

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

October 18, 2018 at 10:00 a.m.

1. **18-90706-E-7**
ADR-1

KAMELAH RICHARDSON
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-26-18 [10]**

WESTDALE COMMONS VS.

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).

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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 26, 2018. By the court's calculation, 22 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). Debtor, creditors, the Chapter 7 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, -----

The Motion for Relief from the Automatic Stay is granted.

Westdale Commons, A California Limited Partnership ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4121 Dale Road #122, Modesto,

October 18, 2018 at 10:00 a.m.

- Page 1 of 15 -

California (“Property”). The moving party has provided the Declaration of Ashley Rightnour to introduce evidence as a basis for Movant’s contention that Kamelah Shatera Richardson (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant argues it is the owner of the Property. Movant has not filed an Unlawful Detainer cause of action as of this time.

Movant filed a copy of the Lease Agreement between Debtor and Westdale Commons and a Three Day Notice to Pay Rent or Quit, which was delivered to Debtor on August 6, 2018. Exhibits 1 and 2, Dckt. 14. While the Rightnour Declaration references the documents, there is no statement that the documents are true and correct copies, nor are they authenticated as required under Federal Rules of Evidence 901 et seq.

Notwithstanding Movant’s failure to authenticate various Exhibits, the Rightnour Declaration itself provides evidence that Debtor is a mere tenant residing at the Property, and has nothing but a mere possessory interest. Based upon the evidence submitted, the court determines that there is no equity in the Property for either 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Westdale Commons, A California Limited Partnership, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4121 Dale Road #122, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant states within its Motion that Debtor (a tenant) remains in possession of the Property without paying any money. Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 Westdale Commons, A California Limited Partnership (“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 Westdale Commons, A California Limited Partnership and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4121 Dale Road #122, Modesto, California.

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

No other or additional relief is granted.

2. [18-90149-E-11](#)
[KMR-1](#)

SOUZA PROPERTIES, INC.
David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
TO CONFIRM TERMINATION OR
ABSENCE OF STAY
9-25-18 [\[82\]](#)

CENLAR FSB VS.

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).

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 in Possession, Debtor in Possession's Attorney, creditors, and Office of the United States Trustee on September 25, 2018. By the court's calculation, 23 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). Debtor, creditors, 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, -----.

The Motion for Relief from the Automatic Stay is granted.
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Cenlar FSB ("Movant") seeks relief from the automatic stay with respect to Souza Properties, Inc.'s ("Debtor in Possession") real property commonly known as 4148 Alderwood Place, Lake Elsinore, California ("Property"). Movant requests "an Order Terminating the Automatic Stay of 11 U.S.C. § 362 and for an Order Annulling the Automatic Stay" (the caption and elsewhere in the Motion it is also indicated Movant seeks confirmation the stay was not in effect during foreclosure proceedings).

REVIEW OF MOTION

The Motion states the following with particularity:

1. Movant holds a Promissory Note dated December 22, 2011, in the principal amount of \$303,141.00, which is secured by the Deed of Trust executed by Nelson Paul Santos Espinosa and Yuly Andrea Santos (“Original Borrowers”).
2. Souza Properties, Inc. fka Souza's Furniture, Appliances, and TV, Inc. (“Debtor”) is not a borrower from or obligor on the Movant’s Note.
3. It has been asserted to Movant that Debtor is a junior lien holder, with a Short Form Deed of Trust and Assignment of Rents in the original amount of \$65,000 secured by the Property having been recorded.
4. Counsel for Movant has confirmed with Counsel for Debtor that Debtor does not have any knowledge of, or claim any interest in, the Property.
5. It is asserted that the Short Form Deed of Trust and Assignment of Rents appears to be a fraudulent document prepared as part of a scheme to delay, hinder and defraud Movant from being able to pursue its default remedies.
6. Pursuant to 11 U.S.C. § 362(d)(1), Movant is requesting relief from the automatic stay for cause because Debtor does not claim, and does not appear to have, a legitimate interest in the Subject Property. Furthermore, Movant believes that Debtor’s bankruptcy petition is being used by a third party as part of a scheme to invalidate Movant’s Trustee’s Sale that occurred on September 18, 2018.
7. Without knowledge of an alleged junior lien held by the Debtor, Movant held a Trustee’s sale on the subject property on September 18, 2018 at 9:58AM. The Property was sold to a third party purchaser. A Trustee’s Deed Upon Sale has not been recorded because of the possible stay imposed by this instant bankruptcy case.
8. On September 18, 2018 at 10:48 AM, after the foreclosure sale had been conducted, Movant’s foreclosure agent received via fax a document purporting to be a a Short Form Deed of Trust and Assignment of Rents (“Souza DOT”) listing Souza Properties (“Debtor”) as the beneficiary of a junior deed of trust to secure an obligation in the amount of \$65,000.
9. A copy of the fax received on September 18, 2018 is filed as Exhibit 7.

10. It is alleged that the faxed Souza DOT has the same recording stamp information and Movant's Deed of Trust.
11. A copy of the Trustee's Sale Guarantee prepared by National Title Insurance for Movant is filed as Exhibit "8."
12. Movant now requests relief from any automatic stay imposed by Debtor's current petition, or, in the alternative, confirmation that no stay existed at the time of the September 18, 2018 Trustee's Sale.
13. Movant further requests the court grant annulment of the automatic stay to have the option to validate the recording and publishing of the Notice of Sale and the September 18, 2018 Trustee's Sale to the third party purchaser, both of which took place after the filing of the petition.
14. Movant asserts it was unaware of the alleged junior lien interest of the Debtor and the bankruptcy filing when the sale took place, and had no way to anticipate that after the sale occurred it would receive the Souza DOT via fax.
15. Pursuant to 11 U.S.C. § 362(d)(4), Movant is requesting the additional protections of *in rem* relief in the event Movant must redo the Notice of Sale and Trustee's Sale of the Property because the third party purchaser withdrawals from the transaction due the current delays caused by this scheme affecting the Property. A Trustee's Deed Upon Sale has not yet been recorded against the Property; therefore, the Original Borrowers still hold title to the Property.

REQUEST FOR RELIEF

Movant requests in its prayer an order granting relief from the automatic stay, or, in the alternative, confirming the Property is not part of Debtor's bankruptcy estate and no stay went into effect upon the filing of this instant petition as to the Property, located at 4148 Alderwood Place, Lake Elsinore, California, so that the filing of the bankruptcy petition does not affect post-petition acts and Movant may proceed with any and all post foreclosure sale remedies, including the unlawful detainer action or any other action necessary to obtain possession of the Property. Movant also requests an order that annuls the automatic stay so that the filing of the bankruptcy petition does not affect post-petition acts and seeks relief pursuant to 11 U.S.C. §362(d)(4)(A) and (B).

SUPPORTING EVIDENCE

Movant has provided the Declarations of Bounlet Louvan and Jeffrey Stanley to introduce evidence and to authenticate various documents, including those upon which it bases the claim and the obligation secured by the Property.

The Louvan Declaration identifies Bounlet Louvan as a Foreclosure Liaison and former Trustee's Sales Officer for QLS Loan Service Corporation, a California Corporation. Dckt. 84. The Louvan Declaration states that QLS conducted a bankruptcy search based on the original borrowers and did not find any active bankruptcy petitions at the time of recording the Notice of Default, Notice of Sale, or as of the date of the Trustee's sale. *Id.*, ¶ 11. Louvan states further authenticates a copy of a Trustee's Sale Guarantee (Exhibit 8, Dckt. 88) prepared by National Title Insurance which does not reflect the Souza DOT. *Id.*, ¶ 12. The Louvan Declaration also authenticates faxed correspondence titled "Short Form Deed of Trust and Assignment of Rents." See Exhibit 7, Dckt. 88.

Exhibit 7, the document identified as the Souza DOT purports to have been signed by Paul Nelson. However, the signature appears to be that of Nelson Paul Santos Espinosa. *Compare signature on the Souza DOT*, Dckt. 88 at 40, *and Movant's Deed of Trust*, *Id.* at 14.

For Movant's loan one of the two borrowers is identified as "Nelson Paul Santos Espinosa." Exhibit 1, *Id.* at 3 and 28. For the alleged Souza DOT, someone named "Paul Nelson" is purported to be the grantor. This appears to be a mangled version of Nelson Paul Santos Espinosa, as if done by someone who did not know the real owner of the property or intending to intentionally mislead (or create plausible deniability) for someone filing a forged document.

The Souza DOT has exactly the same document number, 2011-0571711 as Movant's Deed of Trust. Such is a legal impossibility under the California recording statutes. Cal. Gov. §§ 27320, 27321. It also purports to have been recorded at exactly the same minute, 3:42 p.m. on December 27, 2011, as the Movant's Deed of Trust, a temporal impossibility.

The Trustee's Sale Guaranty is consistent with the contention that there is no Souza DOT that was recorded. Exhibit 8, Dckt. 88 at 47 - 56.

The Stanley Declaration identifies Jeffrey Stanley as a Vice President, Document Execution with Movant. Dckt. 85. The Stanley Declaration authenticates a copy of the Assignment transferring the Deed of Trust to Movant (Exhibit 2, Dckt. 88) and the Original Promissory Note. Exhibit 3, Dckt. 88. Stanley states the original note was executed December 22, 2011, in the principal amount of \$303,141.00.

A review of the Original Promissory Note shows the agreement was entered into by Nelson Paul Santos Espinosa and Yuly Andrea Santos. *Id.* Debtor in Possession's Schedule A/B do not list the Property as property of the Estate. Schedule A/B, Dckt. 32. Movant is not listed as a creditor in this bankruptcy case. Schedules D & E/F, Dckt. 32.

The Souza DOT indicates Paul Nelson transferred his interest in property in Los Angeles County "described on 'Exhibit A' attached hereto." Dckt. 88 at p. 40. Reference to the Property is included only to recite Paul Nelson's address and the mailing address for Debtor in Possession. *Id.*

Fax Transmission Information

The Notice of Bankruptcy Case filing has the following sending information in the header at the top of the page:

From: E & O Home Solution Fax: (888) 429-5428

Exhibit 7, Dckt. 88 at 39.

A initial internet search for “E & O Home Solution” turns up no webpages with that name. However, it does disclose a link to a Facebook page for E&O Home Solutions. That Facebook page contained no information other than the name “E&O Home Solutions Real Estate Agent.” ^{FN.1.}

FN.1. <https://www.facebook.com/pages/EO-Home-Solutions/1673250179561652>.

There also is reported a Yellow Pages return for E & O Home Solutions, LLC, with the address of 18375 Ventura Blvd Suite 241, Tarzana, CA. ^{FN.2.} The “services/products” identified on the Yellow Page is “Home Modifications.” A link is provided to “Http://enohomesolutions.com,” which is to a nonexistent webpage.

FN. 2. <https://www.yellowpages.com/tarzana-ca/mip/e-o-home-solutions-llc-470095036>

An internet search of the (888) 429-5428 generates several returns. One is to Buzzfile, which shows an E & O Home Solutions, LLC located at 18375 Ventura Blvd, Tarzana, California. ^{FN.3.} The description of the business on the Buzzfile website is:

Business Description

E & O Home Solutions is located in Tarzana, California. This organization primarily operates in the Real Estate Agents and Managers business / industry within the Real Estate sector. This organization has been operating for approximately 6 years. E & O Home Solutions is estimated to generate \$250,191 in annual revenues, and employs approximately 3 people at this single location.

The industry designation is “Real Estate Agents and Managers.”

FN.3. <http://www.buzzfile.com/business/E.And.O-Home-Solutions,-LLC-888-429-5428>.

A check on the California Secretary of State Website reports that E & O Home Solutions, LLC status is reported as “SOS/FTB Suspended.”^{FN. 4.}

FN. 4. <https://businesssearch.sos.ca.gov/CBS/Detail>.

RESPONSE FROM DEBTOR IN POSSESSION

No response, statement of non-opposition, or confirmation of allegation that Debtor and Debtor in Possession assert no interest in any such Souza DOT and any alleged obligation purported to be secured by it has been filed in this case.

DISCUSSION

From the facts here presented, Debtor in Possession does not have an interest in the Property. The Original Promissory Note identifies the guarantors as Nelson Paul Santos Espinosa and Yuly Andrea Santos. Exhibit 3, Dckt. 88. The Short Form Deed of Trust and Assignment of Rents allegedly granting an interest to Debtor in Possession does demonstrate some interest was transferred from Paul Nelson to Debtor in Possession, but the document does not indicate what property that interest was in. *See* Exhibit 7, Dckt. 88.

Debtor in Possession’s Schedules and Petition state (by omission) under penalty of perjury that Debtor in Possession has no interest in the Property and owes no debt to Movant. No opposition has been presented by Debtor in Possession.

Determination that No Automatic Stay Exists

Based on the evidence presented and no contrary contention by either the Debtor or Debtor in Possession, the court concludes that there is no Souza DOT that is property of the bankruptcy estate. There being no such property of the estate, there is no automatic stay that came into existence as to the exercise of the power of sale and foreclosure conducted by Movant and Movant’s representative.

Termination and Annulment of the Automatic Stay, If Any

To the extent that the automatic stay may have existed, proper grounds have been provided for terminating and annulling the automatic stay with respect to the Movant’s, and Movant’s representatives, exercising rights under the Note and Deed of Trust.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of

adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor in Possession does not have an interest in the Property and the Property is not property of the Estate. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Further, grounds have been shown for annulling the automatic stay to remove any doubt as to whether the foreclosure sale was conducted in a manner which did not conflict with bankruptcy law.

The court shall issue an order terminating, vacating, and annulling effective as of the March 8, 2018, 3:05:50 p.m. filing of this bankruptcy case by Souza Properties, Inc., 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.

Prospective Relief from Future Stays

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

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

Here, the court must find that: (1) the filing of the current bankruptcy case was part of a scheme to delay, hinder, or defraud creditors which (2) involved a transfer of all or part ownership of the property. Here, the Debtor and now the Debtor in Possession have not asserted any interest in the Souza DOT. While the court concludes that the Debtor was not part of a scheme utilizing the filing of the bankruptcy case, the evidence shows that third-parties have used the filing of the bankruptcy case as part of a requisite scheme. Further, as show by the Notice of Bankruptcy, this scheme is to both delay and to hinder Movant in exercising its rights as creditor. Until the issuance of this ruling and order thereon, it was asserted that Movant was a creditor and that the Debtor's bankruptcy case rendered the foreclosure sale void. Thus, when this Motion was filed, Movant still wore the mantel of a putative "creditor" with standing to seek relief pursuant to 11 U.S.C. § 362(d)(4).

The requisite standing and requirements for such relief have been shown. The court grants relief pursuant to 11 U.S.C. § 362(d)(4), which prevents the automatic stay from going into effect in a subsequent bankruptcy case for a two year period, subject to further order from the bankruptcy judge in any such future case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3). Instead, it merely appears in the prayer, presented as some other relief which the court may want to grant, if the court assembles from the various grounds stated in the Motion.

Generally, the court refrains from providing such associate legal/paralegal services to creditors. In this Contested Matter, it would have been relatively easy for Movant to have a simple paragraph stating “In light of the forged Souza DOT, the misrepresentation of existence of an obligation, and the false assertion of an automatic stay to impede not only Movant’s exercise of its rights but the third-party purchase obtaining clear title to the property, the fourteen day stay imposed by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3) should be waived.”

In light of the continuing harm to the third-party purchaser, as well as the Movant, and the abuse of the federal judicial system, the court infers such request as stated above in the general pleadings and waives the fourteen day stay of enforcement.

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 Cenlar FSB (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled effective as of the March 8, 2018, 3:05:50 p.m. filing of this bankruptcy case, and are also terminated and vacated, to allow (and have allowed as of and after the above annulment date and time) Cenlar FSB, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and

their respective agents and successors under any trust deed that is recorded against the real property commonly known as 4148 Alderwood Place, Lake Elsinore, California, ("Property").

IT IS FURTHER ORDERED that the relief requested pursuant to 11 U.S.C. § 362(d)(4) is granted, which Bankruptcy Code Section provides:

If [this order granting relief pursuant to 11 U.S.C. § 362(d)(4) is] recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

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

No other or additional relief is granted.

3. [18-90597-E-7](#)
[JHW-1](#)

NATALIA AMEZCUA
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-27-18 [\[12\]](#)

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the October 18, 2018 hearing is required.

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*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 27, 2018. By the court's calculation, 52 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 granted.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Nissan Versa, VIN ending in 8249 ("Vehicle"). The moving party has provided the Declaration of Gary Esparza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Natalia Amezcua ("Debtor").

The Esparza Declaration provides evidence that Debtor has defaulted resulting from 4 pre-petition payments, with a pre-petition arrearage of \$1,076.20 (exclusive of late fees).

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Exhibit D, Dckt. 17. 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). Movant asserts

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 \$7,665.66, as stated in the Esparza Declaration (Dckt. 15), while the value of the Vehicle is determined to be \$6,950.00, as stated in NADA valuation. Exhibit D, Dckt. 17.

Movant also points out that Debtor's Statement of Intention indicates Debtor will surrender the Vehicle. *See* Statement of Intention, Dckt. 1 at p. 46.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 pre-petition payments that have come due, lack of equity, and Debtor's expressed intention of surrendering the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either 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 Ramco Indus. v. Preuss (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 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant

requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Nissan Versa VIN ending in 8249 ("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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.