

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address EDWARD G. SCHLOSS BAR #102858 3637 MOTOR AVENUE, SUITE 220 LOS ANGELES, CA 90034 TEL: (310) 733-4488 FAX: (310) 836-4888 B24343/lk <input checked="" type="checkbox"/> Attorney for Movant(s) <input type="checkbox"/> Movant(s) appearing without an attorney	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - <u>LOS ANGELES</u> DIVISION	
In re: CARLOS VASQUEZ, Debtor(s).	CASE NO.: 2:13-bk-29563-NB CHAPTER: 13 NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (WITH SUPPORTING DECLARATIONS) REGARDING REAL PROPERTY DATE: October 15, 2013 TIME: 10:00 a.m. COURTROOM: 1545 PLACE: 255 E. Temple Street, Fifteenth Floor Los Angeles, CA
Movant: BAYVIEW LOAN SERVICING, LLC.	

Movant is the (check one)

- Holder of Deed of Trust
- Assignee of Holder of Deed of Trust
- Servicing Agent for Holder of Deed of Trust or Assignee of Holder of Deed of Trust

1. NOTICE IS HEREBY GIVEN to the Debtor and trustee (if any)(Responding Parties), their attorneys (if any), and other interested parties that on the above date and time and in the stated courtroom, Movant in the above-captioned matter will move this court for an Order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.

2. **Hearing Location:**

<input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles	<input type="checkbox"/> 411 West Fourth Street, Santa Ana
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills	<input type="checkbox"/> 1415 State Street, Santa Barbara
<input type="checkbox"/> 3420 Twelfth Street, Riverside	

This form is mandatory . It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- a. This Motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response to this Motion with the court and serve a copy of it upon the Movant's attorney (or upon Movant, if the Motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this Motion.
- b. This Motion is being heard on SHORTENED NOTICE. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence may be filed and served:
- at the hearing at least 5 court days before the hearing.
- (1) A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
- (2) A Motion for Order Shortening Time was filed per LBR 9075-1(b) and was granted by the court and such motion and order have been or are being served upon the Debtor and trustee, if any.
- (3) A Motion for Order Shortening Time has been filed and is pending. Once the court has ruled on that Motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached Motion and the deadline for filing and serving a written opposition to the Motion, if any.
4. You may contact the clerk's office to obtain a copy of an approved court form for use in preparing your response (*Optional Court Form F 4001-1M.RES*), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.
5. If you fail to file a written response to the Motion or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Date: September 30, 2013

Respectfully submitted,

Bayview Loan Servicing, LLC

Movant name

Edward G. Schloss Law Corporation

Printed name of law firm (*if applicable*)

/s/ Edward G. Schloss

Signature of individual Movant or attorney for Movant

Edward G. Schloss

Printed name of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

1. **The Property at Issue:** Movant moves for relief from the automatic stay with respect to following real property (Property):

Street address: **8222 Vista Del Rosa Street**
Unit/suite no.:
City, state, zip code: **Downey, CA 90240**

Legal description or document recording number (including county of recording): COUNTY OF LOS ANGELES:
20062607539

LOT 172 OF TRACT NO. 15568, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP
RECORDED IN BOOK 348 PAGES 17 AND 18 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

2. **Case History:**

- a. A voluntary An involuntary petition
under chapter 7 11 12 13 was filed on (specify date): 08/01/2013
- b. An Order of Conversion to chapter 7 11 12 13
was entered on (specify date):
- c. Plan was confirmed on (specify date):
- d. Other bankruptcy cases affecting this Property have been pending within the past two years. See
attached declaration.

3. **Grounds for Relief from Stay:**

- a. Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant the requested relief from stay as follows:
- (1) Movant's interest in the Property is not adequately protected.
- (a) Movant's interest in the collateral is not protected by an adequate equity cushion.
- (b) The fair market value of the Property is declining and payments are not being made to
Movant sufficient to protect Movant's interest against that decline.
- (c) No proof of insurance re Movant's collateral has been provided to Movant, despite
borrower(s)'s obligation to insure the collateral under the terms of Movant's contract with
Debtor.
- (d) Payments have not been made as required by an Adequate Protection Order previously
granted to Movant.
- (2) The bankruptcy case was filed in bad faith to delay, hinder, and defraud Movant.
- (a) Movant is the only creditor or one of very few creditors listed on the Debtor's master
mailing matrix.
- (b) Non-individual entity was created just prior to bankruptcy filing for the sole purpose of
filing bankruptcy.
- (c) The Debtor filed what is commonly referred to as a "face sheet" filing of only a few pages
consisting of the petition and a few other documents. No other Schedules or Statement
of Financial Affairs (or chapter 13 Plan, if appropriate) have been filed.
- (d) Other (see attached continuation page)

- (3) (Chapter 12 or 13 cases only)
- (a) Postconfirmation plan payments have not been made to the standing trustee.
- (b) Postpetition payments due on the note secured by a deed of trust on the Property have not been made to Movant.
- (4) For other cause for relief from stay, see attached continuation page.
- b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor has no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.
- c. Pursuant to 11 U.S.C. § 362(d)(3), Debtor has failed within the later of 90 days after the order for relief or 30 days after the court determined that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. §101(51B) to file a reasonable plan of reorganization or to commence monthly payments.
- d. Pursuant to 11 U.S.C. § 362(d)(4), Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved:
- (1) The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval; or
- (2) Multiple bankruptcy filings affecting the Property.
4. Movant also seeks annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as specified in the attached declaration(s).
5. **Evidence in Support of Motion: (Important Note: Declaration(s) in support of the Motion MUST be attached hereto.)**
- a. Movant submits the attached declaration(s) on the court's approved forms (if applicable) to provide evidence in support of this Motion pursuant to the LBR.
- b. Other declaration(s) are also attached in support of this Motion.
- c. Movant requests that the court consider as admissions the statements made by Debtor under penalty of perjury concerning Movant's claims and the Property set forth in Debtor's schedules. Authenticated copies of the relevant portions of the schedules are attached as
- d. Other evidence (specify): Assignment and Lost Instrument Affidavit (Exhibit "A")
Movant's Deed of Trust (Exhibit "B")
Assignment of Deed of Trust from MERS to RCS, Inc. (Exhibit "C")
Assignment of Deed of Trust from RCS, Inc. to Franklin Venture, LLC (Exhibit "D")
Assignment of Deed of Trust from Franklin Venture, LLC to Movant (Exhibit "E")
Docket Face Sheet of Zavala Bankruptcy (case # 2:11-bk-25048-SK) (Exhibit "F")
Grant Deed from Movant's borrower transferring a partial interest to Debtor, recorded May 3, 2011 (Exhibit "G")
Docket Face Sheet of Zavala Bankruptcy (case # 2:11-bk-35074-TD) (Exhibit "H")
Docket Face Sheet of Aguilar Bankruptcy (case # 2:11-bk-49992-SK) (Exhibit "I")
Docket Face Sheet of Aguilar Bankruptcy (case # 2:11-bk-62720-WB) (Exhibit "J")
Docket Face Sheet of Acosta Bankruptcy (case # 2:12-bk-50349-VZ) (Exhibit "K")
Docket Face Sheet of Vasquez Bankruptcy (case # 2:13-bk-14136-SK) (Exhibit "L")
6. An optional Memorandum of Points and Authorities is attached to this Motion.

WHEREFORE, Movant prays that the court issue an Order terminating or modifying the stay and granting the following (specify forms of relief requested):

1. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
2. **Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement**

3. Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as specified in the attached declaration(s).
4. Additional provisions requested:
- a. That the 14-day stay described by FRBP 4001(a)(3) is waived.
 - b. That Extraordinary Relief be granted as set forth in the Attachment (*attach optional LBR Form F 4001-1.EXT.RELIEF.ATTACH*).
 - c. For other relief requested, see attached continuation page.
5. If relief from stay is not granted, Movant respectfully requests the court to order adequate protection.

Date: September 30, 2013

Respectfully submitted,

Bayview Loan Servicing, LLC
Movant name

Edward G. Schloss Law Corporation
Printed name of law firm (if applicable)

/s/ Edward G. Schloss
Signature of individual Movant or attorney for Movant

Edward G. Schloss
Printed name of individual Movant or attorney for Movant

**MEMORANDUM OF POINTS AND AUTHORITIES
(MOVANT: BAYVIEW LOAN SERVICING, LLC)**

I. INTRODUCTORY FACTS

This case involves multiple bankruptcies and a transfer of a *partial* interest in real property as part of a bad-faith scheme orchestrated by the original borrower under Movant's Note for the sole purpose of frustrating Movant's attempt to conduct a foreclosure sale of the subject property. The subject property is a *single family residence* located at **8222 Vista Del Rosa Street, Downey, CA 90240** ("subject property" herein). Franklin Bank, SSB is the original *lender* of a Note dated November 16, 2006, in the original principal amount of \$715,000.00. The Note has been lost and an Assignment and Lost Instrument Affidavit is attached as **Exhibit "A"**. The original *borrower* under Movant's Note is **Sergio Gonzalez Zavala**. The Note is secured by a first deed of trust (**Exhibit "B"**) recorded on November 27, 2006 against the subject property. Mortgage Electronic Registration Systems, Inc., as nominee for Franklin Bank, SSB, transferred its beneficial interest in the Deed of Trust to Residential Credit Solutions, Inc ("RCS" herein) via an Assignment of Deed of Trust (**Exhibit "C"**) recorded on March 18, 2011. RCS transferred its beneficial interest to Franklin Venture, LLC via an Assignment of Deed of Trust (**Exhibit "D"**) recorded on June 14, 2012. Franklin Venture, LLC transferred its beneficial interest by an Assignment of Deed of Trust (**Exhibit "E"**) dated June 3, 2013, which Movant is in the process of recording.

As a result of Movant's original borrower Mr. Zavala's failure to maintain his loan obligations to Movant, Movant initiated non-judicial foreclosure proceedings. Movant recorded a Notice of Default on August 26, 2010. There has been a total of at least **seven (7)** known bankruptcies (including the instant bankruptcy) affecting the subject property, filed for the sole purpose of delaying Movant's foreclosure.

On April 7, 2011, original borrower Mr. Zavala filed a chapter 13 bankruptcy (case #2:11-bk-25048-SK), which was the first bankruptcy to affect the subject property (docket face sheet attached as **Exhibit "F"**). This first bankruptcy to affect the subject property was *dismissed* on May 23, 2011 for failure to appear at the 341(a) meeting.

On or about April 28, 2011, prior to the dismissal of his first bankruptcy, Movant's original borrower, Sergio Gonzalez Zavala, executed a Grant Deed (**Exhibit "G"**) which transferred partial interest in the subject property to **Debtor Carlos Vasquez, Maria Acosta, and Joel Aguilar**. The Grant Deed was recorded on **May 3, 2011** with the

Los Angeles County Recorder's office, as instrument # 20110633447 ("Grant Deed" herein). Movant never authorized, and had no knowledge, of said transfer of interest by this Grant Deed.

On June 10, 2011, original borrower Mr. Zavala filed a chapter 13 bankruptcy (case #2:11-bk-35074-TD), which was the **second** bankruptcy to affect the subject property (docket face sheet attached as **Exhibit "H"**). This second bankruptcy to affect the subject property was *dismissed* on August 31, 2011 at the confirmation hearing.

On September 22, 2011, **Joel Aguilar**, one of the grantees under the Grant Deed, filed a chapter 13 bankruptcy (case #2:11-bk-49992-SK), which was the **third** bankruptcy to affect the subject property (docket face sheet attached as **Exhibit "I"**). This third bankruptcy to affect the subject property was *dismissed* on December 13, 2011 for failure to appear at the 341(a) meeting. On December 30, 2011, unauthorized grantee Joel Aguilar filed *another* chapter 13 bankruptcy (case # 2:11-bk-62720-WB), which was the **fourth** bankruptcy to affect the subject property) (docket face sheet attached as **Exhibit "J"**). This fourth bankruptcy was dismissed on January 23, 2012 for failure to appear at the 341(a) meeting.

On December 7, 2012, **Maria Acosta**, another one of the grantees under the Grant Deed, filed a chapter 13 bankruptcy (case #2:12-bk-50349-VZ), which was the **fifth** bankruptcy to affect the subject property (docket face sheet attached as **Exhibit "K"**). This fifth bankruptcy to affect the subject property was *dismissed* on January 16, 2013 for failure to appear at the 341(a) meeting.

Debtor **Carlos Vasquez**, another one of the grantees under the Grant Deed, previously filed a chapter 13 bankruptcy (case #2:13-bk-14136-SK) on February 19, 2013, which was the **sixth** bankruptcy to affect the subject property (docket face sheet attached as **Exhibit "L"**). This sixth bankruptcy to affect the subject property was *dismissed* on April 9, 2013 for failure to appear at the 341(a) meeting.

On May 29, 2013, Movant caused to be recorded a Notice of Trustee's sale, with a scheduled foreclosure sale date of July 1, 2013 at 9:00 a.m.

On August 1, 2013, Debtor Carlos Vasquez, unauthorized grantee of the subject Grant Deed, filed instant chapter 13 bankruptcy (his second bankruptcy within the past year), which was the **seventh** bankruptcy to affect the subject property. Debtor has not made *any* post-petition payments to Movant since the filing of the instant bankruptcy. Neither Debtor or Movant's original borrower, Mr. Zavala, had made a single payment in almost five (5) years.

Movant alleges that as a result of Debtor's *previous* bankruptcy filing (case #2:13-bk-14136-SK), which was pending and dismissed within the past year, the automatic stay is no longer in effect pursuant to 11 U.S.C. 362(c)(3)(A), as Debtor did not file a Motion to extend the 30-day stay. Movant further alleges that Debtor Carlos Vasquez, Movant's original borrower Sergio Gonzalez Zavala, and *unauthorized* grantees Joel Aguilar and Maria Acosta have engaged in a scheme to delay, hinder and defraud Movant's attempts to conduct a non-judicial foreclosure sale of the subject property. Therefore, Movant seeks an *in rem* Court order *terminating* the automatic stay as to Movant's interest in this real property, to prevent further abuse of the bankruptcy laws by the Debtor, Movant's original borrower Sergio Gonzalez Zavala, and *unauthorized* grantees Joel Aguilar and Maria Acosta. The abuse of bankruptcy laws must be put to an end. Enough is enough.

POINTS AND AUTHORITIES

I. RELIEF FROM THE AUTOMATIC STAY IS WARRANTED WHEN THE BANKRUPTCY IS FILED FOR AN IMPROPER PURPOSE

As is more fully set out above and in the Declaration in Support filed concurrently herewith, it is clear that the Debtor is using the Bankruptcy Court in an attempt to forestall Movant's foreclosure sale and eviction remedies resulting therefrom. 11 U.S.C. §362(d)(1) allows relief from stay for "cause".

In the case of In re Fast Food Properties, Ltd. No. 1, 5 B.R. 539 (C.D. Cal. 1998), the Honorable Peter Elliott, Bankruptcy Judge for the Central District of California, held that a case filed solely for the purpose of frustrating the enforcement of power of sale provisions of a deed of trust was subject to dismissal. The court notes:

Under the Bankruptcy Act of 1898, the Bankruptcy Court, without express statutory authority, dismissed Bankruptcy cases which were filed improperly for an improper purpose. *In re Ettinger*, 76 F.2d 741 (Cir. 19-35) states: 'Also, it is the duty of the court sua sponte when it believes its jurisdiction may have been imposed upon to inquire into the facts and act in accordance therewith.'

In re Fast Food Properties, Ltd. No. 1, 5 B.R. at 540; *see also* Porterfield v. Gerstel, 222 F.2d 137 (5th Cir. 1955).

The Automatic Stay provisions of the Code were not intended to be used as a weapon or club to reduce secured creditors into submission with the continued passage of time while no payments are made to them, nor are they intended to be permanent refuge for financially distressed debtors or properties. The bankruptcy laws were intended only to give legitimate debtors a breathing spell from creditors, and to afford a reasonable time to come up with a repayment or reorganization plan.

In re Gaslight Village, Inc., 8 B.R. 866 (Bkrtcy.Conn. 1981).

Bankruptcy Judge Robert Ordin in the case In re Kenney Kar Leasing, Inc., 5 B.R. 304, 308-09 (C.D.Cal. 1980) (emphasis added) explains:

No one questions the right of a debtor to a fair chance at rehabilitation. On the other hand that right is not so pervasive as to permit the destruction of economical rights equally entitled to the sanctioned protection of law. The cited provisions of the Code are an effort to balance these conflicting interest, to grant to the debtor the right to continued enjoyment and exploitation of property and assets upon rehabilitation depends, not at the expense of secured creditors, but on terms which protect secured creditors in the realization of the value of their interest In such property and assets. Against the theme of adequate protection in the use of the secured creditor's collateral, the statutory and legislative history repeat and emphasize the right of secured creditors to realization of the value of the collateral and the right to be protected against decrease in the value of the interest affected.

In the case of In re Frances M. Bystrek, 17 B.R. 894 (Bankr.E.D.Pa 1982), the Honorable William A. King, Bankruptcy Judge for the Eastern District of Pennsylvania, stated:

...the troubling aspect of this case is that debtor's counsel seems to believe that Bankruptcy Court is a legal playground where the debtor can indulge in an elaborate game of catch-me-if-you-can with her creditors. Such is not the case. Although the law grants a generous measure of relief to debtors, this benefit is not gratuitous. The law also imposes a measure of responsibility. As a member of the bar and an officer of the Court, counsel especially should be aware of this fact. The game attempted in this case cannot be permitted.

Clearly, no reorganization or repayment of Movant's claim is or ever was contemplated by this Debtor.

Rather, by filing a bad-faith bankruptcy case for the sole purpose of delaying Movant's foreclosure of the subject property, while not making any payments to Movant, Debtor and Movant's original borrower have abused the Bankruptcy Court to the sole detriment of this creditor, preventing Movant's foreclosure, while the Debtor and Mr. Zavala continue to reap all the benefits of the property. The instant bankruptcy is the seventh bankruptcy to affect the subject property, and Debtor is one (1) out of three (3) grantees under an *unauthorized* Grant Deed to have received a partial interest in the subject property. Movant did not consent, and had no knowledge, of this bad-faith Grant Deed executed by original borrower Mr. Zavala. Therefore, "cause" exists in this case to grant the instant *in rem* Motion vacating the stay.

II. MOVANT IS ENTITLED TO *IN REM* RELIEF FROM STAY IN ORDER TO STOP FURTHER ABUSE OF THE BANKRUPTCY PROCEDURE AND MOVANT'S RIGHTS

11 U.S.C. 362 (d)(4) provides as follows:

With respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either -

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon

changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Debtor's *prima facie* bad-faith justifies the *in rem* relief from stay remedy provided in 11 U.S.C. 362(d)(4) so as to protect Movant from any future bankruptcies which may later be invoked to further delay Movant's assertion of its rights. Debtor filed the instant bankruptcy case, after *purportedly* obtaining a partial interest in the subject property, by an unauthorized Grant Deed, and without making payments to Movant. Debtor is one (1) of three (3) grantees under the *unauthorized* Grant Deed whom had filed a total of five (5) bankruptcies to affect the subject property (in addition to the two (2) bankruptcy cases filed by Mr. Zavala. As of the time of filing, Movant's borrower, Mr. Zavala was **fifty-seven (57) months** in default under Movant's loan. *In rem* pursuant to 11 U.S.C. 362(d)(4) is appropriate considering the bad-faith scheme orchestrated by Mr. Zavala, the original Borrower under Movant's Note, and Debtor's bad-faith bankruptcy filing.

III. CAUSE EXISTS TO VACATE THE STAY BECAUSE THERE IS NO DEBTOR-CREDITOR RELATIONSHIP BETWEEN MOVANT AND THE DEBTOR

A "claim" is defined at 11 U.S.C. §101(5) and means "the right to payment." Likewise, the word "creditor" is defined at 11 U.S.C. §101(10) and means "an entity that has a claim against the debtor...." The evidence before the Court shows that the Debtor in the instant case has no legal obligation or liability on the debt owed to Movant, and that Movant has no claim against the Debtor. Furthermore, Movant has never looked to the Debtor for payment of the debt.

Accordingly, Movant is not a "creditor" and has no "claim" in this proceeding. Debtor cannot use the Bankruptcy Code's provisions to modify Movant's rights under the Note and Deed of Trust. Therefore, cause exists to vacate the automatic stay to allow Movant to proceed with enforcing its rights pursuant to its duly executed Deed of Trust and Note.

IV. DEBTOR DOES NOT OWN THE PROPERTY

This Debtor is a mere unauthorized transferee under a questionable grant deed. Debtor is without any legal rights with respect to the property. Movant's deed of trust at page 10, paragraph 18, precludes Mr. Zavala from transferring any interest in the property without the Movant's prior written approval. No such approval was sought or obtained prior to the purported partial interest transfer to Debtor.

Movant has never ratified the transfer of title to any transferee, including Debtor, nor has Movant looked to the Debtor transferee for payment of this debt. Additionally, there was no bankruptcy court order approving this transfer of *partial* interest to the Debtor.

Movant would be greatly prejudiced if it were forced to accept a modification of the terms of its original loan contract by a person other than the original mortgagor—a third person who has no personal liability on the loan and whose credit was not relied on by the Movant for repayment of the debt, and who is clearly unreliable. Forcing such a contractual relationship upon Movant is especially unjust.

V. NO AUTOMATIC STAY EXISTS AS A RESULT OF DEBTOR'S FAILURE TO
REQUEST A CONTINUANCE OF THE 30 DAY STAY WHICH AROSE DUE
TO DEBTOR'S PRIOR BANKRUPTCY

The instant bankruptcy is the Debtor's second bankruptcy pending within the last year. Debtor's previous bankruptcy, pending within the last year, was a chapter 13 bankruptcy filed on February 29, 2013 and dismissed on **April 9, 2013** (case # 2:13-bk-14136-SK). Debtor filed the instant chapter 13 bankruptcy on **August 1, 2013**. Pursuant to 11 U.S.C. 362(c)(3)(A):

(3) If a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11. Or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed . . .

(A) the stay . . . with respect to any action taken with respect to a debt on property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

As Debtor's *prior* chapter 13 bankruptcy was pending and dismissed within the past year, the automatic stay in the *instant* bankruptcy terminated on the 30th day after the filing of instant case. To Movant's knowledge, Debtor has not filed any request for this court to continue the 30-day stay. Therefore, the stay, *in its entirety* (as to both the Debtor and the estate) no longer exists in the instant bankruptcy. See In re Reswick, 446 B.R. 362 (9th Cir. 2011). The purpose of 11 U.S.C. 362(c)(3)(A) is to deter successive bankruptcy filings by imposing stricter limitations on the power of the automatic stay as subsequent bankruptcy cases are filed. Id. at 372. As 11 U.S.C. 362(c)(3)(A) was created in order to deter successive bankruptcy filers, such as the Debtor, this Court should enter an Order confirming that no stay is currently in effect as to the Debtor and the estate.

VI. THE BANKRUPTCY COURT RETAINS JURISDICTION AFTER DISMISSAL

A Bankruptcy Court, authorized to grant relief from automatic stay, may do so after the dismissal of a Chapter 13 bankruptcy case. Aheong v. Mellon Mortgage Co. (“In re Aheong”), 267 B.R. 233, 239-40 & n. 8 (9th Cir. BAP 2002).

A Bankruptcy Court retains jurisdiction after dismissal to interpret and effectuate its orders, including the nunc pro tunc lifting of the automatic stay in the bankruptcy case. See In re Aheong, 276 B.R. at 239-40 & n. 8 (quoting Tsafaroff v. Taylor (“In re Taylor”), 884 F.2d 478, 481 (9th Cir. 1989)). See also In re Carraher, 971 F.2d 327, 328 (9th Cir. 1992); and, In re Giddens, 289 B.R. 329, 337 (Bankr. N.D. Ill. 2003).

The effect of the dismissal of a case is to restore the debtor and creditors to their pre-petition status. In In re Aheong, 276 B.R. at 239-40, the Court stated:

[D]ismissal generally ends the automatic stay and reverts property of the estate in the entity in which such property was vested immediately before the commencement of the case. 11 U.S.C. §§ 349(b)(3) and 362(c)(1) and (2)(B).

[W]e hold that by granting [a] Motion to Annul the Stay the bankruptcy court was acting to “interpret” and “effectuate” its Dismissal Order, and was not granting new relief “independent” of that order. The “basic purpose” of the Dismissal Order was “to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 338 (1977), U.S. Code Cong. & Admin. News 1978, 5963, 61294; S. Rep. No. 989, 95 Cong., 2d Sess. 48-49 (1978), U.S. Code Cong. & Admin News 1978, 5787, 5835.

In considering Movant’s motion for *in rem* relief from stay pursuant to 11 U.S.C. 362(d)(4), the Court is properly interpreting and effectuating the dismissal of Debtors Chapter 13 petition. This act is within the Bankruptcy Court’s ancillary jurisdiction, which survives dismissal. In re Aheong, 276 B.R. at 239-40 & n. 8.

Movant respectfully requests this Court retain jurisdiction to rule on Movant’s *in rem* motion for relief from the automatic stay, even if the Court dismisses the Debtor.

VII. CONCLUSION

It is not, nor was it ever, the intent and purpose of the Bankruptcy law to make the protective shield of the Bankruptcy Courts available to debtors who have no ability or intent to reorganize. Debtor is not and never was Movant’s borrower, and Debtor is one (1) out of three (3) grantees, under an *unauthorized* Grant Deed, to have filed a bankruptcy case circumventing Movant’s foreclosure sale of the subject property. There has been a total of seven (7) bankruptcy filings affecting the subject property. Additionally, no party has made *any post-petition* payments

since the filing of the *instant* bankruptcy, and no payment has been received in almost five (5) years. The automatic stay is no longer in effect in the instant bankruptcy pursuant to 11 U.S.C. 362(c)(3)(A). The instant bankruptcy was filed with the sole intention of forestalling Movant's enforcement of its lien and is part of a scheme to delay, hinder and defraud Movant by way of an unauthorized *partial* transfer of interest in the subject property. Movant requests that this Court grant *in rem* relief from the automatic stay, to stem the tide of abuse by Debtor and Mr. Zavala and to allow this Movant to obtain possession of its property.

Respectfully Submitted,

DATED: September 30, 2013

EDWARD G. SCHLOSS

By: /s/ Edward G. Schloss
EDWARD G. SCHLOSS
Attorney for Movant

REAL PROPERTY DECLARATION

1. John Stamm declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the real property that is the subject of this Motion (Property) because (specify):

- I am the Movant and owner of the Property.
- I manage the Property as the authorized agent for the Movant.
- I am employed by Movant as (state title and capacity): Bankruptcy Coordinator
- Other (specify):

2. I am one of the custodians of the books, records and files of Movant that pertain to loans and extensions of credit given to Debtor concerning the Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. The Movant is:

- Original holder of the beneficial interest in the Property. A true and correct copy of a recorded proof of this interest is attached hereto as (e.g. deed of trust).
- Assignee of the original holder of the beneficial interest in the Property. A true and correct copy of recorded proof of this interest is attached hereto as Exhibits "C", Exhibit "D", and Exhibit "E" (E.g., allonge, assignment, et al.)
- Servicing or subservicing agent pursuant to a servicing agreement or other documented authorization to act as Movant for the owner of the beneficial interest. Attached hereto as _____ is a true and correct copy of the relevant part of the document which reflects authority to act as Movant for the owner of the beneficial interest.

4. a. The address of the Property that is the subject of this Motion is:

Street address: **8222 Vista Del Rosa Street**
Unit/suite no.:
City, state, zip code: **Downey, CA 90240**

b. The legal description or document recording number (including county of recording): COUNTY OF LOS ANGELES: 20062807539

LOT 172 OF TRACT NO. 15568, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 348 PAGES 17 AND 18 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

5. Type of property (check all applicable boxes):

- a. Debtor's(s) principal residence
- b. Other single family residence
- c. Multi-unit residential
- d. Commercial
- e. Industrial
- f. Vacant land
- g. Other (specify):

6. Nature of Debtor's interest in the Property:

- a. Sole owner
- b. Co-owner(s) (specify): Carlos Vasquez, Maria Acosta, and Joel Aguilar
- c. Lien holder (specify):
- d. Other (specify):
- e. Debtor did did not list the Property in the schedules filed in this case.
- f. Debtor acquired the interest in the Property by grant deed quitclaim deed trust deed

The deed was recorded on: 05/03/2011

7. Amount of Movant's claim with respect to the Property:

	<u>PREPETITION</u>	<u>POSTPETITION</u>	<u>TOTAL</u>
a. Principal:	\$ 723,998.33	\$	\$ 723,998.33
b. Accrued interest:	\$ 171,891.65	\$ 5,256.54	\$ 177,148.19
c. Late charges	\$ 21,818.15	\$	\$ 21,818.15
d. Costs (attorney's fees, other costs):	\$ 8,314.06	\$ 1,026.00	\$ 9,340.06
e. Advances (property taxes, insurance):	\$ 50,717.88	\$	\$ 50,717.88
f. Less suspense or partial balance paid:	\$ []	\$ []	\$ []
g. TOTAL CLAIM as of September 17, 2013	\$ 976,740.07	\$ 6,282.54	\$ 983,022.61
h. <input type="checkbox"/> Loan is all due and payable because it matured on (specify date):			

8. Movant holds a deed of trust judgment lien other (specify) _____ that encumbers the Property.

- a. A true and correct copy of the document as recorded is attached as **Exhibit "B"**.
- b. A true and correct copy of the promissory note or other document that evidences the Movant's claim is attached as **Exhibit "A"**.
- c. A true and correct copy of the assignment(s) transferring the beneficial interest under the note and deed of trust to Movant is attached as **Exhibit "C"**, **Exhibit "D"**, and **Exhibit "E"**.

9. Status of Movant's foreclosure actions relating to the Property (fill the date or check the box confirming no such action has occurred):

- a. Notice of default recorded on the following date: 08/26/2010 or none recorded
- b. Foreclosure sale originally scheduled for the following date: 07/01/2013 or none scheduled
- c. Foreclosure sale currently scheduled for the following date: 11/19/2013 or none scheduled
- d. Foreclosure sale already held on the following date: N/A or none held
- e. Trustee's deed on sale already recorded on the following date: N/A or none recorded

10. Attached (optional) hereto as Exhibit _____ is a true and correct copy of a POSTPETITION statement of account that accurately reflects the dates and amounts of all charges assessed to and payments made by the Debtor since the petition date.

11. (chapter 7 and 11 cases only):

Status of Movant's loan:

- a. Amount of current monthly payment: _____ for the month of _____.
- b. Number of payments that have come due and were not made: _____. Total amount: \$ _____

c. Future payments due by time of anticipated hearing date (if applicable):

An additional payment of \$_____ will come due on _____, and on the _____ day of each month thereafter. If the payment is not received within _____ days of said due date, a late charge will be charged to the loan.

d. The fair market value of the entire Property is \$_____, established by:

- Appraiser's declaration with appraisal attached herewith as Exhibit _____.
- A real estate broker or other expert's declaration regarding value attached as Exhibit _____.
- A true and correct copy of relevant portion(s) of Debtor's schedules attached as _____.
- Other (specify): _____

e. Calculation of equity in Property:

Based upon preliminary title report Debtor's admissions in the schedules filed in this case, the Property is subject to the following deed(s) of trust or lien(s) in the amounts specified securing the debt against the Property:

	<u>Name of Holder</u>	<u>Amount as Scheduled by Debtor (if any)</u>	<u>Amount known to Declarant and Source</u>
1st deed of trust:			
2nd deed of trust:			
3rd deed of trust:			
Judgment liens:			
Taxes:			
Other:			

TOTAL DEBT:

f. Evidence establishing the existence of the above deed(s) of trust and lien(s) is attached as

And consists of:

- Preliminary title report
- Relevant portions of Debtor's schedules as filed in this case
- Other (specify): _____

g. Subtracting the deed(s) of trust and other lien(s) set forth above from the value of the Property as set forth in Paragraph 10 above, the Debtor's equity in the Property is \$ 0 (§ 362(d)(2)(A)).

h. The value of the "equity cushion" in the Property exceeding Movant's debt and any lien(s) senior to Movant is \$_____(§ 362(d)(1)).

i. Estimated costs of sale: \$_____(estimate based upon ___% of estimated gross sales price)

j. The fair market value of the Property is declining based on/due to:

12. (Chapter 12 and 13 cases only)

Chapter 12 or 13 case status information:

- a. 341(a) meeting currently scheduled for (or concluded on) the following date: 05/20/2013
Confirmation hearing currently scheduled for (or concluded on) the following date: 05/20/2013
Plan confirmed on the following date (if applicable): _____

- b. Postpetition payments due BUT REMAINING UNPAID since the filing of the case:
- | | | |
|-----|-------------------------------|--------------------|
| (1) | payment(s) due at \$ 3,351.34 | Each = \$ 3,351.34 |
| | payment(s) due at \$ | Each = \$ |
| | payment(s) due at \$ | Each = \$ |
| | payment(s) due at \$ | Each = \$ |
| | late charges at \$ | Each = \$ |
| | late charges at \$ | Each = \$ |
| | late charges at \$ | Each = \$ |
| | late charges at \$ | Each = \$ |

(See attachment for additional breakdown or information attached as Exhibit _____.)

- c. Postpetition advances or other charges due but unpaid: \$
(See attachment for details of type and amount attached as Exhibit _____.)
- d. Attorneys' fees and costs \$ 1,026.00
(See attachment for details of type and amount attached as Exhibit _____.)
- e. Less suspense or partial paid balance [\$]
- TOTAL POSTPETITION DELINQUENCY: \$ 4,377.34

f. Future payments due by time of anticipated hearing date (if applicable):
An additional payment of \$ 3,351.34 will come due on October 1, 2013, and on the first (1st) day of each month thereafter. If the payment is not received by the sixteenth (16th) day of the month, a late charge will be charged to the loan.

g. Amount and date of the last 3 postpetition payments received in good funds, regardless of how applied, from the Debtor, if applicable:

\$ _____ received on _____

\$ _____ received on _____ [NO POST-PETITION PAYMENTS RECEIVED]

\$ _____ received on _____

- h. The claim is provided for in the chapter 12 or 13 Plan. Plan payment history is attached as Exhibit
- i. See attached declaration(s) of chapter 12 or 13 Trustee regarding receipt of payments under the plan (attach LBR Form F 4001-1M.13).

13. Movant has not been provided with evidence that the Property is currently insured, as required under the terms of the loan.

14. The court determined that the Property qualifies as single asset real estate on _____ as defined in 11 U.S.C. §101(51B). More than 90 days have passed since the filing of the petition, more than 30 days have passed since the court determined that the Property qualifies as single asset real estate, the Debtor has/have not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time or the Debtor has/have not commenced monthly payments to Movant as required by 11 U.S.C. § 362(d)(3).

15. See attached continuation page for facts establishing that the bankruptcy case was filed in bad faith to delay, hinder, and or defraud Movant.

16. The filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved:

a. The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. See attached continuation page for facts establishing the scheme.

b. Multiple bankruptcy filings affecting the Property. The multiple bankruptcy filings include the following cases:

- See attached continuation page for more information about other bankruptcy cases affecting the Property.
- See attached continuation page for facts establishing that the multiple bankruptcy cases were part of a scheme to delay, hinder, and defraud creditors.
17. Movant seeks annulment of the automatic stay so that the filing of the bankruptcy petition does not affect any and all of the enforcement actions set forth in paragraph 8 above that were taken after the filing of the bankruptcy petition in this case.
- a. These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. Although Movant knew about the bankruptcy filing, Movant had previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting this Property as set forth in paragraph 17(b) above.
- c. For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on September 30, 2013 at Coral Gables, FL.

John Stamm
Printed Declarant's name

[Signature]
Signature of Declarant

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

3637 Motor Avenue, Suite 220, Los Angeles, CA 90034

A true and correct copy of the foregoing document described as **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (WITH SUPPORTING DECLARATIONS) REGARDING REAL PROPERTY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Order(s) and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On September 30, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) stated below:

- Kathy A Dockery (TR) efiling@CH13LA.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL OR OVERNIGHT MAIL (state method for each person or entity served):

On September 30, 2013, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR:
CARLOS VASQUEZ
8222 VISTA DEL ROSA STREET
DOWNEY, CA 90240

ORIGINAL BORROWER:
SERGIO GONZALEZ ZAVALA
8222 VISTA DEL ROSA STREET
DOWNEY, CA 90240

JUNIOR LIENHOLDER:
FRANKLIN BANK, SSB
9800 RICHMOND AVE., SUITE 680
HOUSTON, TX 77042

HONORABLE NEIL W. BASON
U.S. BANKRUPTCY COURT
255 E. TEMPLE STREET, SUITE 1552
LOS ANGELES, CA 90012

JUNIOR LIENHOLDER:
FRANKLIN BANK, SSB
C/O MORTGAGE RESOURCE NETWORK
14800 LANDMARK BLVD., SUITE 400
DALLAS, TX 75254
ATTN: POST PRODUCTION REVIEW
UNIT ID 2278

JUNIOR LIENHOLDER:
FRANKLIN BANK, SSB
C/O MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC
P.O. BOX 2026
FLINT, MI 48501-2026

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: September 30, 2013

Signature: /s/ Reynaldo Del Pilar

Printed Name: Reynaldo Del Pilar