

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**October 17, 2017, at 1:30 p.m.**

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<b>1.</b>	<b><u>17-25903-E-13</u></b> <b>JCW-1</b>	<b>CHRISTINE MCKAY</b> <b>Peter Macaluso</b>	<b>MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY</b> <b>9-29-17 <a href="#">[32]</a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee on September 29, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Confirm Absence of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----

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<b>The Motion to Confirm Absence of the Automatic Stay is granted.</b>
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Wells Fargo Bank, N.A. as servicing agent for U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-GEL4 ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Christine McKay's ("Debtor") third

bankruptcy case pending in the last year and that there is no motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B).

## **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on October 6, 2017. Dckt. 42. The Chapter 13 Trustee states that he does not oppose the Motion, especially because the court has already denied a motion to impose the automatic stay.

## **DISCUSSION**

A review of Debtor's prior bankruptcy cases reveals that two cases were pending in the prior year, such that the provisions of 11 U.S.C. § 362(c)(4)(i) applied, and the automatic stay did not go into effect upon the filing of this case. *See* Order, Bankr. E.D. Cal. No. 16-21315, Dckt. 36, October 7, 2016; Order, Bankr. E.D. Cal. No. 16-27603, Dckt. 84, June 2, 2017.

This case was filed on September 2, 2017, and a review of the docket in this case reveals that Debtor moved to have the automatic stay provisions of 11 U.S.C. § 362 applied in this case, but the court denied that motion. Dckt. 27. The provisions of 11 U.S.C. § 364(c)(4)(B), establishing that the automatic stay did not go into effect upon the filing of this case, and the court confirms that the automatic stay is not in effect in this bankruptcy case, No. 17-25903.

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 to Confirm Absence of the Automatic Stay filed by Wells Fargo Bank, N.A. as servicing agent for U.S. Bank National Association, as Trustee for Structured Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-GEL4 ("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 granted, and the court confirms that the automatic stay provisions of 11 U.S.C. § 362 did not go into effect upon the filing of this bankruptcy case (No. 17-25903) pursuant to 11 U.S.C. § 362(c)(4)(A), and the court confirms that the automatic stay has not been subsequently imposed by the court in this case pursuant to 11 U.S.C. § 362(c)(4)(B).

2. [14-30137](#)-E-13      **ROCHELLE  
DICKSON-MITCHELL  
Richard Jare**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
9-14-17 [\[26\]](#)**

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

**Final Ruling:** No appearance at the October 17, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 14, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

**The Motion for Relief from the Automatic Stay is denied without prejudice, the automatic stay already having been terminated by the confirmed Chapter 13 Plan.**

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Rochelle Dickson-Mitchell’s (“Debtor”) real property commonly known as 7263 Roca Way, Sacramento, California (“Property”). Movant has provided the Declaration of Teresa Barnette to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Teresa Barnette Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,233.63 in post-petition payments past due.

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on October 3, 2017. Dckt. 32. The Chapter 13 Trustee asserts that relief may not be needed because Section 2.11 of the confirmed plan provides for relief from the automatic stay, but the Chapter 13 Trustee does not oppose the Motion.

## DISCUSSION

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 \$122,281.56 (including Movant's first deed of trust), as stated in the Teresa Barnette Declaration and Schedule D. The value of the Property is determined to be \$190,000.00, which is the uncontested value stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not challenged Debtor's assertion of the Property's value and has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Denial without prejudice of this Motion is not necessarily a loss for Movant. As the Chapter 13 Trustee has noted, Section 2.11 of the confirmed plan indicates that "all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Dckt. 7. The confirmed plan lists Movant as a holder of a Class 4 secured claim. If Movant believes that Debtor has defaulted on her obligation, then Movant can enforce its nonbankruptcy rights as provided for in the Plan.

The Motion is denied without prejudice.

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

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

The Motion for Relief from the Automatic Stay filed by 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 Motion is denied without prejudice, the automatic stay having been modified already by the confirmed Chapter 13 Plan, ¶ 2.11, to allow Movant to exercise its right in the collateral, including foreclosure and obtaining possession thereof. Chapter 13 Plan, Dckt. 7, Order Confirming Plan, Dckt. 17.

3. [17-23993](#)-E-13      **SEGUNDO ALMOGELA**  
AP-2                      Pro Se

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
9-6-17 [38]**

**U.S. BANK, N.A. VS.  
DEBTOR DISMISSED: 09/08/2017**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on September 6, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 ("Movant") seeks relief from the automatic stay with respect to Segundo Almogela's ("Debtor") real property commonly known as 211 Aldeburgh Circle, Sacramento, California ("Property"). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on September 8, 2017, for failure to attend the Meeting of Creditors, failing to commence plan payments, and failing to provide tax returns. Dckt. 48.

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

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 September 8, 2017, 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 Debtor and the Property on September 8, 2017.

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 U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 (“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 court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Segundo Almogela (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 211 Aldeburgh Circle, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the September 8, 2017 dismissal of this bankruptcy case filed by Debtor.