

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

September 3, 2015 at 10:00 a.m.

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1.     [15-90700](#)-E-7     JOSEPH MARTINEZ     MOTION FOR RELIEF FROM  
          RDN-1           Pro Se           AUTOMATIC STAY  
  8-6-15 [[25](#)]  
  
BANK OF NEW YORK MELLON VS.  
DISMISSED 8/17/15

**Final Ruling:** No appearance at the September 3, 2015 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 August 6, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Bank of New York Mellon, FKA The Bank of New York, as Trustee, on Behalf of the Holders of the Alternative Loan Trust 2005-56, Mortgage Pass-Through Certificates, Series 2005-56 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 537 Auburn Street, Modesto, California (the "Property"). Movant provided the Declaration of Randall D. Naiman to introduce evidence as a basis for Movant's contention that Joseph J. Martinez ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant purchased the Property at a pre-petition Trustee's Sale on February 20, 2015. Dckt. 27, ¶ 3. This sale was recorded on March 5, 2015. *Id.* Based on the evidence presented, Debtor would be at best

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be a tenant at sufferance.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. 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).

On August 17, 2015, the order dismissing the case for failure to timely file documents was entered. Dckt. 31.

## DISCUSSION

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

**(A) the time the case is closed;**

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

Pursuant to 11 U.S.C. § 554(c), "any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

First, just because the case has been dismissed does not mean that the instant Motion should be discharged as moot. As 11 U.S.C. § 362(c) provides, the stay continues until "such property is no longer property of the estate" which happens at the time of closing of the case when it is abandoned back to the Debtor. Here, the case has been dismissed but not yet closed, meaning the Property remains part of the estate.

The dismissal has just been terminated as to "any other act" under 11 U.S.C. § 362(a). Therefore, as to the Debtor, the stay has been terminated as

an operation of law from the order dismissing the case on August 17, 2015.

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

The court shall issue an order terminating and vacating the automatic stay to allow Bank of New York Mellon, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 537 Auburn Street, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of Bank of New York Mellon, FKA The Bank of New York, as Trustee, on Behalf of the Holders of the Alternative Loan Trust 2005-56, Mortgage Pass-Through Certificates, Series 2005-56 ("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 Bank of New York Mellon, FKA The Bank of New York, as Trustee, on Behalf of the Holders of the Alternative Loan Trust 2005-56, Mortgage Pass-Through Certificates, Series 2005-56 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 537 Auburn Street, Modesto, California.

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

No other or additional relief is granted.

2. [15-90513](#)-E-7 ELISEO MADRIGAL  
Christian J. Younger

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-10-15 [[13](#)]

BANK OF AMERICA, N.A. VS.

**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 states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Michael Creditors, Chapter 7 Trustee, and the Office of the United States Trustee on August 10, 2015. By the court's calculation, 24 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Relief From the Automatic Stay is denied without prejudice.</b></p>
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Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2643 Parkway, Ceres, California (the "Property"). However, as stated above, the notice provided to parties was insufficient. Under Local Bankruptcy Rule 9014-1(f)(1), 28 days' notice is required. Only 24 days' notice was provided.

Because Movant did not provide sufficient notice, the court denies the motion without prejudice.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of America, 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** that the Motion is denied without prejudice.

No other or additional relief is granted.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING  
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED  
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

**ALTERNATIVE RULING**

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2643 Parkway, Ceres, California (the "Property"). Movant has provided the Declaration of Kyle Levey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Levey Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,844.38 in post-petition payments past due. The Declaration also provides evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$6,579.66.

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 \$193,378.64, as stated in the Levey Declaration and Schedule D filed by Eliseo Madrigal ("Debtor"). The value of the Property is determined to be \$140,000.00, as stated in Schedules A and D filed by Debtor.

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.

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

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 denied.

The Movant also requests that it be exempted from further compliance with Fed. R. Bankr. P. 3002.1. Under Fed. Rule Bankr. P. § 3002.1(a), "*In General*. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." This case involves a Chapter 7 filing, not a Chapter 13, and thus does not apply. Therefore, this request is denied.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of America, 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** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Bank of America, N.A., 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 2643 Parkway, Ceres, 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 Movant, having established that the value of the Property subject to its lien not having a value greater than the obligation secured, is not awarded attorneys' fees for all matters relating to this Motion.

**IT IS FURTHER ORDERED** that request of waiver of any requirements under Fed. Rule Bankr. P. 3002.1 related to this Motion is denied.

No other or additional relief is granted.

3. [14-91124-E-7](#) GILBERTO HERRERA AND  
LAURA OLAGUE  
Thomas O. Gillis  
CIG FINANCIAL, LLC VS.  
DISCHARGED 12/15/14

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-7-15 [[27](#)]

**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 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 August 7, 2015. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

In light of the facts relating to this Contested Matter the court shortens the notice period to 27 days.

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 granted.</b>
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Gilberto Herrera and Laura Olague ("Debtor") commenced this bankruptcy case on August 7, 2014. CIG Financial, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Chevrolet Impala, VIN ending in 0849 (the "Vehicle"). The moving party has provided the Declaration of Michelle Doan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Doan Declaration provides testimony that Debtor has not made 12 post-petition payments, with a total of \$5,512.80 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$459.40.

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 \$7,108.11, as stated in the Doan Declaration.

Debtor asserts that the value of the Vehicle is \$9,314.00, as stated in Schedules B and D filed. However, Movant has provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. Exh. C. 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); Decl. 2:18-23.

Trustee filed a nonopposition on August 14, 2015.

#### **RULING**

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981). Further, Debtor and the Chapter 7 Trustee have stipulated to terminating the automatic stay. Dckt. 26.

The court shall issue an order terminating and vacating the automatic stay to allow CIG Financial, LLC, 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.

Based on the stipulation of the parties, 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. Dckt. 26.

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 CIG Financial, 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 2009 Chevrolet Impala ("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.

4. [15-90530](#)-E-7 MARVIN MIGUEL  
AP-1 Christie S. Lee

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-20-15 [[13](#)]

FIRST TECHNOLOGY FEDERAL  
CREDIT UNION VS.

**Final Ruling:** No appearance at the September 3, 2015 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, and Office of the United States Trustee on July 20, 2015. An amended notice was served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 44 days' notice was provided from the amended notice. 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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Marvin Coma Miguel ("Debtor") commenced this bankruptcy case on May 28, 2015. First Technology Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Toyota Avalon, VIN ending in 3819 (the "Vehicle"). The moving party has provided the Declaration of Cassandra Kuring to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kuring Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of \$1,805.50 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of \$593.50.

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 \$40,888.99, as stated in the Kuring Declaration, while the value of the Vehicle is determined to be \$27,000.00, 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 since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, 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 First Technology Federal Credit Union, 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 First Technology Federal Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** 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 2014 Toyota Avalon ("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.

5. [14-90060](#)-E-7 STEVEN GOOLSBY AND TERRI CONTINUED MOTION FOR RELIEF  
AP-1 CANTRELL FROM AUTOMATIC STAY  
Christian J. Younger 7-16-15 [[56](#)]  
WELLS FARGO BANK, N.A. VS.  
DISCHARGED 5/7/14

**APPEARANCE OF BRIAN FAIRMAN, ATTORNEY FOR WELLS FARGO BANK, N.A.  
REQUIRED FOR HEARING  
FAILURE OF COUNSEL TO APPEAR AT THE HEARING SHALL RESULT  
IN THE DENIAL OF THE MOTION WITH PREJUDICE**

**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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1809 Larkspur Lane, Ceres, California (the "Property"). FN.1. Movant has provided the Declaration of Jazmin Rosalia Ceja to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

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FN.1. The court notes that the Memorandum of Points and Authorities contains additional requests that are not present in the Motion. The court shall only review the requests for relief stated with particularity in the Motion, as is required by Federal Rule of Bankruptcy Procedure 9013 and Local Bankr. R. 9004-1 and 9014-1, and the Revised Guidelines for Preparation of Documents.  
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The Ceja Declaration states that there are 14 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,862.08 in post-petition payments past due.

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 \$110,095.87 (including \$102,095.87 secured by Movant's deed of trust), as stated in the Ceja Declaration and Schedule D filed by Steven Wayne Goolsby and Terri Lorrinda Cantrell ("Debtor"). The value of the Property is determined to be \$100,000.00, as stated in Schedules A and D filed by Debtor.

#### **AUGUST 20, 2015 HEARING**

At the hearing, Movant requested that the hearing be continued to allow this service deficiency to be remedied because the Certificates of Service, Dckts. 62, 66, do not attest to serving the pleadings on The Trustee's attorney of record. The court continued the hearing to 10:00 a.m. on September 3, 2015.

On August 20, 2015, the Movant properly served the parties with the Notice of Continued Hearing and the original papers. Dckt. 69 and 70.

#### **DISCUSSION**

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter

7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on May 7, 2015. 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 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. FN.2.

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F2. The court notes that the Motion does not clearly state a plea for relief. In the introduction at the start of the Motion, Movant states, that it does "move, pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) and Rule 4001 of the Federal Rules of Bankruptcy Procedure, for an order terminating the automatic stay of 11 U.S.C. § 362(a) as it applies to Movant and the real property located at 1809 Larkspur Lane, Ceres, California 95307 (the "Property")." No other relief is requested in the Motion.

Thus, the Motion could be read as to only request that the automatic stay should be terminated, only as to Wells Fargo Bank, N.A., and none of its agents, representatives, or transferees. Further, that the termination be only "as to the real property," and not with respect to any rights or interests Wells Fargo Bank, N.A. might have in or to enforce against, such real property.

The last paragraph of the Motion, rather than stating the prayer for relief, could be read to instruct the court to read the memorandum in support, declaration, exhibits, all pleadings filed with the court, and all of the other oral and documentary evidence which Wells Fargo Bank, N.A. springs on the court at the hearing. Then the court is instructed by Wells Fargo Bank, N.A. to undertake the services of subsidizing the work of the Bank's attorneys and assemble all of the grounds and evidence, advocate on behalf of the Bank, and give the attorneys for Wells Fargo Bank, N.A. a pass of fulfilling their obligations to the court.

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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

Wells Fargo 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** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., 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 1809 Larkspur Lance, Ceres, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Steven Wayne Goolsby and Terri Lorrinda Cantrell ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

**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 for cause shown by Movant.

No other or additional relief is granted.



6. [15-90661](#)-E-7 DENISE WILLIAMS  
JCW-1 Michael R. Germain

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-31-15 [[13](#)]

WELLS FARGO BANK, NA VS.

**Final Ruling: No appearance at the September 3, 2015 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 31, 2015. 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.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Wells Fargo Bank, NA ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 189 Manuel Court, Valley Springs, California (the "Property").

Movant has provided the Declaration of Maria Escobar to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Escobar Declaration states that there are no post-petition defaults in the payments on the obligation secured by the Property. The Declaration also provides evidence that there are 12 pre-petition payments in default, with a pre-petition arrearage of \$28,424.29.

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 \$413,263.60, as stated in the Escobar Declaration and Schedule D filed by Denise Rose Williams ("Debtor"). The value of the Property is determined to be \$365,000.00, 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

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Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Alternatively, 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 Wells Fargo Bank, NA ("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, NA, 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 189 Manuel Court, 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 not waived.

No other or additional relief is granted.

7. [15-90685-E-7](#) STANLEY/PHYLLIS HOFFMAN MOTION FOR RELIEF FROM  
SCF-1 Christian J. Younger AUTOMATIC STAY  
8-5-15 [[13](#)]  
VALLEY FIRST CREDIT UNION  
VS.

**Final Ruling:** No appearance at the September 3, 2015 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, and Office of the United States Trustee on August 5, 2015. 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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Stanley Morse Hoffman and Phyllis Ann Hoffman ("Debtor") commenced this bankruptcy case on July 14, 2015. Valley First Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Ford F-250 truck, VIN ending in 9271 (the "Vehicle"). The moving party has provided the Declaration of Linda Dadisho to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dadisho Declaration provides testimony that Debtor has no delinquent post-petition payments. However, the Declaration provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$1,325.94.

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

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\$24,330.24, as stated in the Dadisho Declaration, while the value of the Vehicle is determined to be \$18,646.00, as stated in Schedules B and D filed by Debtor. FN.1.

The Dadisho Declaration also seeks to introduce additional evidence establishing the value of the asset through the *Kelley Blue Book* valuation, attached as an Exhibit. While this Exhibit was properly authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

#### **RULING**

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

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

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Valley First Credit Union ("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 2008 Ford F-250 truck ("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.

8. [15-90588](#)-E-7 KRISTIAN BERN  
RDW-1 Christian J. Younger

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR ADEQUATE PROTECTION  
7-30-15 [[12](#)]

**CAM IX TRUST VS.**

**Tentative Ruling:** The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

**Correct Notice Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Cam IX Trust, its successors and/or assignees, its assignees and/or successors ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3868 Belleza Drive, Ceres, California (the "Property"). Movant has provided the Declaration of Karin Murphy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Murphy Declaration states that there are 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of

\$1,554.41 in post-petition payments past due. The Declaration also provides evidence that there are 49 pre-petition payments in default, with a pre-petition arrearage of \$76,166.09.

#### **AUGUST 20, 2015 HEARING**

At the hearing, Movant requested that the hearing be continued to allow this service deficiency to be remedied because the Certificate of Service do not attest to serving the pleadings on The Trustee's attorney of record. The court continued the hearing to 10:00 a.m. on September 3, 2015.

On August 20, 2015, the Movant properly served the parties with the Notice of Continued Hearing and the original papers. Dckt. 23.

#### **DISCUSSION**

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

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

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

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

While Movant does plead the *Travelers* Case for the proposition that a creditor may be awarded prevailing party attorneys' fees which are not part of the secured claim (such as to include a non-bankruptcy non-judicial foreclosure), the Motion does not state a contractual or statutory basis for such fees. Additionally, the Motion does not state any specific amount for such fees which could be the subject of any default judgment/order. Finally, there is no evidence of any fees relating to this Motion.

Though the Motion need not state the claim for attorneys' fees as a separate claim (Fed. R. Bankr. P. 7008(b) having been amended in 2014), at this point if the court were to conduct post-judgment remedial proceedings for attorneys' fees, it is likely that such additional fees would exceed what it cost for the motion for relief, which could have included: (1) the statement of the contractual or statutory basis for the fees, (2) the amount of attorneys' fees which could be the subject of the default, and (3) evidence of the fees and services provided in conjunction with the Motion.

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. The "claim" for this relief is merely a sentence fragment in the prayer for relief.

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 Cam IX Trust, its successors and/or assignees, its assignees and/or successors ("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 Cam IX Trust, its successors and/or assignees, its assignees and/or successors, 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 3868 Belleza Drive, Ceres, 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.

**IT IS FURTHER ORDERED** that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.