

# Eastern District of California

# Modesto, California

[illegible]

**Final Ruling:** No appearance at the August 25, 2016, hearing is required.

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

**The Motion for Relief from the Automatic Stay is granted.**

The Adriana Arredondo Declaration provides testimony that Debtor has not made one post-petition payments, with a total of \$355.05 in post-petition payments past due. The Adriana Arredondo Declaration also provides evidence that there are twenty-three (23) pre-petition payments in default, with a pre-petition arrearage of \$8,429.30.

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From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$16,108.75, as stated in the Adriana Arredondo Declaration. The value of the Vehicle is not stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The NADA Valuation Report for the Vehicle indicates that the retail value of the Vehicle is \$7,450.00.

## **NON-OPPOSITION**

Ashley R. Amerio, attorney for Debtor, has filed a Declaration of Non-Opposition to the Instant Motion. Dckt. 16.

## **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 because 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 Santander Consumer USA Inc., and its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Santander Consumer USA 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** 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 2005 Ford Expedition ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

2. [16-90454-E-7](#)      **JOSE/MARIA ROJAS**  
**EAT-1**                      **Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-27-16 [\[13\]](#)**

**THE BANK OF NEW YORK TRUST  
COMPANY, N.A. VS.**

**Final Ruling: No appearance at the August 25, 2016, Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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The Bank of New York Trust Company National Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2605 Garvey Avenue, Modesto, California (the "Property"). Movant has provided the Declaration of Mary Gracia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mary Gracia Declaration states that there are two post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,793.41 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$924.29.

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 \$304,186.12 (including \$254,876.12 secured by Movant's first deed of trust), as stated in the Mary Gracia Declaration and Schedule D filed by Jose Rojas and Maria Rojas ("Debtors"). The value of the Property is determined to be \$168,000.00, as stated in Schedules A and D filed by Debtors.

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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by The Bank of New York Trust Company 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 immediately vacated to allow The Bank of New York Trust Company 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 2605 Garvey Avenue, 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 not waived.

No other or additional relief is granted.

3.

**16-90558-E-7**  
**JCW-1**

**SERENA CRUZ**  
**Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-27-16 [\[19\]](#)**

**WELLS FARGO BANK, N.A. VS.**

**Final Ruling: No appearance at the August 25, 2016, hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Wells Fargo Bank, N.A. dba America's Servicing Company as servicing agent for U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1 ("Creditor") seeks relief from the automatic stay with respect to the real property commonly known as 1771 York Mountain Court, Tulare, California (the "Property"). Creditor moves for relief pursuant to 11 U.S.C. § 632(d)(1) and (4). The moving party has provided the Declaration of Crystal Massey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Serena Cruz ("Debtor").

The Crystal Massey Declaration states that the Creditor received a copy of a Grant Deed, which

shows that on or around December 1, 2006, the Original Borrower transferred all interest to Cesar A. Betancourt and Deirdre Del Consuelo Betancourt as joint tenants without the knowledge or consent of the Movant in violation of the terms of the Deed of Trust the Original Borrower signed.

Creditor also received a copy of a Deed of Trust with Assignment of Rents which shows that on or around June 22, 2016, Cesar Betancourt transferred an alleged interest in the Property to Debtor without the knowledge or consent of the Creditor in violation of the terms of the Deed of Trust the Original Borrower signed.

The Motion asserts that Debtor has filed multiple bankruptcies as part of a scheme to delay, hinder, and defraud creditors and has transferred partial interest in the Property without permission as a means to further delay the Movant from exercising its rights.

### **Prospective Relief From Automatic Stay**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* The Court takes notice of a pattern regarding the Property that involves several recent transfers of assets and serial filings.

On September 9, 2005, Cesar A. Betancourt entered into an agreement with Movant for \$429,300.00, which is secured by the Deed of Trust on the Property.

On December 1, 2006, Cesar A. Betancourt transferred all interest to Cesar A. Betancourt and Deirdre Del Consuelo Betancourt, husband and wife, as joint tenants (100%) without knowledge or consent of the Movant.

Between 2012 and 2016, Cesar A. Betancourt and Deirdre Del Consuelo Betancourt have filed eight (8) bankruptcy cases that affect Creditor's interest in the Property. Those cases are:

#### **A. Cesar A. Betancourt**

1. Case No. 12-10143
  - a. Filed: January 8, 2012
  - b. Type: Chapter 7
  - c. Discharge Entered: May 3, 2012. Case No. 12-10143, Dckt. 32.
2. Case No. 13-15114
  - a. Filed: July 26, 2013

- b. Type: Chapter 13
  - c. Date of Dismissal: August 13, 2013
  - d. Reason for Dismissal: Failure to timely file documents. Case No. 13-15114, Dckt. 11.
3. Case No. 13-15810
- a. Filed: August 29, 2013
  - b. Type: Chapter 13
  - c. Date of Dismissal: September 16, 2013
  - d. Reason for Dismissal: Failure to timely file documents. Case No. 13-15810, Dckt. 12.
4. Case No. 13-17358
- a. Filed: November 18, 2013
  - b. Type: Chapter 13
  - c. Date of Dismissal: December 6, 2013
  - d. Reason for Dismissal: Failure to timely file documents. Case No. 13-17358, Dckt. 12.
5. Case No. 14-13772
- a. Filed: July 29, 2014
  - b. Type: Chapter 13
  - c. Date of Dismissal: August 18, 2014
  - d. Reason for Dismissal: Failure to timely file documents. Case No. 14-13772, Dckt. 12.

B. Deirdre Del Conseulo Betancourt

1. Case No. 14-13781
- a. Filed: July 29, 2014
  - b. Type: Chapter 7
  - c. Party: Filed as Deirdre Martinez
  - d. Date of Dismissal: August 11, 2014
  - e. Reason for Dismissal: Failure to timely file documents. Case No. 14-13781, Dckt. 13.
2. Case No. 14-15531
- a. Filed: November 14, 2014
  - b. Type: Chapter 7
  - c. Party: Filed as Deirdre Del Conseulo Betancourt
  - d. Date of Dismissal: December 2, 2014
  - e. Reason for Dismissal: Failure to timely file documents. Case No. 14-15531, Dckt. 15.
3. Case No. 16-10932
- a. Filed: March 23, 2016



- b. Type: Chapter 7
- c. Party: Filed as Deirdre Del Consuelo Betancourt
- d. Date of Dismissal: April 11, 2016
- e. Reason for Dismissal: Failure to timely file documents. Case No. 16-10932, Dckt. 16.

On June 22, 2016, Cesar A. Betancourt allegedly obtained a junior lien in the amount of \$19,655.00 on the property wherein Debtor is the named beneficiary under the Deed of Trust and Assignment of Rents without the knowledge or consent of the Movant.

On June 23, 2016, Debtor filed the instant bankruptcy case. On Schedule A/B Debtor states under penalty of perjury that she has no interests in any real property. Dckt. 1 at 10.

Debtor has not tried to claim an interest in the Property. Dckt. 1. Upon filing the instant bankruptcy case, Debtor did not appear to have knowledge of being named beneficiary in the Deed of Trust that Cesar Betancourt obtained on June 22, 2016. That plus knowledge that Cesar Betancourt and Deirdre Del Consuelo Betancourt have filed multiple bankruptcies involving the Property indicates that a more nefarious scheme is present.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. While the “unauthorized” transfer of interest in the subject property from the husband to the husband and wife does not cause the court great concern, the filing of serial, nonproductive bankruptcy cases is a problem for this Cesar and Deirdre Betancourt, as well as the purported deed of trust having been given by Cesar Betancourt to Debtor. Debtor does not list any such obligation owed by Cesar Betancourt to her when completing Schedule A/B under penalty of perjury. Dckt. 1.

Movant has provided the court with evidence that Cesar Betancourt and Deirdre Betancourt have engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases. In addition, the scheme now includes the purported transfer of an interest in the property to this Debtor by the Deed of Trust.

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. The court also grants relief pursuant to 11 U.S.C. § 362(d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3) and this part of the requested relief is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. dba America's Servicing Company as servicing agent for U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A. dba America's Servicing Company as servicing agent for U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, 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 14321 Riverton Circle, Westminster, California.

**IT IS FURTHER ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable state laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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

No other or additional relief is granted.

4.

[16-90368](#)-E-7  
JCW-1

JOSE GARCIA  
Pro Se

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-13-16 [\[20\]](#)**

**SELECT PORTFOLIO SERVICING,  
INC. VS.**

**Final Ruling: No appearance at the August 25, 2016, hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 in interest ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 14321 Riverton Circle, Westminster, California (the "Property"). Movant has provided the Declaration of Maureen Webb to introduce evidence and authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion asserts that Jose Garcia ("Debtor") has filed multiple bankruptcies as part of a scheme to delay, hinder, and defraud creditors and has transferred partial interest in the Property without permission as a means to further delay the Movant from exercising its rights.

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* The court takes notice of a pattern regarding the Property that involves several recent transfers of assets and serial filings.

On October 16, 2006, Nina Nguyen entered into an agreement with Movant for \$550,000.00, which is secured by the Deed of Trust on the Property.

On January 12, 2014, Nina Nguyen transferred an alleged interest in the property to Nina Nguyen as to an undivided 60% interest, and Yvonne Thu Pham as to an undivided 40% interest as tenants in common without knowledge or consent of the Movant.

On February 7, 2014, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a 60/40 Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez and Sasha Lawrence as general partner without the knowledge or consent of the Movant.

On February 13, 2014, Nina Nguyen transferred an alleged interest in the property to Nina Nguyen as to an undivided 60% interest, and Tony T. Nguyen as to an undivided 40% interest as tenants in common without knowledge or consent of the Movant.

On July 2, 2014, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Diana Aranda as general partner each holding a 20% interest without the knowledge or consent of the Movant.

On September 5, 2014, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Gloria Burgos as general partner each holding a 15% interest without the knowledge or consent of the Movant.

On October 6, 2014, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Evelia Ruvalcaba as general partner each holding a 20% interest without the knowledge or consent of the Movant.

On November 6, 2014, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Cecilia Almaraz as general partner each holding a 15% interest without the knowledge or consent of the Movant.

On January 7, 2015, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Denise L. Ayala general partner each holding a 20% interest without the knowledge or consent of the Movant.

On February 6, 2015, Nina Nguyen transferred an alleged interest in the property to The 14321

Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Joaquin Casarez general partner each holding a 25% interest without the knowledge or consent of the Movant.

On May 8, 2015, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Ngyuen as general partner, Edwin Rodriguez as general partner, and Jorge Andrade as general partner each holding a 35% interest without the knowledge or consent of the Movant.

On July 29, 2015, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Maria Banales as general partner each holding a 20% interest without the knowledge or consent of the Movant.

On September 29, 2015, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez as general partner, and Carlos Calderon as general partner each holding a 30% interest without the knowledge or consent of the Movant.

On May 9, 2016, Nina Nguyen transferred an undivided one sixteenth interest in the property to Jose Aurelio Garcia without the knowledge or consent of the Movant.

On May 13, 2016, Nina Nguyen transferred an alleged interest in the property to The 14321 Riverton Circle Partnership, a 60/40 Joint Venture consisting of Nina Nguyen as general partner, Edwin Rodriguez and Sergio Martinez as general partner without the consent of the Movant.

On April 28, 2016, Jose Aurelio Garcia (“Debtor”) filed the instant bankruptcy case.

Following these transfers, each of the transferors have filed at least one bankruptcy case in the past ten years since the execution of the Note and Deed of Trust. All of these cases have been dismissed.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfers of interest in the subject property to beneficiaries who then filed several bankruptcies were a deliberate attempt as a stay to any foreclosure. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue 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. The court also grants relief pursuant to 11 U.S.C. § 362(d)(4).

An *in rem* order pursuant to 11 U.S.C. § 362(b)(20) must be entered in accordance with § 362(d)(4). Section 362(b)(20) creates an exception to the stay for the enforcement of a lien against or

security interest in real property following the entry of an order in a prior bankruptcy case prohibiting the application of the automatic stay as to property and shall remain in effect for a period of two years after the date of entry unless relief from the order is granted.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3) and this part of the requested relief is granted

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

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

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 in interest (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., as trustee, on behalf of the holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 in interest, 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 14321 Riverton Circle, Westminster, California.

**IT IS FURTHER ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable state laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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

No other or additional relief is granted.

5. [15-91171](#)-E-7 CYNTHIA HOLLIDAY  
EAT-1 Mary D. Anderson

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-14-16 [[55](#)]

WILMINGTON SAVINGS FUND  
SOCIETY, FSB VS.

**Final Ruling: No appearance at the August 25, 2016, hearing is required.**

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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, parties requesting special notice, and Office of the United States Trustee on July 14, 2016. 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). 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.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Wilmington Savings Fund Society, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7239 Jenny Lind Road, Valley Springs, California (the "Property"). Movant has provided the Declaration of Irisa Staggers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Irisa Staggers Declaration states that there are six (6) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,696.48 in post-petition payments past due. The Irisa Staggers Declaration also provides evidence that there are thirteen (13) pre-petition payments in default, with a pre-petition arrearage of \$17,621.89.

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 \$316,012.79 including \$240,985.79 secured by Movant's first deed of trust, as stated in the Irisa Staggers Declaration and Schedule D filed by Cynthia Ann Holliday ("Debtor"). The value of the Property is determined to be \$262,000.00, 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 that 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 July 26, 2016. Dckt. 61. 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue 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 Wilmington Savings Fund Society, FSB ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wilmington Savings Fund Society, FSB, 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 7239 Jenny Lind Road, Valley Springs, 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.

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

No other or additional relief is granted.

6. [16-90083-E-7](#) VALLEY DISTRIBUTORS,  
DES-1 INC.  
Iain A. MacDonald  
PACIFIC UNION HOMES, INC.  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-22-16 [[169](#)]

**Final Ruling: No appearance at the August 25, 2016, hearing is required.**  
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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, parties requesting special notice, and Office of the United States Trustee on July 22, 2016. By the court's calculation, 34 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.**

Pacific Union Homes, Inc. and Atwater Mellow Investors, LP ("Movants"), seek relief from the automatic stay to proceed only against the available insurance assets of Valley Distributors, Inc. ("Debtor") in the state law actions *Ayala, et al. v. Mello Ranch 130 et al.*, Case No. CVM-018323, and *Heck, et al. v. Atwater Mello Investors et al.*, Case No. 14 CV-00609. Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of David Stumbos to introduce evidence to authenticate the documents upon which it bases its claim. Dckt. 172.

The David Stumbos Declaration states that Movants are defendants and cross-complainants in two pending cases in the Superior Court of the State of California, County of Merced: *Ayala, et al. v. Mello Ranch 130 et al.*, Case No. CVM-018323, and *Heck, et al. v. Atwater Mello Investors et al.*, Case No. 14 CV-00609. On May 27, 2014, plaintiffs in *Ayala* alleged that construction defects exist in their homes, and on July 28, 2014, the plaintiffs filed a Doe Amendment, naming Atwater Mello Investors, LP, in place of Doe defendants. Atwater Mello Investors, LP, filed a cross-complaint for indemnity and named Debtor as a cross-defendant.

On December 29, 2014, plaintiffs in *Heck* alleged construction defects exist in their homes and named Atwater Mello Investors, LP, as defendant. On April 30, 2015, Atwater Mello Investors, LP, filed a cross-

complaint for indemnity and named Debtor as a cross-defendant. On August 24, 2015, the Superior Court of the State of California, County of Merced, entered an order to consolidate *Heck* with *Ayala* and designated *Ayala* as the lead case.

The David Stumbos Declaration states that Movants are aware of insurance policies that may provide coverage to Debtor in the Superior Court actions. Those policies are:

- A. Zurich Insurance Company
  - 1. PPS 37292647-03 (01/01/04-01/01/05)
  - 2. CPO3703340-01 (01/01/05-02/01/05)
  - 3. CPO3703340-02 (02/01/05-02/01/06)
  - 4. CPO3703340-03 (02/01/06-02/01/07)
- B. Granite State Insurance Company
  - 1. 02LX2826460 (02/01/07-02/01/08)
  - 2. 02LX2826460-01 (02/01/08-02/01/09)
  - 3. 02LX2826460-02 (02/01/09-02/01/10)
- C. The ILM Group
  - 1. APP19066162 (02/01/10-02/01/11)
  - 2. APP19066162 (02/01/11-02/01/12)
  - 3. CUL141608-14 (02/01/11-02/01/12)
  - 4. APP19066162 (02/01/12-02/01/13)
  - 5. CGL14131099-13 (02/01/13-02/01/14)

Movant and Trustee have entered into a stipulation that would allow Movant to pursue its cross-complaints against Debtor in the Superior Court actions solely to allow Movant to pursue liability insurance proceeds available to Debtor.

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Given that the Movant would not seek to enforce any judgements against the Debtor and will proceed against the Debtor only to the extent its claims can be satisfied from the Debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the Movant to prosecute the claims against the Debtor, but not enforce any judgments against the Debtor or the Estate other than against available insurance coverage, if any.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Pacific Union Homes, Inc and Atwater Mellow Investors, LP 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 modified to allow Pacific Union Homes, Inc and Atwater Mellow Investors, LP , its agents, representatives, and successors to allow the Movant to prosecute the claims against the Debtor, but not enforce any judgments against the Debtor or the Estate other than against available insurance coverage, if any.

No other or additional relief is granted.

7. [16-90083](#)-E-7 VALLEY DISTRIBUTORS,  
MWP-1 INC.  
Iain A. MacDonald  
JKB HOMES CORPORATION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-22-16 [[175](#)]

**Tentative Ruling:** 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).

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

Correct Notice Not Provided. The Proof of Service does not state that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 7 Trustee, or the Office of the United States Trustee.

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 defaults of the non-responding parties are entered.

<b>The Motion for Relief from the Automatic Stay is denied without prejudice.</b>
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JKB Home Corporation, JKB Construction, Inc., JKB Homes Norcal, Inc., and JR Development ("Movant") seeks relief from the automatic stay with respect to its claims against Valley Distributors, Inc. ("Debtor") and pursue the satisfaction of any judgment on those claims out of available insurance proceeds in two cases now consolidated and pending in California State Courts. The moving party has provided the Declaration of Heather Ingle-Gernhardt to introduce evidence as a basis for Movant's contention that the stay should be modified to allow the state court action to proceed.

## **SERVICE ISSUES**

Local Bankruptcy Rule 9014-1(f)(1)(A) requires that at least 28 days' notice of the hearing on a motion be provided. A written opposition must be filed at least 14 days prior to the hearing. When the timing is perfect and exactly 28-days' notice is given, the opposition must be filed 14 days after service of the motion. This corresponds to the 14-day period established by Federal Rule of Bankruptcy Procedure

6004(a) and (b), and 2002(a)(2).

When there has been improper notice under Local Bankruptcy Rule 9014-1(f)(1), some courts will convert the notice to one under Local Bankruptcy Rule 9014-1(f)(2), which requires only 14-days notice of the hearing and allows oral opposition to be presented. This court does not so apply the rules as it can lead to confusion or create the “opportunity” for a less than scrupulous party to try and chill opposition by giving inadequate notice and misrepresenting that written opposition must be filed.

**The Proof of Service does not show that the moving papers were served on Debtor, Debtor’s Attorney, the Chapter 7 Trustee, or the Office of the US Trustee.** The only parties that appear to have been noticed of the instant Motion are those who are parties to the state court action. As outlined in Local Bankruptcy Rules and the Federal Rules of Bankruptcy Procedure, there are additional parties, including the Chapter 7 Trustee, Debtor’s Attorney, and other parties in interest in the bankruptcy, who must be properly served.

Facially, the Movant failed to serve all necessary parties.

#### **FAILURE TO STATE WITH PARTICULARITY**

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

The grounds stated with particularity as required by Federal Rule of Bankruptcy Procedure 9013 consists of the following:

“This motion has been filed and is based on the notice of motion, the attached memorandum of points and authorities and declaration of Heather Ingle-Gernhardt, the papers, records, and file herein and such evidence as may be presented at the hearing of the motion.”

Motion, p. 2:3-5; Dckt. 175. This fails to meet that requirement.

In essence, the Movant is requesting the court to mine the docket and Movant’s filing to piecemeal a proper motion under the Rules. Specifically, this is not the court’s responsibility nor role.

Therefore, as discussed supra, 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 JKB Home Corporation, JKB Construction, Inc., JKB Homes Norcal, Inc., and JR Development (“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 denied without prejudice.

8. [16-90385-E-7](#)      **MELVIN REECE**      **MOTION FOR RELIEF FROM**  
**FF-1**      **Pro Se**      **AUTOMATIC STAY**  
7-15-16 [[22](#)]

**FRANCES MESSIER-REECE VS.**

**Final Ruling: No appearance at the August 25, 2016, hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 15, 2016. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion for Relief from the Automatic Stay is to continue the matter to September 29, 2016, at 10:00 a.m.</b></p>
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Melvin N. Reese (“Debtor”) commenced this bankruptcy case on May 2, 2016. Frances Eva Messier-Reese (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2014 Hyundai Elantra, as well as to allow the state court to adjudicate the Dissolution of marriage, to enforce the order for temporary spousal support, to enter a final order for spousal support, and to allow the state court to adjudicate the Order to Show Cause against Debtor. The moving party has provided the Declaration of Robert Moore to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robert Moore Declaration provides testimony that the state court issued rulings ordering that the Movant shall have the exclusive use of the 2014 Hyundai Elantra and that she shall make all automobile and automobile insurance payments and the Debtor shall pay temporary spousal support in the sum of \$559.00 per month effective November 1, 2015.

However, the court reviewed the Motion and notes that two pages are missing from the Motion. Without these pages, the court cannot determine if there are proper grounds for relief from the stay or if the Movant has stated the grounds with particularity.

In light of this oversight, and to afford the Movant the opportunity to cure this defect, the court continues the matter to 10:00 a.m. on September 29, 2016. The Movant shall file and serve a Supplemental Motion, which includes the missing pages, and Notice of Hearing for the continued hearing by September 8, 2016. Any opposition or response must be filed and served by September 22, 2016.

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 Frances Eva Messier-Reese (“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 continued to 10:00 a.m. on September 29, 2016. The Movant shall file and serve a supplemental motion and Notice of Hearing by September 8, 2016. Any opposition or response must be filed and served by September 22, 2016.



PRESTIGE FINANCIAL SERVICES  
VS.

**Final Ruling:** No appearance at the August 25, 2016, hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 15, 2016. By the court's calculation, 41 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.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
--

James David Currier and Irina Currier ("Debtors") commenced this bankruptcy case on June 7, 2016. Prestige Financial Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Toyota Camry, VIN ending in 4841 (the "Vehicle"). The moving party has provided the Declaration of Selena Sengpaseuth to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Selena Sengpaseuth Declaration provides testimony that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$886.86.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$16,638.65, as stated in the Serena Sengpaseuth Declaration, while the value of the Vehicle is determined to be \$6,416.00, as stated in Schedules B and D filed by Debtor.

## RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent

in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because 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 Prestige Financial Services, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Prestige Financial Services (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Toyota Camry (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.