** **MOTION FOR RELIEF FROM**
HRH-3 **Mark Shmorgon** **AUTOMATIC STAY**
BMO HARRIS BANK N.A. VS. **7-15-20 [97]**

Final Ruling: No appearance at the August 13, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Borrower, and Office of the United States Trustee on July 15, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

BMO Harris Bank N.A. ("Movant") seeks relief from the automatic stay with respect to an assets identified as:

1. A 2017 Volvo VNL Series VNL64T/670 Tractor Truck, VIN ending in 0619; and

2. A 2018 Wabash Dry Van 53', VIN ending in 7759 ("Vehicles").

The moving party has provided the Declaration of Kimberly Mundt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Aliaksei Fliaha ("Debtor").

Additionally, Declarant asserts that Debtor personally guaranteed the obligations of AVD Transportation & Logistics, Inc. pursuant to the Agreement, as evidenced by the Personal Guaranty filed as Exhibit "3" (Dckt. 100) in support of the Motion. Id., ¶¶ 5, 15.

Movant provides evidence that Agreement No. 1 (Volvo Vehicle) is in arrears in the amount

of $5,727.95, consisting of two (2) payments of $2,664.16 each and three (3) late charges of $133.21 each. Declaration, Dckt. 99. According to Movant, on December 1, 2019, Debtor and AVD defaulted under the terms of the Agreement No. 2 (Wabash Vehicle) and the Guaranty No. 2 by failing to make payments thereunder to Movant and Movant accelerated the balance due thereunder. *Id.* Movant notes that Agreement No. 2 is now current. However, the Agreements are cross-collateralized.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's July 17, 2020 Docket Entry Statement.

DISCUSSION

In the Motion, Movant states that the Vehicles were purchased by AVD Transportation & Logistics and Movant has perfected its lien in the Vehicles purchased by AVD Transportation & Logistics. Further, Debtor provided a guaranty of the obligation owed by AVD Transportation & Logistics to Movant, and AVD Transportation & Logistics gave a lien on each vehicle to Movant for that obligation.

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 $80,054.64 under Agreement No. 1 and $22,339.48 under Agreement No. 2 (Declaration, Dckt. 99), while the value of the Vehicles are determined to be $75,000 for the Volvo Truck and $23,000 for the Wabash Van, as stated in Schedules A/B and D filed by Debtor. Dckt. 11.

The Certificate of Title filed as Exhibit 2 Lists the registered owner as ADV Trans/Logistics, Inc. and the lien holder as BMO Harris Bank, N.A.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, Movant asserts that cause exists for granting relief on the basis that Debtor personally guaranteed Borrower AVD Transportation & Logistics, Inc.'s loan obligations, which Vehicles are listed

on Debtor's Amended Schedules.

The evidence presented by Movant demonstrates that the property securing the obligation of AVD Transportation & Logistics, Inc. is owned by Debtor and that Debtor personally guaranteed it. Exhibit 3, Dckt. 100. Debtor lists AVD Transportation & Logistics, Inc. as a business name used in the last eight (8) years. Petition, Dckt. 1.

The instant bankruptcy was filed on December 31, 2019. Dckt. 1. Debtor has not made any payment for their guaranty obligations on the loan since November 2019. Declaration, Dckt. 99, ¶¶ 6, 16. Moreover, Movant argues that Debtor has not provided evidence of current insurance on either Vehicle listing Movant as an additional insured and loss payee. *Id.*, ¶¶ 6, 16.

Cause exists to grant relief from the automatic stay.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no realizable equity in the Vehicle for either 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 Ramco Indus. v. Preuss (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 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.

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 in the Motion that relief from the fourteen-day stay be granted due to the depreciating nature of the collateral and due to the Debtor not providing evidence of insurance.

Movant has 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), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by BMO Harris Bank 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 Vehicles, under its security agreement, loan documents granting it a lien in the assets identified as:

2017 Volvo VNL Series VNL64T/670 Tractor Truck, VIN ending in 0619

and

2018 Wabash Dry Van 53', VIN ending in 7759 ("Vehicles"),

and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-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.

4. **20-22333-E-7** **ANDY REYNOLDS** **MOTION FOR RELIEF FROM**
MMJ-1 **George Burke** **AUTOMATIC STAY**
EXETER FINANCE, LLC VS. **7-1-20 [22]**

Final Ruling: No appearance at the August 13, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Office of the United States Trustee on July 1, 2020. 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). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Exeter Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Dodge Challenger R/T Coupe 2D, VIN ending in 1994 ("Vehicle"). The moving party has provided the Declaration of Nancy Wafer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Andy Eugene Reynolds ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of $1,583.32 in post-petition payments past due. Declaration, Dckt. 24. Movant also provides evidence that there are 2.243 pre-petition payments in default, with a pre-petition arrearage of $1,775.98. *Id*.

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

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 $31,925.61 (Declaration, Dckt. 24). Debtor valued the Vehicle at $20,000.00, as stated in Schedules A/B and D. Movant values the Vehicle at $21,375.00 as

stated in the KBB Valuation report.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Prior Discharge

Debtor was granted a discharge in this case on August 11, 2020. 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), 524(a)(2). 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 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.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has 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), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Exeter Finance, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** 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 2018 Dodge Challenger R/T Coupe 2D, VIN ending in 1994 ("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 Andy Eugene Reynolds ("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 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.

5. **14-29361-E-7** **WALTER SCHAEFER** **MOTION FOR RELIEF FROM**
RAS-1 **Douglas Jacobs** **AUTOMATIC STAY**
4 thru 5 **6-30-20 [524]**
U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the August 13, 2020 Hearing is required.

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

Sufficient 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 30, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Certificate of Service, Dckt. 529, does not attest to service on J. Russell Cunningham (or other attorney in his office) listed by the Clerk as counsel for the Trustee. However, Mr. Cunningham being an ECF registered attorney, service was electronically made by the Clerk of the Court pursuant to Federal Rule of Bankruptcy Procedure 9036.

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to Walter Helge Schaefer's ("Debtor") real property commonly known as 728 Clifford Drive, Westwood, California ("Property"). Movant has provided the Declaration of Gabriel Deanda to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 45 post-petition payments, with a total of $47,275.75 in post-petition payments past due. Declaration, Dckt. 527.

DISCUSSION

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 $299,068.09 (Declaration, Dckt. 527). As of May 2015, Debtor valued the Property at $312,000, as stated in Schedules A/B and D. Dckt. 123. Movant presents Manufactured Home Broker's Price Opinion valuing the property at $339,900 as of October 17, 2019. Exhibit C, Dckt. 526. No authentication is provided for this BPO.

Movant holds a first deed of trust over the Property. There is a second deed of trust from the same creditor over the Property in the amount of $32,631.27. *See* Dckt. 530, 532.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). 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). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (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.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is

requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has 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), and this part of the requested relief is granted.

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 Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant 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 U.S. Bank National Association ("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 Movant, 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 that is recorded against the real property commonly known as 728 Clifford Drive, Westwood, California ("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 to obtain possession of the Property.
>
> **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.

6. **14-29361-E-7** **WALTER SCHAEFER** **MOTION FOR RELIEF FROM**
RAS-2 **Douglas Jacobs** **AUTOMATIC STAY**
6-30-20 [530]

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the August 13, 2020 hearing is required.

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

Sufficient 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 30, 2020. By the court's calculation, 44 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to Walter Helge Schaefer's ("Debtor") real property commonly known as 728 Clifford Drive, Westwood, California ("Property"). Movant has provided the Declaration of Gabriel Deanda to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 39 post-petition payments, with a total of $4,156.87 in post-petition payments past due. Declaration, Dckt. 533.

DISCUSSION

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 $32,631.27 (Declaration, Dckt. 533). As of May 2015, Debtor valued the Property at $312,000, as stated in Schedules A/B and D. Dckt. 123. Movant presents Manufactured Home Broker's Price Opinion valuing the property at $339,900 as of October 17, 2019. Exhibit C, Dckt. 526. No authentication is provided for this BPO.

Movant holds a first deed of trust over the Property. There is a second deed of trust from the same creditor over the Property in the amount of $32,631.27. *See* Dckt. 530, 532.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). 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). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (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.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has 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), and this part of the requested relief is granted.

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 Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant 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 U.S. Bank National Association ("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 Movant, 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 that is recorded against the

real property commonly known as 728 Clifford Drive, Westwood, California ("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 to obtain possession of the Property.

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.