

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday August 31, 2022
Place: Department A - Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [[246](#)]

MEGAN KILGORE/MV
LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

1. [20-13479](#)-A-7 **IN RE: MARIA RUIZ DE VERA AND GERMAN VERA**
[AKT-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
8-1-2022 [[38](#)]

GERMAN VERA/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The Notice of Hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Finally, the motion does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document. This motion was filed as a single eleven-page document that included the movant's exhibit. Doc. #38. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

German Vera and Maria Y. Ruiz (collectively, "Debtors"), the chapter 7 debtors in this case, seek an order approving a stipulation modifying the automatic stay to permit Debtors' insurer, State Farm Mutual Automobile Insurance Company ("Insurer"), to pay a policy limits settlement in the amount of \$15,000.00 with respect to a motor vehicle incident involving Morales Llamas ("Creditor") and Debtors. Doc. #38.

Section 362(d)(1) of the Bankruptcy Code allows the court to modify the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to modify the stay. Debtors, the chapter 7 trustee, and Creditor have stipulated to allow Insurer to tender a policy limits settlement totaling \$15,000.00 to Creditor as a final resolution of a state court action regarding a motor vehicle incident between Debtors and Creditor. Ex. A, Doc. #38.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Insurer to disburse the policy limits settlement in a manner consistent with the stipulation filed as Ex. A, Doc. #38.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the modification of the automatic stay has been stipulated to by Debtors, the chapter 7 trustee, and Creditor.

2. [22-11095](#)-A-7 **IN RE: SEAN/KRISTINA MOSS**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2022 [[15](#)]

FREEDOM MORTGAGE CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely filed written opposition on August 3, 2022. Doc. #25. The chapter 7 trustee timely filed written opposition on August 17, 2022. Doc. #36. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

The movant, Freedom Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 1609 Evergreen Court, Visalia, California ("Property"). Doc. #15.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

Movant has produced evidence that the debtors are in contractual default for thirty mortgage payments that came due from February 2020 through July 2022, for a total of \$58,252.34, exclusive of fees, costs and/or charges. Doc. #19. Movant also asserts cause exists because the debtors intend to surrender the Property and this is a no asset case. Doc. ##1, 8, 15. However, on August 2, 2022, the debtors filed an amended statement of intention indicating that the debtors intend to retain the Property and allow the chapter 7 trustee to sell it. Doc. #22.

Both the debtors and the chapter 7 trustee oppose the court granting relief from stay asserting that there may be equity in the Property for creditors and the Property should be sold by the chapter 7 trustee for the benefit of creditors. Doc. ##25, 36. According to the debtors' amended schedules, the fair market value of the Property exceeds the amount owed to Movant by nearly \$133,000. Doc. #18.

Notwithstanding the fact that debtors are in contractual default for thirty mortgage payments, the moving papers show there is significant equity in the Property, and the chapter 7 trustee is currently working on an agreement regarding the debtors' exemptions that would allow for a sale of the Property by the bankruptcy estate. Doc. ##18, 37. If the chapter 7 trustee sells the Property, Movant would be paid in full, and it appears that the debtors' unsecured creditors also would be paid in full. Doc. ## 1, 18.

Based on the evidence before the court and the opposition by the debtors and the chapter 7 trustee, the court finds cause does not exist to grant relief from stay pursuant to 11 U.S.C. § 362(d)(1), and the motion is denied.