

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

October 19, 2017, at 10:00 a.m.

1. [17-90214-E-7](#) **EMIDIO RAMIREZ** **MOTION FOR RELIEF FROM**
MEL-1 **Pro Se** **AUTOMATIC STAY**
 9-6-17 [38]
CITIMORTGAGE, INC. VS.

APPEARANCE BY MEGAN LEES, COUNSEL FOR
CITIMORTGAGE, INC.
(Failure of Counsel to Appeal Will Result in Denial of Motion)

Telephonic Appearance Permitted

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.

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, and Office of the United States Trustee on September 6, 2017. By the court's calculation, 43 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.

October 19, 2017, at 10:00 a.m.

The Motion for Relief from the Automatic Stay under 11 U.S.C. § 362(d)(1) and for relief pursuant to 11 U.S.C. § 362(d)(4) is granted.

CitiMortgage, Inc. (“Movant”) seeks relief from the automatic stay with respect to Emidio Ramirez’s (“Debtor”) real property commonly known as 3636 Fallview Avenue, Ceres, California (“Property”). FN.1. Movant has provided the Declaration of Nabeel Zuberi to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN.1. Movant combined the Motion and Memorandum of Points and Authorities for this matter. Local Bankruptcy Rule 9014-1(d)(4) states that a motion and memorandum of points and authorities may be filed as a single document if the filing does not exceed six pages. Movant exceeded the page-limit.

Movant has sought relief pursuant to 11 U.S.C. § 362(d)(1), based on the grounds stated below in the court’s ruling on the prospective relief requested pursuant to 11 U.S.C. § 362(d)(4). Such conduct and actions constitute cause for relief from the stay pursuant to 11 U.S.C. § 362(d)(1). The court incorporates herein by this reference the findings and conclusions in determining that a scheme to hinder, defraud, or delay exists by Debtor in granting the relief herein.

PROSPECTIVE RELIEF FROM STAYS IN FUTURE CASES

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where 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 the 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 the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* The Court takes notice of a pattern regarding the Property that involves several serial filings.

Since 2015, Debtor, Justino Quiles, and Justino Sandoval have filed six bankruptcy cases that affect Movant’s interest in the Property. Those cases are:

A. Justino Quiles, Case No. 15-91168

1. Chapter 7 Case filed on December 2, 2015, *in pro se*.
2. Property listed on the voluntary petition as the debtor’s current address. Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. Dckt. 15.

4. Case dismissed on December 31, 2015, for failure to file documents including Schedules and Statement of Financial Affairs. Dckt. 21.

B. Emidio Ramirez, Case No. 16-90439

1. Chapter 7 Case filed on May 23, 2016, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.
4. Case dismissed on June 21, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. Dckt. 19.

C. Justino Sandoval, Case No. 16-90789

1. Chapter 7 Case filed on August 29, 2016, *in pro se*.
2. Property listed on the voluntary petition as the debtor's current address. 16-90789, Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. *Id.*, Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.
4. Case dismissed on September 20, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 20.

D. Justino Quiles, Case No. 16-90881

1. Chapter 7 Case filed on September 26, 2016, *in pro se*.
2. Property listed on the voluntary petition as the debtor's current address. 16-90881, Dckt. 1.
3. On Schedule A/B filed in Case No. 16-90881 no interest in the Property. *Id.*, Dckt. 14 at 3.

4. On Schedule D filed in Case No. 16-90881, Justino Quiles states under penalty of perjury that there are no creditors with any secured claims. *Id.*, Dckt. 14 at 15.
5. Case dismissed on January 16, 2017, for failure to appear at the Meeting of Creditors. *Id.*, Dckt. 29.

E. Emidio Ramirez, Case No. 16-91019

1. Chapter 7 Case filed on November 7, 2016, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. 16-91019, Dckt. 1.
3. Case dismissed November 28, 2016, for failure to file document, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 14.

F. Emidio Ramirez, Case No. 17-90214 (Current Bankruptcy Case)

1. Chapter 7 Case filed on March 17, 2017, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. 17-90214, Dckt. 1.
3. Debtor states under penalty of perjury on Schedule A/B that he does not have any interest in the Property. *Id.*, Dckt. 21 at 1. On Schedule D Debtor states under penalty of perjury that he has no creditors with any secured claims. *Id.* at 13. On Schedule H Debtor states under penalty of perjury that he has no unexpired leases. *Id.* at 22.
4. Case dismissed on October 19, 2017, for failure to attend the Meeting of Creditors.

The relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. With respect to the first, the court concludes that the filing of the current Chapter 7 case was part of a scheme by Debtor to hinder and delay Movant from exercising its rights in or to real property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking or per se bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. However, the filing of the current Chapter 7 case does not appear to have been for any bona fide, good faith reason in light of Debtor filing this sixth case in a series of bankruptcy attempts. All six cases have been dismissed for failure to timely file documents or to appear at the Meeting of Creditors.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Emidio Ramirez, Justino Quiles, and Justino Sandoval have engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting the relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(d)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than file several bankruptcy cases that are then dismissed.

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. Generally, when no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

In this matter, however, the court *infers* that Movant intended to assert and clearly state with particularity that it was incorporating into a request for the Rule 4001(a)(3) waiver all of the grounds stated with particularity as the grounds stated for 11 U.S.C. § 362(d)(4).

Movant having 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), this part of the requested relief is granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities are provided in support of that request. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other

than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay are necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by CitiMortgage, Inc., and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted CitiMortgage, Inc., and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

RULING

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on October 19, 2017. Further, the court shall enter an order granting relief under 11 U.S.C. § 362(d)(4).

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 CitiMortgage, 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 that automatic stay provisions of 11 U.S.C. § 362(a) are vacated for cause pursuant to 11 U.S.C. § 362(d)(1) to allow CitiMortgage, Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3636 Fallview Avenue, Ceres, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable state laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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. [17-90214-E-7](#) EMIDIO RAMIREZ
GRF-1 Pro Se

CONTINUED TRUSTEE'S MOTION TO
DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING AND MOTION TO
EXTEND THE DEADLINES FOR FILING
OBJECTIONS TO DISCHARGE AND
MOTIONS TO DISMISS
5-26-17 [\[23\]](#)

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.

Local Rule 9014-1(f)(1) Motion—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, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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Gary Farrar ("the Chapter 7 Trustee") alleges that Emidio Ramirez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Based on Debtor's failure to attend the First Meeting of Creditors, the Trustee requests that this case be dismissed.

Alternatively, if Debtor's case is not dismissed, the Chapter 7 Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 1:00 p.m. on July 7, 2017. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

CREDITOR'S OPPOSITION

CitiMortgage, Inc. ("Creditor"), holder of a secured claim, filed an Opposition on June 15, 2017. Dckt. 26. Creditor argues that Debtor has engaged in a scheme of multiple bankruptcy filings that has prevented Creditor from enforcing its state court rights against real property commonly known as 3636 Fallview Avenue, Ceres, California ("Property"). Creditor argues that Debtor and other individuals have

filed three prior bankruptcy cases since December 2015 that have been dismissed for either failure to file documents or for failure to appear at the Meeting of Creditors. Creditor states that it will be bringing a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(4) and requests that the court continue the hearing on this Motion by sixty days to allow Creditor time to file, serve, set for hearing, and hear that motion for relief from the automatic stay.

JUNE 29, 2017 HEARING

At the hearing, the court continued the matter to 10:30 a.m on September 7, 2017. Dckt. 30.

CHAPTER 7 TRUSTEE'S REPORT

The Chapter 7 Trustee filed a statement on the docket on July 7, 2017, that the Continued Meeting of Creditors was conducted, that Debtor did not appear, and that the meeting was continued to 1:00 a.m. on September 28, 2017. The Chapter 7 Trustee amended his report on August 28, 2017, to reflect that the meeting would be held at 1:00 p.m. on September 28, 2017.

SEPTEMBER 7, 2017 HEARING

At the hearing, Creditor's counsel explained that the attorney who had been handling the matter left the firm, causing a delay in filing the motion seeking relief pursuant to 11 U.S.C. § 362(d)(4). Creditor requested that the court continue the hearing to the date and time set for that motion for relief from the stay, or, in the alternative, that this court exercise its post-discharge jurisdiction to address the pending motion. In light of the allegations concerning the filing of multiple bankruptcy cases and the 11 U.S.C. § 362(d)(4) motion already being set for hearing, the court continued the matter to 10:00 a.m. on October 19, 2017. Dckt. 44.

CHAPTER 7 TRUSTEE'S REPORT

The Chapter 7 Trustee filed a statement on the docket on September 29, 2017, that the Continued Meeting of Creditors was conducted, that Debtor did not appear, and that the meeting was continued to 1:00 p.m. on October 26, 2017.

DISCUSSION

Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1). For this matter, though, Creditor has argued that the case should not be dismissed because of an alleged bankruptcy filing scheme that Debtor has engaged in over the past few years to prevent Creditor from exercising its rights in state court.

The court has reviewed the cases asserted by Creditor to be part of a fraudulent scheme and has noticed the following property listed in each case that Creditor cites, plus two additional ones for the debtor in this case:

A. Justino Quiles, Case No. 15-91168

1. Chapter 7 Case filed on December 2, 2015, *in pro se*.
2. Property listed on the voluntary petition as the debtor's current address. Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. Dckt. 15.
4. Case dismissed on December 31, 2015, for failure to file documents including Schedules and Statement of Financial Affairs.. Dckt. 21.

B. Emidio Ramirez, Case No. 16-90439

1. Chapter 7 Case filed on May 23, 2016, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.
4. Case dismissed on June 21, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. Dckt. 19.

C. Justino Sandoval, Case No. 16-90789

1. Chapter 7 Case filed on August 29, 2016, *in pro se*.
2. Property listed on the voluntary petition as the debtor's current address. 16-90789, Dckt. 1.
3. A request for extension of time to file the documents was filed and granted. *Id.*, Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.
4. Case dismissed on September 20, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 20.

D. Justino Quiles, Case No. 16-90881

1. Chapter 7 Case filed on September 26, 2016, *in pro se*.
2. Property listed on the voluntary petition as the debtor's current address. 16-90881, Dckt. 1.
3. On Schedule A/B filed in Case No. 16-90881 no interest in the Property. *Id.*, Dckt. 14 at 3.
4. On Schedule D filed in Case No. 16-90881, Justino Quiles states under penalty of perjury that there are no creditors with any secured claims. *Id.*, Dckt. 14 at 15.
5. Case dismissed on January 16, 2017, for failure to appear at the Meeting of Creditors. *Id.*, Dckt. 29.

E. Emidio Ramirez, Case No. 16-91019

1. Chapter 7 Case filed on November 7, 2016, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. 16-91019, Dckt. 1.
3. Case dismissed November 28, 2016, for failure to file document, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 14.

F. Emidio Ramirez, Case No. 17-90214 (Current Bankruptcy Case)

1. Chapter 7 Case filed on March 17, 2017, *in pro se*.
2. Debtor listed the Property as his current address on the voluntary petition. 17-90214, Dckt. 1.
3. Debtor states under penalty of perjury on Schedule A/B that he does not have any interest in the Property. *Id.*, Dckt. 21 at 1. On Schedule D Debtor states under penalty of perjury that he has no creditors with any secured claims. *Id.* at 13. On Schedule H Debtor states under penalty of perjury that he has no unexpired leases. *Id.* at 22.

At the October 19, 2017 hearing, the court addressed Creditor's motion for relief from the automatic stay under 11 U.S.C. § 362(d)(4), which resolves Creditor's opposition to this Motion. The Chapter 7 Trustee has moved for this case to be dismissed because Debtor has failed repeatedly to attend the Meeting of Creditors as required by the Code. Grounds exist to dismiss this case. The Motion is granted, and the case is dismissed.

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

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

No 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.

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 14, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay is xxxxxxx.

MTGLQ Investors, L.P. (“Movant”) seeks relief from the automatic stay with respect to Marjorie Shamgochian’s (“Debtor”) real property commonly known as 2360 Mira Flores Drive, Turlock, California (“Property”). FN.1. Movant has provided the Declarations of Terrance Blakemore and Carrie Dockler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN.1. Movant combined the Motion and Memorandum of Points and Authorities for this matter. Local Bankruptcy Rule 9014-1(d)(4) states that a motion and memorandum of points and authorities may be filed as a single document if the filing does not exceed six pages. Movant exceeded the page-limit.

The Dockler Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$11,437.14 in post-petition payments past due. The Declaration also provides evidence that there are thirty-five pre-petition payments in default, with a pre-petition arrearage of \$74,528.33.

ISSUE OF SERVICE AND COMPETENCY OF DEBTOR

This court has conducted several hearings and has now issued an Order to Show Cause and to Conduct a Competency Hearing concerning the named Debtor, Marjorie Shamgochian. Order, Dckt. 58. That Order discusses in detail the questionable conduct of Debtor’s grandson in filing repeated bankruptcy cases in the Debtor’s, his grandmother’s, name. There arises the question of whether Debtor is competent, is aware of the bankruptcy case, and is able to act to protect her rights and interests. It was disclosed to the court that Debtor’s other grandson is living in the Property that is the subject of the motion, and nobody is making the required mortgage payments. It was also disclosed that Debtor is living in Mexico with her son and is apparently unable to communicate with her grandson, who filed this case, the Chapter 7 Trustee, or the U.S. Trustee by phone.

At the hearing, the court addressed with counsel for Creditor how the Motion was served and whether the court could or should proceed without the Debtor being present. **XXXXXXXXXX**.

The court further addressed with Creditor and **XXXXXXXXXX**, the issues concerning Federal Rule of Bankruptcy Procedure 9011 in connection with the statements made in the Petition, Schedules, and other documents filed by Steven Shamgochian in this case.

DISCUSSION OF MOTION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by secured by Movant’s deed of trust is determined to be \$342,475.91, as stated in the Dockler Declaration. Debtor has not filed a Schedule A for the court to evaluate the Property’s value, and Movant has only provided the Declaration of Terrance Blakemore who testifies that he performed a sales comp of the analysis and concluded that it is worth \$340,000.00. Dckt. 42.

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 post-petition payments that have come due. 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). The court is unable to determine whether Debtor has equity in the Property, however, because no persuasive evidence has been provided. Debtor has not filed a Schedule A, and Movant has only provided the testimony of a broker who performed a sales comp evaluation that conveniently happens to be slightly less than the amount owed to Movant. The court denied without prejudice the relief requested under 11 U.S.C. § 362(d)(2).

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.

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), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as**

opposed to every other order issued by the court, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by MTGLQ Investors, L.P. and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted MTGLQ Investors, L.P. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 MTGLQ Investors, L.P. (“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 for cause pursuant to 11 U.S.C. § 362(d)(1) to allow MTGLQ Investors, L.P., 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 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 to obtain possession of the real property commonly known as 2360 Mira Flores Drive, Turlock, California (“Property”).~~

~~IT IS FURTHER ORDERED that relief from the automatic stay requested under 11 U.S.C. § 362(d)(2) is denied without prejudice, the court not being provided with sufficient evidence to determine whether there is equity in the Property.~~

~~IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

~~No other or additional relief is granted.~~

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 19, 2017 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’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 19, 2017. By the court’s calculation, 30 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.

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 236 Fairmont Street, Colorado Springs, Colorado (“Property”). The moving party has provided the Declaration of Dave McGraw to introduce evidence as a basis for Movant’s contention that Trino Ramirez and Monica Ramirez (“Debtor”) do 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. Based upon the petition, Debtor used to live at the Property, but moved away from it in October 2016. Movant sought to quiet title in an action in Colorado District Court, County of El Paso and received summary judgment quieting title in favor of Movant on February 21, 2017. Exhibit 3, Dckt. 50.

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).

Movant has presented a colorable claim for title to and possession of this real property. 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 Wells Fargo Bank, N.A., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 236 Fairmont Street, Colorado Springs, Colorado, 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 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), 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, 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 vacated to allow Wells Fargo Bank, N.A. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 236 Fairmont Street, Colorado Springs, Colorado.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

5. [17-90276-E-7](#) **MARGARET/CHARLES GABLE** **MOTION FOR RELIEF FROM**
RCO-1 **Martha Lynn Passalacqua** **AUTOMATIC STAY AND/OR MOTION**
 FOR ADEQUATE PROTECTION
 9-7-17 [63]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 19, 2017 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, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 7, 2017. By the court’s calculation, 42 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.

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Margaret Gable and Charles Gable’s (“Debtor”) real property commonly known as 1513 West Whitmore Avenue, Modesto, California (“Property”). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Joselle Bracy Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$6,532.90 in post-petition payments past due.

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 \$246,336.62 secured by Movant’s first deed of trust, as stated in the Joselle Bracy Declaration and Schedule D. The value of the Property is determined to be \$224,760.00, as stated in Schedules A and D.

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 post-petition payments that have come due. 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). 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).

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), and this part of the requested relief is not granted.

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys’ fees or having any obligation to pay attorneys’ fees. Based on the pleadings, the court would either: (1) have to award attorneys’ fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys’ fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

Request for Prospective Injunctive Relief

In addition, Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

No points and authorities is provided in support of the Motion. If a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Wells Fargo Bank, N.A., and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Wells Fargo Bank, N.A., and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 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 that 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 to obtain possession of the real property commonly known as 1513 West Whitmore Avenue, Modesto, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

6. [17-90485](#)-E-7 **STEPHEN RICHARDS**
AP-1 **David Foyil**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
8-31-17 [\[28\]](#)

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the October 19, 2017 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, Debtor’s Attorney, and Chapter 7 Trustee on August 31, 2017. By the court’s calculation, 49 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

JPMorgan Chase Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2014 Subaru Impreza, VIN ending in 1138 (“Vehicle”). The moving party has provided the Declaration of Elaine Sanchez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Stephen Richards (“Debtor”).

The Elaine Sanchez Declaration provides testimony that Debtor has not paid since March 24, 2017, and the monthly payments are \$477.61. The Motion pleads with particularity that Debtor failed to make payments as of June 28, 2017, for a total default of \$1,661.48.

The Elaine Sanchez Declaration seeks to introduce evidence establishing the Vehicle’s value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated, and it is illegible.

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the “market reports and similar commercial publications” exception to the hearsay rule (Federal Rule

of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Elaine Sanchez to be that she obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

The Kelley Blue Book report provided by Movant appears to indicate that the Vehicle's mileage is around 46,000 miles, but the court cannot actually determine the number input because the exhibit provided to the court is largely illegible. On Schedules B and D, Debtor lists the Vehicle as having 159,817 miles and being in good condition. The disparity regarding mileage may be the reason that Movant's and Debtor's valuations differ so drastically. Without credible evidence as to the state of the Vehicle, and its mileage, the court is not able to determine its value.

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 \$15,872.69, as stated in the Elaine Sanchez Declaration. On the Statement of Intention, Debtor has indicated to the court that he will surrender the Vehicle back to Movant.

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 because of defaults in payments that have come due and because Debtor intends to surrender 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). Based upon the allegations of value (including Debtor's \$4,374.00 valuation and Movant's questionable \$15,498.00 valuation), the court determines that there is no equity in the Vehicle for either Debtor or the Estate using either Debtor's valuation or Movant's valuation. 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).

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 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 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 JPMorgan Chase 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 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 Subaru Impreza (“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.