

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

September 8, 2016, at 10:00 a.m.

1. **16-90103-E-7**      **JOSE MERCADO**  
**ETL-1**              **Nelson Gomez**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-1-16 [54]**

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

**Final Ruling: No appearance at the September 8, 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, and Office of the United States Trustee on August 1, 2016. By the court's calculation, 38 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.**

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 775-777 South Orange Street, Turlock, California ("Property"). Movant has provided the Declaration of Crystal M. Massey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Crystal M. Massey Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,009.82 in post-petition payments past due. The Declaration also provides evidence that there are 37 pre-petition payments in default, with a pre-petition arrearage of \$51,490.52, for a total arrearage amount of \$59,500.34.

September 8, 2016, at 10:00 a.m.

Movant's Motion for Relief from Automatic Stay lists three prior bankruptcy cases—including the current one—commenced by Debtor since March 28, 2013, that affect Movant's interest in the Property. Those cases are:

- A. Case No. 13-12130
  - 1. Filed: March 28, 2013
  - 2. Type: Chapter 13
  - 3. Date of Dismissal: June 18, 2013
  - 4. Reason for Dismissal: Failure to file a Credit Counseling Certificate
  
- B. Case No. 15-14152
  - 1. Filed: October 23, 2015
  - 2. Type: Chapter 13
  - 3. Date of Dismissal: January 13, 2016
  - 4. Reason for Dismissal: Voluntary Dismissal
  
- C. Case No. 16-90103
  - 1. Filed: February 10, 2016
  - 2. Type: Converted from Chapter 11 to Chapter 7
  - 3. Instant Case

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 \$263,765.42 (including \$263,765.42 secured by Movant's first deed of trust), as stated in the Crystal M. Massey Declaration and Schedule D filed by Jose Cruz Mercado ("Debtor"). The value of the Property is determined to be \$185,000.00, 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 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).

11 U.S.C. § 362(d)(4) allows the court to grant relief from the automatic stay when the court finds that the petition was filed as 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 secured creditors or court

approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. Debtor has filed for bankruptcy three (3) times since 2013, including the present filing. 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 the filing of multiple bankruptcy cases. The Debtor's prior bankruptcies were all dismissed on procedural grounds for the Debtor's failure to comply with even the most basic duties, including failing to file necessary documents, such as the Credit Counseling Certificate. Once again, it appears that the Debtor is failing to comply with the necessary requirements for filing a Chapter 7 and that the Debtor has no intention of prosecuting the instant case in good faith.

The court shall issue a minute 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. § (d)(4).

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 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 775–777 South Orange Street, Turlock, 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. **16-90460-E-7      MICHAEL/SANDRA DEMELLO      MOTION FOR RELIEF FROM**  
**APN-1                   Kathleen Crist      AUTOMATIC STAY**  
**8-2-16 [\[12\]](#)**  
**WELLS FARGO BANK, N.A. VS.**

**Final Ruling:** No appearance at the September 8, 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 2, 2016. By the court's calculation, 37 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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Michael DeMello and Sandra DeMello ("Debtors") commenced this bankruptcy case on May 31, 2016. Wells Fargo Bank, N.A., doing business as Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Fit, VIN ending in 7897 (the "Vehicle"). The moving party has provided the Declaration of Jennifer Woessner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jennifer Woessner Declaration provides testimony that Debtor has not made two post-petition payments. The Declaration also provides evidence that there is one pre-petition payment in default, with a total arrearage of \$1,270.66.

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 \$25,461.11, as stated in the Jennifer Woessner Declaration, while the value of the Vehicle is determined to be \$16,375.00, as stated in the NADA Valuation Report that Movant filed 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).

## **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).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., 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 Wells Fargo Bank, N.A., doing business as Wells Fargo Dealer 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 2015 Honda Fit (“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.

3.	<a href="#"><u>16-90083</u></a> -E-7 MWP-1  JKB HOMES CORPORATION VS.	<b>VALLEY DISTRIBUTORS, INC. Iain MacDonald</b>	<b>CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 7-22-16 <a href="#"><u>175</u></a></b>
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**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, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 30, 2016. By the court’s calculation, 9 days’ notice was provided.

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

JKB Homes NorCal, Inc. ("Movant") seeks relief from the automatic stay for the sole purpose of permitting the Movant to prosecute its claims against the Debtor in a state court action in the Superior Court of Stanislaus County, State of California, *Rupinder Jagpal and Manvir Kaur, et al. v. JKB Homes NorCal, Inc., et al.*, Case No. 684696.

Movant seeks relief from the automatic stay to proceed only against the available insurance assets of Valley Distributors, Inc. ("Debtor") in the claim related to construction industry standards and involving tort and contract claims. Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Heather Ingle-Gernhardt to introduce evidence to authenticate the documents upon which it bases its claim.

**AUGUST 25, 2016 HEARING**

At the hearing, the court continued the Motion for Relief from Automatic Stay to September 8, 2016, at 10:00 a.m. for failing to serve all required parties and for failing to state grounds with particularity.

**DISCUSSION**

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 Movant would not seek to enforce any judgments against Debtor and will proceed against Debtor only to the extent its claims can be satisfied from 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 Movant to prosecute the claims against Debtor, but not enforce any judgments against Debtor or the estate other than against available insurance coverage, if any.

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 JKB Homes NorCal, Inc. 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 JKB Homes, Inc., its agents, representatives, and successors to allow 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.

4. [16-90699-E-7](#)      **YULIE MEZA**      **MOTION FOR RELIEF FROM**  
**ADR-1**      **Pro Se**      **AUTOMATIC STAY**  
8-8-16 [\[17\]](#)

**DIANNE JARAMILLO VS.**  
**DEBTOR DISMISSED: 08/19/2016**

**Final Ruling: No appearance at the September 8, 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 August 8, 2016. By the court's calculation, 31 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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Dianne Jaramillo ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 326 N 3rd Street, Patterson, California ("Property"). The moving party has provided the Declaration of Dianne Jaramillo to introduce evidence as a basis for Movant's contention that Yulie Meza ("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 asserts she is the property manager,



records-custodian, and owner of the property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus and received a judgment for possession, with a Writ of Possession having been issued by that court on July 22, 2016. Exhibit A, Dckt. 22.

Movant has provided a properly authenticated and certified copy of the recorded Unlawful Detainer Judgment 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).

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 that address issues arising only under 11 U.S.C. § 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 instant case was dismissed on August 19, 2016, for failure to timely file documents. Dckt. 27.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section 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).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of August 19, 2016, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on August 19, 2016.

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).

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 Dianne Jaramillo (“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) were terminated as to Debtors pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 326 N 3rd Street, Patterson, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the August 19, 2016 dismissal of this bankruptcy case filed by Yulie Meza, the Debtor.

**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.