

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 14, 2020 at 1:30 p.m.

1.	<u>18-27651</u> -E-13 <u>AP-1</u>	VIVIAN TOLIVER Peter Macaluso	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-6-19 [41]
WELLS FARGO BANK, N.A. VS.			

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 6, 2019. By the court’s calculation, 39 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.
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Wells Fargo, N.A. (“Movant”) seeks relief from the automatic stay with respect to Vivian Toliver’s (“Debtor”) real property commonly known as 708 Los Lunas Way, Sacramento, California (“Property”). Movant has provided the Declaration of Tameka S. Green to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five (5) post-petition payments, with a total of \$6,951.59

in post-petition payments past due. Declaration, Dckt. 44.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on December 17, 2019. Dckt. 48. Trustee asserts that Debtor is current under the confirmed plan where the last payments totaling \$1,400.00 posted December 3, 2019. Debtor's confirmed plan classifies Movant as a Class 1 secured claim with actual treatment outlined in the Enslinger Provisions include under Section 7 of the Plan. Debtor's adequate protection payments are \$1,200.00 against principal and interest only.

Movant's filed Proof of Claim (Claim 3-1) reflects an arrearage of \$117,740.00 as of the date of the petition.

Trustee further asserts that Debtor's confirmed Plan provides Debtor have in process a HAMP Application under Section 7.03, and that where Creditor asserts Debtor has not submitted any loan modification application since the case was filed on December 10, 2018, the Creditor might be entitled to relief.

DEBTOR'S RESPONSE

Debtor filed a Response on December 31, 2019. Dckt. 51. Debtor's Counsel asserts that Debtor has been working with the mortgage lender on obtaining approval of a loan modification. However, due to the recent holidays, Debtor was unable to provide a declaration to counsel. Debtor will supplement the record before hearing on this matter.

DISCUSSION

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 \$204,173.06 (Declaration, Dckt. 44), while the value of the Property is determined to be \$300,000.00, as stated in Schedules B and D filed by Debtor.

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.

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 Wells Fargo, 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 Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 708 Los Lunas Way, Sacramento, California, (“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 Property.

No other or additional relief is granted.

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

Below is the court's tentative ruling.

Debtor's Atty: Pro Se

Notes:

Set by order of the court dated 12/6/19 [Dckt 33]. Wallace Lundry, the Debtor, and NeNae A. Lundry, his non-debtor spouse, are to appear in person. No telephonic appearances permitted.

Trustee's Response to Interim Order Vacating Dismissal of Case and Setting Status Conference and Status Update filed 12/20/19 [Dckt 60]; Declaration filed 12/20/19 [Dckt 61]

The Ex Parte Motion to Vacate the Dismissal is denied, the Interim Order Vacating the Dismissal is Terminated, and the Bankruptcy Case is dismissed.

On December 4, 2019, Wallace Lundry, the Debtor, filed with the court a letter apologizing for missing the November 26, 2019 "appointment," identifying some medical issues he has been addressing, and stating that he has called the Chapter 13 Trustee explaining the situation. The letter also inquires if a different "meeting" can be scheduled.

As addressed below, the Debtor's bankruptcy case was dismissed on November 29, 2019. There is no basis for resenting meetings in a dismissed case.

However, the court construes the December 4, 2019 filed document (Dckt. 48) to be an *Ex Parte* Request to Vacate the Order Dismissing This Case so that the Debtor can diligently prosecute this case.

In light of the medical issues cited, the court vacated the order (Dckt. 44) dismissing this case on an interim basis and sets a Final Hearing on the *Ex Parte* Request to Vacate Dismissal for 1:30 p.m. on January 14, 2020 to:

A. Afford Debtor the opportunity to obtain counsel and take action to show that this

case is being diligently prosecuted, which will include:

1. Identifying and having confirmation from the family member(s) providing the \$2,000.00 a month support contribution (not loans);
 2. Having in place the moneys for an immediate adequate protection payment to U.S. Bank, N.A./Rushmore as the creditor holding the claim secured by the Salmon Falls Road Property, and providing for going forward monthly adequate protect payments during the expedited marketing and sale of said Property; and
 3. Having an amended plan filed that complies with the Bankruptcy Code and motion to confirm said plan filed and set for hearing.
- B. Have employed and actively marketing for sale the Debtor's real property on an expedited basis; and
- C. Whether to issue a final order denying the request to vacate the dismissal and reenter the order dismissing this case because such expedited, good faith prosecution of a Chapter 13 Plan does not appear feasible.

DISCUSSION

Debtor commenced this case on September 4, 2019. This case was dismissed on November 29, 2019. The court has attached for the Debtor's convenience a copy of the court's Minutes (Dckt. 43) from the November 20, 2019 hearing on the Trustee's Motion to Dismiss this case. As addressed in the Minutes, the Debtor's plan originally filed in this case failed to make any provision for the Debtor to fund the plan, no claims to be paid were provided for (those fields marked "N.A."). Plan, Dckt. 12. The Plan did include an additional provision stating that Debtor intended to sell the Salmon Falls Road Property and then pay Capitol One from the escrow. *Id.* at 7. No provision was made for setting any terms for the sale, deadline, or what was to occur if Debtor failed to timely sell the property. The Trustee filed an objection to confirmation of that Plan.

Review of Current and Prior Chapter 13 Case

On November 18, 2019, the Debtor filed another Chapter 13 Plan (the "Amended Plan"). Dckt. 40. In the Amended Plan, Debtor was now to make \$2,450.00 a month plan payments and to sell the Salmon Falls Road property. *Id.*, ¶ 2.01, ¶ 2.02. The term of the Amended Plan was set for thirty-six months.

Nationstar Mortgage is listed as the only Class 1 Claim holder, and would receive a current monthly payment of \$2,085.99 and an arrearage divided of \$1,583.33 (for a \$57,000 stated pre-petition arrearage amount). *Id.*, ¶ 3.07(c).

Attached as an additional provision, modifying treatment of the Nationstar secured claim treatment. *Id.* at p. 7. It provides that the Debtor will commence making \$2,450 a month payments to Nationstar on or before January 25, 2019 (which is ten months before the Amended Plan was filed). Further, it provides for the sale of the Salmon Falls Road property to be completed on or before

December 31, 2019 (which is only forty-nine days after the Amended Plan was filed).

However, the additional provisions then further provide that no payments will be made on the pre-petition arrearage, Paragraph 3.07(c) stating that there was to be a \$1,583.33 arrearage payment, until after the sale of the property is completed.

These additional provisions appear to be a copy of the additional provisions that Debtor's former counsel included in a proposed Chapter 13 Plan in Debtor's prior Chapter 13 case. 18-20933; Plan, Dckt. 66. The plan in the prior case was filed on December 14, 2018, so the dates to commence payments and to complete the sale make sense in the context of that Plan. The court denied confirmation of the Plan based on the separate objections of US Bank, N.A., which identified itself as the creditor with the secured claim, and the Chapter 13 Trustee. *Id.*; Minutes and Orders, Dckts. 92, 93, 94, 95.

On Original Schedule I in this case, Debtor lists income of \$2,110 a month, consisting of: Debtor's \$905 Social Security, non-debtor spouse's \$710 Social Security, and \$500 from "Garage Sales." Dckt. 11 at 28-29. Debtor states that his former employment had been as a Realtor. For expenses, on Original Schedule J Debtor lists having expenses of (\$3,461) for his family unit of two persons (Debtor and non-debtor spouse). *Id.* at 30-32. Of this, \$2,100 is listed as the mortgage, property taxes, and property insurance. Debtor lists no expense for water/sewer/garbage, phone/internet/cable, personal care services, medical/dental, or entertainment. Debtor lists \$400 a month for food and housekeeping supplies (which, after allowing \$75 for supplies, leaves \$1.81 per person for each meal a month). It does not appear that these expenses are realistic.

Amended Schedules

On November 18, 2019, Debtor filed Amended Schedules. Dckt. 39. On Amended Schedule I, Debtor now lists income of \$4,115, with there being an additional \$2,000 for family support payments. *Id.* at 15. This is stated to be provided "until home sells." With this new \$2,000 of family support (from an unidentified source), Debtor states having \$654 in monthly net income after expenses (including the mortgage, property insurance, and property tax expenses). *Id.* at 18. The Debtor has not provided anything for the missing expenses identified in Original Schedule J.

On Amended Schedule A/B Debtor states that the Salmon Falls Road property has a value of \$500,000. *Id.* at 1. On Original Schedule D (no amended Schedule D filed), Debtor lists creditor "Rushmore" as having a claim of (\$440,000) secured by that property. In the prior bankruptcy case (18-20933), U.S. Bank, N.A., as Trustee (for whom Rushmore Loan Management Services is listed as the person to whom payments and notices are to be sent) filed Proof of Claim No. 5-1 stating a secured claim of (\$405,943.17) as of the February 20, 2018 commencement of that prior case. It appears that Debtor's (\$440,000) stated amount of the claim takes into account interest, fees, and expenses that have accrued since the filing of the prior case.

Allowing for normal costs of sale, estimated at 8% of the sales price, and assuming that the property would sell for \$500,000, there would appear to be a small, but economically significant to the Debtor, equity in the property.

Vacating Order Dismissing Case

Assuming that Debtor does have financial support from family members sufficient to provide for an adequate protection payment, it appears that Debtor (most probably with the assistance of counsel)

may be able to obtain a low five digit equity value from a timely, expedited sale of the Salmon Falls Road Property. Some doubt exists in light of Debtor (who states he is a retired Realtor) failing to do so during the twelve months since he first stated that he was going to do so in his prior Chapter 13 case.

The court recognized the disruption of business schedules and limited hearing dates during this Holiday Season in year end 2019, setting a date for a final hearing on the *ex-parte* request to vacate the dismissal is not practical. But it did allow sufficient time for Debtor to obtain counsel and move forward in this case, if possible, and setting a final hearing on the request to vacate the dismissal.

January 14, 2020 Hearing

Though afforded the opportunity, no responsive pleadings have been filed by Debtor and no attorney has appeared in this case for Debtor.

The Chapter 13 Trustee has filed a Response. Dckt. 60. The Trustee directs the court to the Trustee's Motion to Dismiss this case, which the Motion for which the order dismissing the case was entered. As the Trustee notes, the dismissal was not merely for "missing a meeting," but, as set forth in the Civil Minutes from the November 20, 2019 hearing:

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Wallace A. Lundry ("Debtor"), has no Plan payment, Plan length, or claims to be paid.
2. Debtor has failed to provide the Trustee with a tax transcript or copy of his tax returns.

DISCUSSION

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Plan Blank

Debtor filed an incomplete plan that does not include plan payment, length or claims to be paid. Plan fails to comply with 11 U.S.C. §§ 1325 and 1322.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

Dckt. 43.

The Debtor has not sought to prosecute this case and has not obtained counsel. Debtor, with the assistance of counsel could not successfully prosecute his prior Chapter 13 case which was dismissed after having been pending for a year. In this case, it does not appear that Debtor can prosecute this case.

Proper grounds for vacating the Dismissal and for this case to proceed have not been provided to the court.

The request to vacate is denied, the court's interim order is terminated, and the case is Ordered to be dismissed.

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

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

The Motion to Vacate the Dismissal of this case filed by Wallace Lundry, the Debtor having been granted on an interim basis pursuant to the ex parte request of Debtor, the court having conducted a final hearing, and upon and upon review of the pleadings and files in this case and Debtor's prior Chapter 13 case (18-20933),, and good cause appearing,

IT IS ORDERED that the Motion to Vacate is denied, the Court's Interim Order Vacating the Dismissal Order (Dckt. 53) is terminated.

IT IS FURTHER ORDERED that this Bankruptcy Case is dismissed.

3. [18-27755-E-7](#) **MARK/RENEE EVANS**
[19-2042](#)

SCHREIBER V. EVANS ET AL

**CONTINUED PRE-TRIAL
CONFERENCE
RE: COMPLAINT FOR FRAUD AND
DISCHARGABILITY
3-22-19 [1]**

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 3/22/19
Answer: 4/17/19

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Continued from 1/8/20 [specially set date and time]

SUMMARY OF COMPLAINT

Gazelle Schreiber ("Plaintiff") has filed a Complaint to have the obligation owed to her determined nondischargeable pursuant to 11 U.S.C. § 523(a)(1), (4), and/or (6). Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff purchase property from Defendant-Debtor's company.
2. Plaintiff alleges that Defendant-Debtor's and their company failed to disclose known defects in the property sold to Plaintiff.
3. It is alleged that this was a "flip the property sale," in which Defendant-Debtor had been provided information by the engineers of extension foundation damage to the property.

SUMMARY OF ANSWER

Mark Evans and Renee Evans ("Defendant-Debtor") have filed an Answer that admits and denies specific allegations in the Complaint. Dckt. 6.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Gazelle Schreiber's Complaint seeks relief in the form of the court determining that the obligation owed to Plaintiff by Defendants Mark and Renee Evans are nondischargeable pursuant to 11 U.S.C. § 524(a)(2), § 523(a)(4), and § 523(a)(6). These are core matter proceedings as provided for in 28 U.S.C. § 157(b)(2), for which the bankruptcy judge issues all final orders and judgment. To the extent that the proceedings were non-core, Plaintiff expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶ 5, Dckt. 1. Defendants Mark Evans and Renee Evans admit that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334 and § 157. To the extent that any part of this matter is deemed non-core, Defendants consent to this Court in rendering final judgment. Pre-Trial Conf. Stmt., p.2:5-6; Dckt. 22.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.

- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2020**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2020**.
- F. The Trial shall be conducted at ----**x.m. on -----, 2020**.

The Parties in their respective Pretrial Conference Statements, Dckts. 24, 22, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>Plaintiff Gazelle Schreiber's Complaint seeks relief in the form of the court determining that the obligation owed to Plaintiff by Defendants Mark and Renee Evans are nondischargeable pursuant to 11 U.S.C. § 524(a)(2), § 523(a)(4), and § 523(a)(6). These are core matter proceedings as provided for in 28 U.S.C. § 157(b)(2), for which the bankruptcy judge issues all final orders and judgment. To the extent that the proceedings were non-core, Plaintiff expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶ 5, Dckt. 1. Defendants Mark Evans and Renee Evans admit that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334 and § 157. To the extent that any part of this matter is deemed non-core, Defendants consent to this Court in rendering final judgment. Pre-Trial Conf. Stmt., p.2:5-6; Dckt. 22.</p>	
<p>Undisputed Facts:</p> <ol style="list-style-type: none"> DEFENDANTS filed the Chapter 13 case on December 14, 2018. DEFENDANTS failed to include PLAINTIFF as a creditor in their case. 5. DEFENDANTS amended their Schedules to add PLAINTIFF as a Creditor on February 15, 2019. DEFENDANT, MARK W. EVANS is the President of UNITED. UNITED filed its own bankruptcy case no 2018-27710 on December 12, 2019. 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> Defendants filed for Chapter 13 protection on December 14, 2018, and converted to Chapter 7 on September 19, 2019. Plaintiff Gazelle Schreiber ("Plaintiff") has asserted that she is a creditor in the underlying Chapter 7 bankruptcy case. 5. This adversary proceeding was brought in connection with Defendants' underlying bankruptcy under Chapter 7 of Title 11, case number 18-27755-E-13. Plaintiff's Adversary Complaint is brought pursuant to 11 U.S. Code §§ 523(a)(2), 523(a)(4), 523(a)(6), and was filed by

6. DEFENDANTS failed to include UNITED's bankruptcy as a related case when they filed the instant case.	Plaintiff within the instant adversary proceeding on or about March 22, 2019.
7. DEFENDANTS waited more than TWO months to file a notice of related case to relate the UNITED case to their own Bankruptcy case on February 19, 2019.	5. Defendant Mark W. Evans was the President of United Global, LLC. ("United").
8. DEFENDANTS failed to serve their Chapter 13 Plan on PLAINTIFF despite knowing that she was a creditor.	6. At all times did Defendant Mark W. Evans act in his capacity as President as to these matters, not as an individual.
9. DEFENDANTS, UNITED, CONDIE and H&M, listed the property for sale at some point in 2016.	7. Defendant Renee Evans did not hold a managerial position with United.
10. The listing contained no descriptions or indications of foundation problems or repairs.	8. United purchased the subject real property commonly known as 7678 River Village Drive, Sacramento, California, 95831 ("Subject Property").
11. DEFENDANTS through UNITED purchased and "flipped" the property.	9. United listed the Subject Property for sale in 2016.
12. This was DEFENDANTS and UNITED's first "flip."	10. When listing the Subject Property for sale on MLS, the statement "Home previously had foundation issues that have been corrected with permits" was stated and disclosed.
13. The listing induced Plaintiff to submit an offer on the property on or about August 2, 2016.	11. Plaintiff submitted an offer on the Subject Property on or about August 2, 2016.
14. Shortly after the offer was submitted, UNITED prepared and transmitted a Seller Property Questionnaire form that did not adequately identify issues with the foundation, with various windows (including a skylight), the sewer main and an undisclosed easement.	12. Plaintiff was represented by real estate professional Docmai Caban, a Broker for Money Tree Realty.
15. In late 2017, Plaintiff discovered that the foundation was literally sinking which was causing the home to sink unevenly causing cracks in the walls and the foundation. Plaintiff also discovered that the roof was older than disclosed, the windows were improperly installed, leaking and was required to completely	13. Plaintiff contemplated the condition of the Subject Property after careful inspection.
	14. Broker Docmai Caban and Plaintiff each personally inspected the Subject Property before submitting Plaintiff's offer to purchase the Subject Property.
	15. Plaintiff thereafter entered into a Residential Purchase Agreement on August 2, 2016.

<p>replace them.</p> <p>16. Plaintiff ultimately hired a contractor to inspect the foundation issue and prepare an estimate. The contractor discovered severe damages. The contractor's preliminary estimate totaled approximately \$150,000.00.</p> <p>17. DEFENDANTS individually hired an engineer during the "flip" who reported the extensive foundation damage and recommended replacing the foundation.</p> <p>18. DEFENDANTS, UNITED and CONDIE knew of the foundational issues prior to selling the subject property. DEFENDANTS, UNITED and CONDIE had full knowledge of the intrusion and intentionally failed to disclose it.</p> <p>19. DEFENDANTS and UNITED intentionally concealed the Engineering report.</p> <p>20. DEFENDANTS repaired the property concealing the damage prior to obtaining a permit to make any repairs.</p>	<p>16. Tami L. Condie, a licensed Real Estate Agent working as an agent with H and M RE Holdings, Inc. d/b/a/ New Visions Realty Group, was the listing agent representing United, and also served as the agent representing United in the purchase of the Subject Property.</p> <p>17. At the time of United's purchase of the Subject Property, Tami L. Condie was aware that the Subject Property had foundation issues, and that United had used the services of B.A.M. Construction Services ("BAM") to correct the foundation issues.</p> <p>18. The Subject Property was the first and only sale as to any home by United.</p> <p>19. Defendant Renee Evans has no personal knowledge of any facts between United and Plaintiff.</p>
<p>Disputed Facts:</p> <p>1. DEFENDANTS committed fraud in refusing to disclose material facts as required by the law prior to the sale of the property to induce PLAINTIFF into buying said property for DEFENDANTS financial gain.</p>	<p>Disputed Facts:</p> <p>1. Whether United is liable to Plaintiff for failing to disclose known defects in the Subject Property sold to Plaintiff.</p> <p>2. Whether Plaintiff can pierce the corporate veil as to Defendant Mark Evans, and hold him personally liable.</p> <p>3. Whether Plaintiff can pierce the corporate veil as to Defendant Renee Evans, and hold her personally liable.</p> <p>4. Whether that liability, if found, is subject to 11 U.S.C. 523(a)(2), (4) and/or (6).</p>

<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. 2. 3. 	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None Identified
<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. 2. 3. 	<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. Determination that obligations, if any, are dischargeable.
<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. § 523(a)(2) 2. 11 U.S.C. § 523(a)(4) 3. 11 U.S.C. § 523(a)(6) 	<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. § 523(a)(2) 2. 11 U.S.C. § 523(a)(4) 3. 11 U.S.C. § 523(a)(6)
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. ANDREY BOYKO BAM CONSTRUCTION SERVICES, INC. 2. Senthil Puliyadi, MS., M.Eng., PE 3. MARK W. EVANS 4. RENEE EVANS 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Mark Evans, Debtor, and President of United 2. Renee Evans, Debtor
<p>Exhibits:</p> <ol style="list-style-type: none"> 1. <i>All Documents from BAM</i> 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Debtors' Bankruptcy Petition #18-27755

<p><i>CONSTRUCTION SERVICES, INC.</i> <i>relating to the property.</i></p> <p>2. <i>All documents from Zenith Engineering relating to the property.</i></p> <p>3. <i>All documents receive from DEFENDANTS relating to the property.</i></p> <p>4. <i>All sales documents relating to the property.</i></p>	<p>2. United's Bankruptcy Petition #18-27710</p>
<p>Discovery Documents:</p> <p>1. <i>All Documents from BAM CONSTRUCTION SERVICES, INC. relating to the property.</i></p> <p>2. <i>All documents from Zenith Engineering relating to the property.</i></p> <p>3. <i>All documents receive from DEFENDANTS relating to the property.</i></p> <p>4. <i>All sales documents relating to the property.</i></p>	<p>Discovery Documents:</p> <p>1. Plaintiff's Response to Defendant Renee Evan's Request for Production of Documents, Set One</p> <p>2. Plaintiff's Response to Defendant Renee Evan's Request for Admissions, Set One</p> <p>3. Plaintiff's Notice of Motion and Motion for Leave to Amend Complaint, filed in County of Sacramento Superior Court, case no. 34-2018-00240345, on or about December 4, 2019</p>
<p>Further Discovery or Motions:</p> <p>1. None</p>	<p>Further Discovery or Motions:</p> <p>1. None</p>
<p>Stipulations:</p> <p>1. None Identified</p>	<p>Stipulations:</p> <p>1. None Identified</p>
<p>Amendments:</p> <p>1. None</p>	<p>Amendments:</p> <p>1. None</p>
<p>Dismissals:</p> <p>1. None</p>	<p>Dismissals:</p> <p>1. None</p>

<p>Agreed Statement of Facts:</p> <p>1. One Identified</p>	<p>Agreed Statement of Facts:</p> <p>1. None Identified</p>
<p>Attorneys' Fees Basis:</p> <p>1. <i>Plaintiff Seeks Attorneys' Fees - No Contract or Statutory Provision Cited</i></p>	<p>Attorneys' Fees Basis:</p> <p>1. <i>Prevailing Party - No Contract or Statutory Provision Cited</i></p> <p>2.</p> <p>3.</p>
<p>Trial Time Estimation: <i>Oops</i></p>	<p>Trial Time Estimation: Two (2) Days</p>

FINAL RULINGS

4. [19-24802](#)-E-13 GREGORY/CHO FRENCH MOTION FOR RELIEF FROM
DWE- [1](#) Catherine King AUTOMATIC STAY
12-13-19 [\[84\]](#)
FREEDOM MORTGAGE CORPORATION
VS. WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 14, 2020 hearing is required.

Freedom Mortgage Corporation (“Creditor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the January 14, 2020 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 13 Trustee, and Office of the United States Trustee on December 6, 2019. By the court’s calculation, 39 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.

U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT (“Movant”) seeks relief from the automatic stay with respect to Jacqueline Elaine Nixon’s (“Debtor”) real property commonly known as 3301 North Park Drive, #1013 Sacramento, California (“Property”). Movant has provided the Declaration of David Ha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made two post-petition payments, with a total of \$1,453.00 in post-petition payments past due. Declaration, Dckt. 46.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 16, 2019. Dckt. 51. Trustee asserts that Debtor is delinquent \$5,484.21 under the proposed plan and has paid a total of \$0.00 to date. Further, that Trustee’s Motion to Dismiss has been continued to January 8, 2020. Lastly, no

disbursements have been made to the Movant.

DISCUSSION

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 \$98,606.90 (Declaration, Dckt. 46), while the value of the Property is determined to be \$220,000.00, as stated in Schedules B and D filed by Debtor.

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.

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 U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT (“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 Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3301 North Park Drive, #1013 Sacramento,

California, (“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 Property.

No other or additional relief is granted.

6. [19-23036-E-13](#) [RDW-1](#) **SANJANI/VIKASH SINGH** **MOTION FOR RELIEF FROM**
Gary Fraley **AUTOMATIC STAY AND/OR MOTION**
FOR ADEQUATE PROTECTION
12-6-19 [72]

**HERITAGE COMMUNITY CREDIT
UNION VS.**

Final Ruling: No appearance at the January 14, 2020 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 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2019. By the court’s calculation, 39 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.
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Heritage Community Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Nissan Quest, VIN ending in 5543 (“Vehicle”). The moving party has provided the Declaration of Destiny Davis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sanjani Singh and Vikash Singh (“Debtor”).

Movant argues Debtor has not made seven (7) post-petition payments, with a total of

\$3,474.59 in post-petition payments past due. Declaration, Dckt. 75. Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$992.74. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on December 16, 2019. Dckt. 78. Title of Party asserts that Debtor is delinquent \$19,135.64 under the confirmed plan. Further, Trustee's Motion to Dismiss is set for January 8, 2020. The Debtor has paid a total of \$7,714.36 to date. The Trustee has made no disbursements to the Movant.

DISCUSSION

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 \$23,469.77 (Declaration, Dckt. 75), while the value of the Vehicle is determined to be \$9,750.00, as stated in Schedules B and D filed by Debtor.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

Movant has 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 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 Heritage Community Credit Union (“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 2015 Nissan Quest, (“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 not waived for cause.

No other or additional relief is granted.

EXETER FINANCE, LLC VS.

Final Ruling: No appearance at the January 14, 2020 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 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 9, 2019. By the court’s calculation, 36 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.

Exeter Finance, LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2014 BUICK Verano Sedan 4D, VIN ending in 1520 (“Vehicle”). The moving party has provided the Declaration of Joe White to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Shoshana Christina Boek (“Debtor”).

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$1,298.07 in post-petition payments past due. Declaration, Dckt. 33. Movant also provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of \$1,298.07. *Id.*

Movant has also provided a copy of the Kelley Blue Book 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).

TRUSTEE’S RESPONSE

Trustee filed a Response on December 17, 2019. Dckt. 37. Debtor does not oppose the

motion and asserts that Debtor provides for Movant on Schedule D and in class 4 of the proposed Plan. Movant filed a secured amended claim on October 6, 2019 (Claim 2-1) for \$16,666.13.

DISCUSSION

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 \$18,730.04 (Declaration, Dckt. 33), while the value of the Vehicle is determined to be \$10,959.00, as stated in Schedules B and D filed by Debtor.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 Exeter Finance, 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 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 BUICK Verano Sedan 4D (“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.

Final Ruling: No appearance at the January 14, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 9, 2019. The court computes that 97 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on October 1, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.