

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**December 17, 2015 at 10:00 a.m.**

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1. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION FOR LEAVE TO  
[14-9033](#) RMY-1 FILE THIRD PARTY COMPLAINT  
ARTERBURN ET AL V. CHOPRA AGAINST MID VALLEY SERVICES,  
INC.  
6-4-15 [[19](#)]

CONTINUED: 10/22/15

**Final Ruling: No appearance at the December 17, 2015 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<b>The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. is continued to 10:00 a.m. on February 4, 2016.</b>
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Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

**STIPULATION**

**December 17, 2015 at 10:00 a.m.**

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an *ex parte* Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

The court approved the stipulation on June 25, 2015, approving the requested continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on August 20, 2015.

#### **STIPULATION**

On August 14, 2015, the parties filed an *ex-parte* Application to Approve Second Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 39. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on October 22, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on October 22, 2015.

#### **STIPULATION**

On October 15, 2015, the parties filed an *ex-parte* Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 44. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on December 17, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on December 17, 2015.

#### **STIPULATION**

On December 14, 2015, the parties filed an *ex-parte* Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 51. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on February 4, 2016.

#### **DISCUSSION**

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on February 4, 2016.

2. [15-91045-E-7](#) MATTHEW/GERALYN TRUBY MOTION FOR RELIEF FROM  
APN-1 Scott J. Sagaria AUTOMATIC STAY  
11-13-15 [[13](#)]

SANTANDER CONSUMER USA, INC.  
VS.

**Final Ruling:** No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 13, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Matthew J. Truby and GERALYN R. Truby ("Debtor") commenced this bankruptcy case on October 30, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Pontiac G6, VIN ending in 2647 (the "Vehicle"). The moving party has provided the Declaration of Stephanie Hilliard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hilliard Declaration provides evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$3,408.02.

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 \$20,426.51, as stated in the Hilliard Declaration, while the value of the Vehicle is determined to be \$7,695.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The NADA Valuation

Report states that the Vehicle has a replacement value of \$8,225.00

## **RULING**

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue 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 2010 Pontiac G6 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

3. [15-91049](#)-E-7 SYLVIA SENTER MOTION FOR RELIEF FROM  
WLP-1 Pro Se AUTOMATIC STAY  
12-2-15 [9]  
HUTCHESON INVESTMENT  
PARTNERS, LLC VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Chapter 7 Trustee on December 2, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Hutcheson Investment Partners, LLC dba Westgate Village ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1200 South Carpenter Road, Space 77, Modesto, California (the "Property"). The moving party has provided the Declaration of Annette Schwartz to introduce evidence as a basis for Movant's contention that Sylvia M. Senter ("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 on the evidence presented, Debtor would be at best tenant at sufferance.

Movant has provided a properly authenticated copy of the lease to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

The court shall issue an order terminating and vacating the automatic stay to allow Hutcheson Investment Partners, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1200 South Carpenter Road, Space 77, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Hutcheson Investment Partners, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Hutcheson Investment Partners, LLC and its agents, representatives and successors, to exercise and enforce

all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1200 South Carpenter Road, Space 77, Modesto, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.

4.     15-90965-E-7     JASMINE ALEXANDER                     MOTION FOR RELIEF FROM  
          APN-1             Michael Benavides                 AUTOMATIC STAY  
  11-12-15 [16]  
  
FINANCIAL SERVICES VEHICLE  
TRUST VS.

**Final Ruling:** No appearance at the December 17, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 12, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Jasmine R. Alexander ("Debtor") commenced this bankruptcy case on October 9, 2015. Financial Services Vehicle Trust ("Movant") seeks relief from the

automatic stay with respect to an asset identified as a 2014 BMW 320i , VIN ending in 7074 (the "Vehicle"). The moving party has provided the Declaration of Greg Essman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Essman Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$490.54 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$1,471.61.

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 \$34,057.92, as stated in the Essman Declaration.

The Debtor has not listed the Vehicle on the Debtor's petition as a lease.

Movant states that they are in possession of the Vehicle at this time.

#### **RULING**

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Financial Services Vehicle Trust, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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



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

The Motion for Relief From the Automatic Stay filed by Financial Services Vehicle Trust ("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 BMW 320i("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

5. [15-90976-E-7](#) NIGH/MELVA LAWHON  
SSA-2 Gary Ray Fraley

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-24-15 [[18](#)]

E.J. VALLORTIGARA, ET AL.,  
VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2015. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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E.J. Vallortigara and Betty Vallortigara, as Trustees of the Vallortigara Family Trust Dated May 12, 1987, as to an undivided 21.166% interest, Kenji and Jeanette Yoshimura, As Trustees of the Yoshimura Revocable Trust Dated December 13, 2005, as to an undivided 21.166% interest, Kenette Yoshimura, as to an undivided 21.166% interest, Jay Vallortigara, a single man, as to undivided 21.166%, Jon D. Gaier and Fay Gaier, as Trustees of the Gaier Family Trust, Dated April 3, 1995 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3139 Beaver Court, Copperopolis,

California (the "Property"). Movant has provided the Declaration of Gene Vallortigara to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Vallortigara Declaration states that the Debtor has defaulted on the insurance, has allowed property taxes to accrue, and judgment liens to accrue against the Property.

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 \$177,835.02, with an additional \$30,928.36 in liens and fees, as stated in the Vallortigara Declaration and Schedule D filed by Night Edward Lawhon and Melva Lee Lawhon ("Debtor"). The value of the Property is determined to be \$350,000.00, as stated in Schedules A and D filed by Debtor. However, Debtor has claimed a \$175,000.00 exemption in the property, which appears to render there being no value for the estate. Schedule C, Dckt 1 at 17.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in property taxes and insurance coverage. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). As stated in the declaration, the Movant had to pay out-of-pocket a total of \$14,835.02 for unpaid property taxes and insurance coverage.

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

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Additionally, the Movant does not provide any request for specific fees nor does the Movant provide time sheets to justify any time spent on the instant Motion. Without this information, the court will not grant attorneys fees.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow E.J. Vallortigara and Betty Vallortigara, as Trustees of the Vallortigara Family Trust Dated May 12, 1987, as to an undivided 21.166% interest, Kenji and Jeanette Yoshimura, As Trustees of the Yoshimura Revocable Trust Dated December 13, 2005, as to an undivided 21.166% interest, Kenette Yoshimura, as to an undivided 21.166% interest, Jay Vallortigara, a single man, as to undivided 21.166%, Jon D. Gaier and Fay Gaier, as Trustees of the Gaier Family Trust, Dated April 3, 1995, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3139 Beaver Court, Copperopolis, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

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

No other or additional relief is granted.

6. [15-90680](#)-E-7 JO GIBSON  
AP-1 David Foyil

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-19-15 [[18](#)]

CITIMORTGAGE, INC. VS.

**Final Ruling: No appearance at the December 17, 2015 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 19, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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CitiMortgage, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1729 Kennedy Road, Bristol, Illinois (the "Property"). Movant has provided the Declaration of Michelle Ross to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ross Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,717.22 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$2,873.46.

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 \$157,566.42 which is Movant's first deed of trust), as stated in the Ross Declaration and Schedule D filed by Jo Anne Gibson ("Debtor"). The value of the Property is determined to be \$151,644.00, as stated in Schedules A and D filed by Debtor.

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

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

Debtor was granted a discharge in this case on December 8, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

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 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 the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated 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 under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1729 Kennedy Road, Bristol, Illinois.

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

No other or additional relief is granted.