**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
**Chief Bankruptcy Judge**
**Sacramento, California**

**February 11, 2020 at 1:30 p.m.**

---

**1.** **19-27940-E-13** **JORGE MARTINEZ**
**SMR-1** **Peter Macaluso**

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY**
**1-13-20 [15]**

**RNM INVESTMENTS, INC. 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 January 13, 2020. By the court's calculation, 29 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.**

RNM Investments, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1248 Greenlea Avenue, Sacramento, California ("Property"). The moving party has provided the Declaration of Roman Maznik to introduce evidence as a basis for Movant's contention that Jorge Martinez ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on December 5, 2019. Based

on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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

**CHAPTER 13 TRUSTEE'S RESPONSE**

David P. Cusick ("the Chapter 13 Trustee") filed a Response on January 28, 2020. Dckt. 22. Trustee requests that the court consider the following:

A. The Property is included in Debtor's Plan in Class 2(A) as Reverse Mortgage Funding with a scheduled amount of $236,323.29 to be paid within 60 days from the sale of the property.

B. Property is listed on Schedule A/B as equitable interest.

C. Schedule C discloses a Probate Estate for Silviano A. Martinez, reverse mortgage on 1248 Greenlea Avenue.

D. Schedule D reflects item 2.2 Reverse Mortgage Funding as Probate Rights to Property.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 28, 2020. Dckt. 25. Debtor asserts that the Trustee's Sale which Movant purports gave it ownership over the Property is void as it occurred in violation of the automatic stay. Debtor argues that:

A. The automatic stay arose as to Debtor and the estate on October 31, 2019, in case 19-26776 (Debtor's First Case). Debtor's case was dismissed on November 18, 2019, ending Debtor's stay.

B. A Trustee's sale occurred on December 5, 2019.

C. The bankruptcy estate terminated on December 6, 2019, ending the stay as to the estate.

D. The sale was recorded on December 20, 2019.

E. 11 U.S.C. 362(a) was in effect as of October 31, 2019 and terminated on December 6, 2019. As such, 11 U.S.C. 362(a) was in effect on December 5, 2019, and the sale is therefore is void.

F. Acts in violation of 11 U.S.C. 362(a) are void.

G. There is a split between the circuits on the consequences of a violation of the automatic stay.

H. The Third, Fifth, Sixth, and Eleventh Circuits have held that violations of the stay render such actions voidable. The First, Second, Ninth, and Tenth Circuits have held violations of the stay to be void ab initio.

I. Whether the act taking place during the stay is void or voidable determines who has the burden of challenging the act.

J. As the present case is under the Ninth Circuit, when a stay is void ab initio, a debtor can focus its efforts on reorganization and not bother with litigating whether a violation can be rectified retroactively.

K. Referring to "Soares," without including any citations, Debtor contends that in this case a state court entered a default order and authorized entry of a foreclosure judgment one week after the debtor filed bankruptcy. Subsequently, the bankruptcy court vacated the automatic stay retroactively so that the state court's action would not be deemed to have violated the stay. The district court affirmed but the First Circuit reversed, holding that the district court's actions were not merely ministerial and concluding that the majority of courts consider violations of the stay to be void.

L. Debtor requests the court deny the motion fo relief from the stay as the stay was in effect at the time of the sale.

**MOVANT'S REPLY**

Movant filed a Reply to Debtor's Opposition on February 4, 2020. Dckt. 27. Movant counters with the following arguments:

A. Debtor's Opposition fails to offer evidence that the automatic stay was in effect at the time of the Trustee's Sale.

B. Debtor's previous case was a Chapter 7 dismissed on November 18, 2019 ending the automatic stay in its entirety, not just as to Debtor.

C. The order entered one day after the Trustee's sale was nothing more than an order closing an already dismissed case.

D. Movant argues that Debtor argument rests on the unsupportable contention, (through either facts pertinent to the matter or the Bankruptcy Code) that the stay survived the court's dismissal and endured until the matter was procedurally closed on December 6, 2019. Thus, the Trustee's sale was a not a violation of the stay and thus the resulting sale is not void.

E. Further, Movant argues that Debtor's Opposition offers no evidence entitling him to the protections of the automatic stay.

F. Movant restates its Motion's argument that Movant lacks adequate protection, and adds that Debtor does not discuss any interest in the Property he might have. Adding that even if the Debtor as son of the non-filing co-debtor had any interest, it would have been inheritance in a property that was subject to foreclosure and this inheritable interest would have been extinguished by the December 5, 2019 sale.

G. As such Debtor has no equity in the Property and any occupancy right would have been lawfully terminated by the Trustee's sale. No equity is cause for granting relief from the automatic stay.

H. The burden to state the nature of his equitable interest in the Property rests on Debtor and he has failed to meet this burden.

I. Debtor's response and schedules indicate a lack of good faith in the filing of the second/present bankruptcy case and this is cause for terminating the stay.

J. Debtor's Opposition makes no reference to its interest, and instead discusses issues involved with the nature and timing of the Trustee's sale.

K. The stay is meant to give a debtor a break from collection efforts in order to attempt a repayment or reorganization plan with an aim toward satisfying existing debt. Movant argues that Debtor is not using the present filing for these purposes but that Debtor has filed the present case as a means of delaying Movant's ability and right to recover possession of the Property.

L. Adding that further proof of bad faith includes Debtor's filed Schedules in which he claims an interest over a property subject to foreclosure which was sold 22 days before the filing of the case.

M. Because Debtor filed in bad faith only to obtain the automatic stay so as to prevent Movant from recovering the Property, such a filing lacks good faith, only prejudices Movant and is grounds of cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1).

N. Finally, Movant argues that it is entitled to relief as to non-filing co-debtor in accordance to 11 U.S.C. § 1301 on the basis that (1) co-debtor has received the benefits of occupancy of the property since December 5, 2019; and (2) continuation of automatic stay as to co-debtor will work a real and irreparable harm as owner continues to bear the burden of the costs and burdens incident to ownership of the Property without receiving corresponding income from the occupancy from either Debtor or non-filing co-debtor.

**DISCUSSION**

11 U.S.C. § 362(c) provides for termination of the automatic stay by operation of law in specific circumstances. Relevant to the question now before the court:

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section—
>
> > (1) the **stay of an act against property of the estate** under subsection (a) of this section **continues until such property is no longer property of the estate**;
> >
> > (2) the **stay of any other act under subsection (a)** of this section continues **until the earliest** of—
> >
> > > (A) the time the case is closed;
> > >
> > > (B) **the time the case is dismissed**; or
> > >
> > > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied; . . . .

11 U.S.C. § 362(c)(1), (2) (emphasis added).

Debtor's opposition cites to § 362(c)(1), but does not cite the court to the legal authority to determine when property of the bankruptcy estate is no longer property of the bankruptcy estate. Debtor just concludes that the property at issue stopped being property of the bankruptcy estate on December 6, 2019.

While providing an eight (8) page Reply Brief arguing the facts, arguing the equities, and arguing that dismissal terminates the stay as to everything, Movant does not cite the court to the legal authority for when property of the bankruptcy estate ceases to be property of the bankruptcy estate and the stay terminates.

**Property of the Bankruptcy Estate**

As Debtor states, the prior Chapter 13 case was filed on October 31, 2019, dismissed on November 18, 2019, and closed on December 6, 2019. Case No. 19-26776.

As instructed by the U.S. Supreme Court, one begins with reading the language of the statute as written by Congress and seeks to determine the plain language of the statute. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)*.

Congress has written when property of a bankruptcy estate ceases to be property of the bankruptcy estate in these circumstances. In 11 U.S.C. § 349(b)(3) Congress provides:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 [stockbroker liquidation] of this title
> . . .
>
> > (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

Debtor's Opposition does not clearly state what interest Debtor asserts having in the Property. On Schedule A/B Debtor lists the Property, stating it has a value of $325,000, that Debtor is the only person who has an interest in the Property, that the current value of Debtor's interest is only $45,000, and that Debtor's interest is an "equitable interest." Dckt. 1 at 12. This is stated by Debtor under penalty of perjury.

On Schedule D, Debtor lists a creditor named "reverse mortgage funding" as having a claim for ($236,323.29) and the Property which secures the claim has a value of $325,000. *Id.* at 21. Further, that it is the Debtor who owes the debt and that creditor's lien is merely a "Probate Rights to Property." *Id.*

It is unclear how "reverse mortgage funding" would have a lien arising from "Probate Rights to Property."

On Schedule A/B Debtor lists having an asset described as:

> Probate Estate Opened: Silviano A. Martinez:
> reverse mortgage on 1248 Greenlea Ave. Sacramento, CA 95833; $325k less debt of $236k = $89k
> Siblings of 7 = $12,714

Schedule A/B question 33; *Id.* at 16. It is unclear how Debtor claims having a reverse mortgage interest in the Probate Estate of Silviano A. Martinez.

What this appears to be is that Debtor claims to be one of seven siblings who are heirs of Silviano A. Martinez and that the 7 siblings are to inherit the Property from Silviano A. Martinez.

At the hearing, Debtor's counsel explained **xxxxxxxxxx**

Thus, it does not appear that Debtor actually owned the Property that was foreclosed on, but claims the right to inherit a one-seventh interest in the Property. If Silviano A. Martinez had not died as of the time Debtor filed bankruptcy or within 180 days of filing bankruptcy, there would be no property

right/interest to be in the bankruptcy estate. 11 U.S.C. § 541(a)(5). For purpose of this analysis, the court will presume (given that no evidence has been provided) that Silviano A. Martinez died before or within 180 days of filing so that such right or "equitable interest" was the Debtor's that became property of the bankruptcy estate.

Those rights and interests continued as part of the bankruptcy estate until the bankruptcy case was dismissed, when it was revested in the Debtor on November 18, 2019. Pursuant to 11 U.S.C. § 362(c)(1), the stay terminated as to the Property, it no longer being property of the bankruptcy estate. To the extent Debtor claims any other stay as applying, such as stay of act against Debtor or Debtor's property, all such other stays terminated upon the dismissal of the case pursuant to 11 U.S.C. § 362(c)(2)(B).

Because the stay ended on November 18, 2019, it seems that the Trustee's sale which occurred on December 5, 2019, at which time Movant purchased the Property, did not occur in violation of the stay as it took place after the stay had ended. As such, for purposes of this Motion, the sale is valid and not void. [FN. 1.]

---

FN. 1. Debtor drops the word Soares in his argument. He states that there was a state court judgment default order for a foreclosure one week after the bankruptcy case was filed. The bankruptcy court issued an order annulling the stay so that the state court order for judgment would not violate the automatic stay. Debtor states that the First Circuit reversed holding that the "district Court's actions" were not merely ministerial.

The Debtor continues to explain that the First Circuit agreed with the majority of the other Circuits that an act in violation of the stay is void.

In reading *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969 (1st Cir. 1997), assuming that this is the "Soares" referenced by Debtor, does state that the First Circuit agrees with the Ninth Circuit that acts in violation of the stay are void, not merely voidable.

What the First Circuit Court of Appeal addressed in *Soares* was whether retroactive relief from the stay was proper. The First Circuit panel concluded that the bankruptcy judge did not state sufficient grounds to annul (retroactive relief) the automatic stay.

The present Motion does not seek retroactive relief, but prospective relief for the rights that were obtained at the foreclosure sale after the prior bankruptcy case was filed and before the December 27, 2019 filing of the current case.

---

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

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.

**11 U.S.C. § 362(d)(2)**

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 showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

**Co-Debtor Stay**

Additionally, Movant requests that the court grant relief from the co-debtor stay under 11 U.S.C. § 1301(a) – to the extent that there is a co-debtor. Debtor does not assert that Debtor is personally obligated to pay the obligation secured by the Property. The court infers that Debtor states that he is a "co-debtor" with Silviano A. Martinez (who appears to be the person who obtained the reverse mortgage) and that Debtor asserts to have an interest in the Property that the creditor's lien encumbers.

However, 11 U.S.C. § 1301 states who is a co-debtor, providing that the "co-debtor stay" applies to stay the creditor from taking an act "to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt . . . ." Thus, Debtor would have to show that he is liable on a debt for which the other person also became liable or secured a debt of the Debtor.

The person identified by Movant as the co-debtor as Silviano Martinez as the "former owner" of the Property. Movant has served Silviano A. Martinez with the Motion and supporting pleadings. Cert. of Serv., Dckt. 21.

Debtor's counsel argues in the Opposition that Silviano A. Martinez is deceased. No evidence is presented as to Silviano Martinez's "life" situation. The court does not accept "argument testimony."

If Silviano Martinez is alive, he has been served with the pleadings and relief is granted as to him.

If Silviano Martinez has died and someone else claims to be a co-debtor, Movant will have to address such co-debtor, if any.

Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because non- filing co-debtor has received the benefits of occupancy of the subject premises at all times since the December 5, 2019 Trustee's Sale and Movant continues to bear the burden of the costs and burdens incident to ownership of the subject premises without receiving corresponding income from the occupancy by the debtor and non-filing co-debtor of the subject premises.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise all rights and interests, including unlawful detainer or other legal proceedings, to obtain possession of the Property.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3). All Movant has done is add the request to the prayer. The court will not guess, or prepare for Movant, the grounds subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011 and state them for Movant. This part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by RNM Investments, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors to exercise any and all rights and interests, including unlawful detainer or other legal proceedings, to obtain possession of the the real property commonly known as 1248 Greenlea Avenue, Sacramento, California.
>
> **IT IS FURTHER ORDERED** that the request to terminate the co-

debtor stay of Silviano A. Martinez of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**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.

**2.** **19-20617-A-7 HSM-6** **DAISY CUARESMA** **CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS 11-26-19 [65]**

Local Rule 9014-1(f)(2) Motion—Final Hearing on Motion for Sanctions Conducted on January 30, 2020. The Final Hearing on the Motion to Compel Discovery was continued to February 11, 2020, to afford the parties to consider resolution of the disputes in a mutually advantageous method.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further.

Oppositions have been filed and the continued hearing on this Motion was conducted on January 30, 2020.

**The court has granted the Motion for Sanctions.**

**The hearing on the portion of the Motion to compel the 2004 examination and Turnover of Documents is xxxxxxxxxx**

Gary Farrar, the Chapter 7 Trustee, has filed the present Motion to have Daisy Cuaresma, the Chapter 7 Debtor, held in contempt for failure to comply with the prior order of this court to comply with the ordered turnover of records, monies, and other property of the bankruptcy estate.

In the Motion, the Chapter 7 Trustee states with particularity, (Fed. R. Bankr. 9013) the following grounds and relief requested:

A. This court entered an order on October 28, 2019, compelling Debtor to turn over certain real property on or before noon on Friday November 15, 2019.

B. The property ordered to be turned over specified in this court's prior Order, Dckt. 62, is identified as:

1. the Funds consisting of: "Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at $823,409.20, listed in the Debtor's Amended Schedule A/B (Docket 43), or the value thereof;

2. Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions);

3. Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition;

4. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms;

5. Account statements for any account held or previously held with the above entities;

6. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition;

7. All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same;

8. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

9. Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

10. All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California;

11. Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California;

12. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California;

13. Lease agreement for of 16922 Rail Way, Lathrop, California; and

14. Identification of and access information to any cryptocurrency "wallet," including public or private keys, in which the Debtor had in interest during the 4 years pre-petition, as well as the username and password for any portfolio/account related to the Funds

The Trustee asserts that Debtor has failed to turnover the funds with a value of $823,409.20 listed on Debtor's Amended Schedule A/B (Dckt. 43) that has been identified as "Investment with Trust Investment & Crypto Company, with Bitcoins, through a Chung Lee A." It is further asserted that Debtor has provided "essentially no meaningful information in connection with the Funds" as of the date the Motion was filed. As addressed at the hearing and in the Response by Debtor, no further information has been provided.

The Trustee questions how Debtor, who has a stated million dollar investment, has no or provides no information about the people involved in the investment.

Review of Communications

The Trustee directs the court to emails from Debtor's counsel concerning this asset. The first is from August 12, 2019, the day before the continued First Meeting of Creditors. Debtor's Counsel includes what is identified an email thread from Ms. Lee stating that there was a "breach," resulting in some of Debtor's funds being lost. This is filed as Exhibit C, Dckt. 70.

Beginning at the earliest in date email, there is a July 12, 2019 (time stamped 01:04) email from Chung Lee to Debtor. *Id.* at 17. She states that the market is slow and it has been a bloody week for the "altcoins." Chung Lee posits that the drop in the altcoin market has been caused by FOMO.

The Debtor responds with a July 12, 2019 email (time stamped 4:07) stating that when there is a positive result in the market Debtor "really need funds to settle things immediately."

The email thread continues, with the next dated August 8, 2019 (time stamped 13:01). *Id.* at 18. It begins with an email from Chung Lee to Debtor, stating that "Here are the final list of Documents requested by you." Further, that other information from 2018 and 2017 have been lost due to hackers. Four pages of documents are attached.

The next email in the thread is from the Debtor on August 8, 2019 (time stamped 8:10 p.m.). *Id.* Debtor expresses concern over all the money invested and her personal financial information.

Chung Lee them responds with an email dated August 8, 2019 (time stamped 11:53 p.m.). *Id.* Ms. Chung responds that Debtor's "transaction is well secured. . . ."

The latest email in Exhibit C is one dated August 12, 2019 (time stamped 4:05) from Mark Hannon to Gary Farrar, the Chapter 7 Trustee. It states that documents (not specified) showing crypto currency investments is attached. Mr. Hannon requests that the 341 meeting be continued, suggesting that based on the documents the Trustee may be able to recover "half a million or more." *Id.* at 16.

The Trustee then references the court to a September 18, 2019 (time stamped 2:18 p.m.) email from Debtor's counsel stating that Debtor has instructed that the Bitcoin account be liquidated, with that instruction resulting in a 55% penalty, reducing the value of the asset from $719,998.00 to $395,999.00. Exhibit D, Id. at 23. That will generate enough monies to pay the Internal Revenue Service and California Franchise Tax Board nondischargeable claims, but no enough to pay what Debtor asserts to be the dischargeable interest and penalties.

The email does not state the basis by which Debtor could order the liquidation of property of the bankruptcy estate or authorize the payment of a 55% penalty. The document attached to the email states that Debtor's December 18th, 2019 instruction to liquidate the fund will result in a "forfeit" of 55% of the total investment.

The next document in the Exhibits is part of Exhibit E, which is a fax cover sheet dated September 23, 2019 from Debtor's counsel to counsel for the Trustee. *Id.* at 25. In it counsel for the Debtor states:

- Counsel for the Trustee is no longer to call him, but instead to communicate by letter or email.

- Counsel for Debtor does "not take order from attorneys and I do not like to reason with someone who is unable."

- Counsel for Debtor found it unreasonable that the Internal Revenue Service attorney questioned the Debtor at the First Meeting of Creditors for four hours, repeating the same questions over and over. Counsel for the Debtor then express displeasure that when he stated his objections to the questions, the Trustee "just smiled."

At this point, the Fax Cover Sheet does not state what was expected of the Trustee or why Debtor's counsel who was at the 341 Meeting did not object and instruct his client not to answer questions presented by the Internal Revenue Service which Debtor's counsel deemed not to be proper to the test of filing a motion to compel and giving Debtor's counsel the opportunity to present his argument to a judge who could then rule on the objection.

- That the maturity date for the investment is 2022, but that Debtor is proceeding to liquidate, and suffer the 55% forfeiture, with that generating only enough monies to pay the priority (nondischargeable) claims of the Internal Revenue Service and California Franchise Tax Board.

- That counsel for Debtor thinks that the Trustee not agreeing to the 55% forfeiture of the value today so that Debtor can pay her nondischargeable debt, with there being

nothing for other creditors or the bankruptcy estate, is unreasonable.

- Debtor states under oath that she does not have the documents, Debtor's counsel has never read them, and questions whether the Trustee will seek a court order to "further the abuse of the 341 process."

- If the Trustee wants deposit records, the Trustee is to identify the date, amount, and bank account number.

- The bitcoin investment and records for the over $800,000 Debtor invested "are almost as tangible as a snowflake and records about as tangible as a blade of grass.

On the point of the "snowflake" investment and the 55% forfeiture, Debtor's counsel does not state in the email a basis for a contention that the fiduciary of the Bankruptcy Estate should accept a 55% forfeiture of the investment caused by the Debtor purporting to instruct (without authorization from the Trustee) that the investment be liquidated so that Debtor could immediately have her nondischargeable taxes paid.

Exhibit F is a October 7, 2019 (time stamped 9:42 p.m.) email from Debtor's counsel to his client, on which the Trustee is copied, in which Debtor's counsel states that he has $5,000 of time into Debtor's case, Debtor has not been paying him, and that Debtor has been yelling at him (Debtor's counsel). Further, that Debtor is failing to cooperate with Debtor's counsel and if she does not pay $4,200.00 to him (Debtor's counsel), then he file a motion to withdraw from the case. *Id.* at 26.

Exhibit I is a letter from Debtor's Counsel to the Trustee, and Exhibit J is a copy of Trustee's counsel's response. *Id.* at 29 and 30-31, respectively. In Debtor's counsel's letter he states that he will not be present for the 2004 examination scheduled for 9:00 a.m. on November 15, 2019. *Id.* at 29. He states that it was not a date and time "arranged with him" and that such is "highly unprofessional."

Debtor's counsel continues, stating that the believes that "It would be best if you allow her to go ahead and liquidate on the December date." *Id.*

Exhibit J is a response letter from counsel for the Trustee. *Id.* at 30. In the letter counsel for the Trustee disputes the assertion that the 2004 examination was scheduled without consulting Mr. Hannon, Debtor's counsel, stating:

> Your assertion is not true. On October 9, 2019, prior to service of the subpoena, you and I spoke by telephone. On that telephone call, you agreed to accept service of the subpoena on your client by email. Also on that telephone call, I stated that I was planning to notice the deposition for November 15, 2019. You said that was okay.

*Id.*

Exhibit K is an email dated November 8, 2019 (time stamped 4:59 p.m.) from Debtor's counsel to Trustee's counsel. *Id.* at 32. Debtor's counsel disputes the assertion that the 2004 exam date and time had been agreed to, stating:

> Mr. Avery, I do not care what your self serving notes indicate.
>
> Mr. Farrar said you were going to email me about an informal meeting sometime this Tuesday. You failed to do so.
>
> You did not contact me about agreeing to a meeting in Sacramento for a Rule 2015 no phone call from you your secretary or Mr. Farrar.
>
> So I will not appear on November 15, 2019 and neither will the debtor. I have not spoken with you by phone for over a month when I asked you not to call me. Your assertion otherwise is false.

*Id.*

Exhibits L, M, N, and O (*Id.* 33-39) are a series of correspondence between Debtor's counsel and Trustee's counsel, generally stating the "displeasure" that each counsel is having communicating with the other.

Exhibit P is a November 13, 2019 letter from the Trustee to Debtor's counsel, stating it is in response to an email from Debtor's counsel earlier that day. The Trustee states that he does not understanding Debtor's counsel conduct in a phone conference on November 12, 2019. *Id.* at 40-41. In it, the Trustee points out that on Schedule A/B filed in this case under penalty of perjury, the Debtor did not disclose her $800,000 investment. The Trustee learned of this asset from a creditor. Though requested, Debtor has not produced documents concerning the $800,000 investment.

Attached to the Trustee's Exhibit P letter is Debtor's Counsel's November 13, 2019 (time stamped 10:16 a.m.) Email that prompted the Trustee's November 13, 2019 response letter from the Trustee and then Debtor's Counsel's reply. *Id.*. at 42-44. Debtor's Counsel states the Trustee should have gotten ex parte orders liquidating the bitcoin investments months earlier. Debtor's counsel recounts how the Trustee and Trustee's counsel had only 20 minutes of questions at the First Meeting(s) of Creditors, but it was the Internal Revenue Service representatives who conducted the hour of questioning.

Exhibit P includes a Fax Cover Sheet from Debtor's counsel to the Trustee dated November 19, 2020. In it he expresses an apology for "non professional language" and discusses the highly stressful nature of the case. He makes an insightful comment concerning this bitcoin investment, stating:

> This is a simple case actually, My client poured money into a fools gold (bit coin) account while not paying any taxes. She had no idea how much.

*Id.* at 44. There is a fools aspect to such an investment, the lack of control, as well as Debtor choosing not to pay taxes. Given the magnitude of the investment, even for chasing "fools gold," one has to wonder how Debtor could have "no idea" of how much she plowed into that mineshaft.

The Motion continues, stating that Debtor's Counsel and Debtor have been instructed that they are not authorized to subject the property of the Bankruptcy Estate to a purported 55% penalty reduction. It also points out what the Trustee alleges was "unprofessional" conduct by Debtor's

Counsel.

The Trustee alleges that Debtor has failed or refused to comply with the court's order and subpoena issued for production.

**RESPONSE FILED BY DEBTOR**

Debtor filed no opposition or response pleading to the Motion why she should not be held in contempt. What Debtor has done is have her counsel file his own declaration in response. Dckt. 72. In it, Debtor's counsel provides the following as his personal knowledge testimony (Fed. R. Evid. 601, 602), which are identified by the paragraph number of the Declaration:

1. Mark Hannon affirms that the facts stated in the Declaration are true based on his own knowledge.

2. Debtor invested over $800,000 in bit coins between 2016 and 2019.

3. Debtor has filed all tax returns since 2016.

4. For an unstated period of time Debtor worked as a registered nurse and failed to have income taxes withheld, which resulted in over $300,000 owed to the Internal Revenue Service and California Franchise Tax Board .

   Debtor began working two jobs for several years earning over $300,000 a year.

5. "Recently, Debtor has been able to work only one job and now earns less than $100,000 a year.

6. Debtor attended two 341 meetings, both of which lasted more than two hours. Debtor has provided 500 pages of documents, including four years of bank statements, tax returns, and the closing documents on his house.

7. At the 341 Meetings, "over ninety (90) of the questioning was performed by four Internal Revenue Service agent.

8. Trustee and Trustee's counsel conducted an informal telephonic conference with the Debtor, Debtor's counsel, and Trustee's counsel.

9. Though presented as an "informal conference," it was not informal and the Trustee questioned the Debtor for one and one-half hours.

10. Debtor has undergone five and a half hours of questioning.

11. The Debtor's bitcoin account does not mature for two years (in 2022). To pay her tax obligations Debtor arranged to have the bitcoin account liquidated on December 18, 2019 (which was ten months after this bankruptcy case was commenced). This would have been sufficient to pay the tax claims (which Debtor states are priority,

nondischargeable claims), but the Trustee's attorney told the Debtor to stop liquidating property of the Bankruptcy Estate.

12. Debtor has lost $200,000 from her bit coin account due to the bit coin bank manager stealing it.

13. The Trustee could easily intercept the bit coin liquidation (not stating how this could be easily done) and obtain it for the bankruptcy estate.

14. No further questioning of Debtor is appropriate.

15. Five and one-half hours of questioning of the Debtor in this case is excessive, and possibly abusive in light of the questioning not generating anything to show for the Bankruptcy Estate.

16. Counsel for the Trustee refuses to explain how the Debtor is to comply with the turnover order without liquidating the bitcoin investment.

Other than with respect to the 341 meetings and the telephonic questioning, it is unclear how Debtor's counsel has personal knowledge of the financial and bit coin "facts."

**December 12, 2020 Hearing**

At the December 12, 2020 hearing, the court questioned Debtor's Counsel as to how he could have personal knowledge testimony as to the facts concerning the investments, Debtor's income, Debtor's working, Debtor's losses, and other testimony other than the First Meeting of Creditors testimony. Federal Rule of Evidence 602, as every attorney knows, requires that a witness may provide testimony "only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."

When asked, Debtor's Counsel stated that he had "knowledge" because he had read various papers provided to him by his client. Debtor's Counsel, in stating such, admitted that he had no personal knowledge and knew he did not have personal knowledge when he purported to so testify under penalty of perjury.

At the hearing, Debtor's Counsel strongly argued (though no opposition other than his substantially non-personal knowledge "testimony" was filed) that documents had been provided, that the Trustee was unreasonable, and the Debtor was liquidating the investment for which there would be a 55% penalty loss.

**DISCUSSION**

As stated by the Trustee, on Original Schedule A/B filed by Debtor under penalty of perjury she does not list the $800,000 bitcoin investment as an asset. Dckt. 1 at 8-12. On Schedule E/F Debtor lists the California Franchise Tax Board as having a ($57,618.00) priority claim and the Internal Revenue Service having a ($279,607.26) priority claim. Id. at 16-17.

For general unsecured claims, Debtor lists creditors having a total of ($88,566.39) in claims.

On Schedule I, Debtor lists having monthly gross income of $13,928.05, and on Schedule J monthly expenses of ($3,854.90). Id. at 25-29. Debtor's computes her monthly net income, her projected disposable income, to be $6,756.00. Id. at 29.

For the Internal Revenue Service, Amended Proof of Claim No. 1-4 is for ($390,779.79), of which ($384,375.79) is asserted as a priority claim.

For the California Franchise Tax Board, Amended Proof of Claim No. 3-2 has been filed for ($60,844.90), of which $53,839.76 is asserted as a priority claim.

On August 26, 2019, (seven months after Debtor commenced this case) Debtor filed the Amended Schedule A/B which lists the bitcoin investment of $823,409.20. Dckt. 43 at 6.

While Debtor's counsel argues, both in his Declaration and correspondence that the Internal Revenue Service agents have been using the 341 Meeting process to ask extensive questions of the Debtor, the U.S. Supreme Court provides in Federal Rule of Bankruptcy Procedure 2003(b):

> (b) Order of Meeting.
>
> (1) Meeting of Creditors. The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

As further discussed in Collier on Bankruptcy ¶ 2003.02[c] (emphasis added):

> [c] Examination of Debtor under Oath
>
> The examination of the debtor at the meeting of creditors is usually all that occurs. The debtor must attend the meeting and is not entitled to travel expenses. While this may be perfunctory, and usually is, **creditors may question the debtor concerning acts, transfers, financial condition or any matter that may affect the administration of the estate or the debtor's right to a discharge**. If the debtor asserts the right to the Fifth Amendment privilege, the court must determine whether reasonable grounds exist for the purpose of the privilege.
>
> **A creditor should not abuse the right to examine the debtor**. Meetings under Rule 2003(b)(1) are **not to be considered as substitutes for examinations under Rule 2004.15.** A **Rule 2004 examination allows a creditor great latitude to examine the debtor at length regarding almost any issue concerning the debtor's case**. If a creditor attempts to go into great detail at a meeting of creditors, the result may well be that other creditors will not have adequate opportunity to ask relevant questions and that other meetings scheduled on the same docket for other cases will be unavoidably delayed.

> The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Act") amended section 341 to permit creditors to appear and examine the debtor by non-attorney agents, such as a credit manager, at section 341 meetings.

While Debtor may complain that the Internal Revenue Service agents conducted extensive questioning at the 341 meetings, it is Debtor's counsel who properly intercedes to the extent that such is contended to be excessive. It is not the Chapter 7 Trustee who advocates and defends Debtor.

With respect to the requests for sanctions, a properly issued subpoena was served on the Debtor and Debtor's counsel. Whether it was "unprofessionally done" without first conferring with Debtor's counsel or Debtor and Debtor's counsel reneged on an agreed date and time, if one does not want to comply with a subpoena, it is not an option to just state "I don't agree and I'm not going to be there." Such a response all but guarantees that attorneys' fees and costs in compelling the attendance is required. If the date and time was not reasonably set, then relief must be obtained from the court rather than the subpoena ignored.

As clearly provided in Federal Rule of Bankruptcy Procedure 2004(c), attendance at a 2004 examination is compelled through the issuance of a subpoena (Fed. R. Bankr. P. 9016). Federal Rule of Bankruptcy Procedure 9016 incorporates the subpoena provisions of Federal Rule of Civil Procedure 45.

Federal Rule of Civil Procedure 45(g) expressly provides that the court may hold a person in contempt who fails, without adequate excuse, to obey the subpoena. Federal Rule of Civil Procedure 45(d) provides the procedure by which a person may obtain relief from a subpoena, which requires seeking such relief from the court.

As addressed by the Seventh Circuit Court of Appeals in United States *SEC v. Hyatt*, 621 F.3d 687, 693 (7th Cir. 2010):

> The contempt provision in subsection (e) does not distinguish between subpoenas issued with some court involvement--those issued in blank by the court clerk and completed by the party who requests it--and those issued without any court involvement at all by an attorney as an officer of the court. Instead, subsection (e) of Rule 45 broadly refers to the contempt power of the "issuing court," which implies that all discovery subpoenas are contempt-sanctionable orders of the court whether issued in blank by the clerk or by an attorney as an officer of the court.

While in contempt, at this point the "damage" has been forcing the Trustee to bring this present Motion to compel the Debtor to actually comply with the subpoena and attend the 2004 examination. That cost and expense for the estate was caused by, and rests at the foot of, Debtor and Debtor's counsel.

The present Motion also addresses the asserted failure to comply with the turnover order of this court. While on the one hand Debtor asserts that she has no documents as ordered to turn over, such appears suspect. While Debtor can argue, "Hey, how do I turnover the bitcoin monies if I don't liquidate the bitcoin account," it stretches credulity that Debtor, who had almost $1,000,000 to invest, says that she doesn't have and cannot produce:

> a . Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account

controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions);

b. Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition;

c. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms;

d. Account statements for any account held or previously held with the above entities;

e. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition;

f. All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same;

g. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

h. Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

i. All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California;

j. Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California;

k. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California;

l. Lease agreement for of 16922 Rail Way, Lathrop, California;

m. Identification of and access information to any cryptocurrency "wallet," including public or
private keys, in which the Debtor had in interest during the 4 years pre-petition; and

n. The username and password for any portfolio/account related to the Funds

The present Motion also seeks to have the court compel the Debtor to comply with the prior order of the court (as compared to a "mere" subpoena issued pursuant to Federal Rule of Bankruptcy Procedure 2004) and produce these documents.

Of the $7,728 in fees sought as part of the sanctions, the court computes that $4,380.00 of it relates to the present Motion which has been necessitated by Debtor's failure to comply with the Rule 2004 Examination Subpoena and the Order of this court to turnover and produce various records and documents.

The remaining amounts may properly be sanctions or damages flowing from the violations, but more information is required by the court.

The court orders Debtor to pay the sum of $4,380.00 as compensatory, corrective sanctions caused by her failure to comply with the subpoena issued for the Rule 2004 Examination and the order of this court to turnover the documents and records, which amount is to reimburse the Bankruptcy Estate from having to commence the necessary proceedings to begin in the enforcement of the subpoena and turnover over of this court.

**Further Discovery**

The court bifurcates the relief requested, and shall conduct a further hearing at 1:30 p.m. on February 11, 2020 on the issues of compelling compliance with the Subpoena and Turnover Order (Order, Dckt. 62). The court continues the hearing on the bifurcated issues to allow the parties to consider their respective positions and interests as the court discusses below in the "Further Thoughts" section of this ruling.

If the compliance must be compelled by further order of this court, the document and records turnover and Rule 2004 examination to be conducted in the courtroom, taking the lead from former Chief Judge Christopher M. Klein, who has conducted such discovery proceedings in the courtroom when the parties and their counsel have demonstrated an inability to do so in the normal conference room setting. In that way, to the extent that any discovery or production disputes exist, the judge is a courtroom deputy call away from coming into the courtroom, hearing the discovery dispute, and issuing an order resolving the dispute right then and there. It is akin to having a judge available by phone during a deposition to address discovery disputes, but giving everyone the benefit of having that in person opportunity to present their position to the court.

**Food for Further Thought for the Parties**

As with many legal matters, the Parties may continue in an economically disadvantageous spiral, something that one often sees in non-bankruptcy courts. Or the parties may seek out the "bankruptcy solution," in which adverse parties find the common ground that leaves each of them with an equally bad taste in their mouths but constructive action is taken.

Debtor argues that she does not want to wait until the contract matures in 2022 and the Trustee can recover 100% of the investment. Debtor asserts that the Trustee should forfeit 55% of the

value so that just enough money can be obtained to pay Debtor's nondischargeable tax debt and Debtor can go forward, free of such nondischargeable liabilities.

The Trustee counters, not so jaded to the bitcoin market, seeing his fiduciary duties being to the Bankruptcy Estate and not merely the collection agent for the Internal Revenue Service and California Franchise Tax Board to recover monies for their nondischargeable debt. The court understands the Trustee's position to be that he has made the business decision that it is better to ride the market, have confidence in the Debtor's wisdom in making the investment in bitcoin, and recover not only enough to pay all claims.

In looking at the claims filed in this Chapter 7 case (the claims bar date having passed), those that have been timely filed appear to be:

| **Proof of Claim No.** | **Creditor** | **Secured** | **Priority Unsecured** | **General Unsecured** |
|---|---|---|---|---|
| 1 | Internal Revenue Service | ($384,375.79) | ($6,245.00) | ($155.00) |
| 3 | Cal Franchise Tax Board | | ($53,839.76) | ($7,005.14) |
| | | | | |
| | Total Tax Claims | ($384,375.79) | ($60,084.76) | ($7,160.14) |
| | | | | |
| 2 | Jefferson Capital Systems | | | ($2,564.96) |
| 4 | LVNV Funding, LLC | | | ($5,190.62) |
| 5 | LVNV Funding, LLC | | | ($1,665.02) |
| 6 | Merrick Bank | | | ($1,554.86) |
| 7 | Velocity Investments, LLC | | | ($11,645.08) |
| 8 | Velocity Investment, LLC | | | ($7,289.39) |
| 9 | Capital One | | | ($681.00) |
| 10 | Velocity Investments | | | ($21,591.38) |
| 11 | Portfolio Recovery Associates, LLC | | | ($2,228.36) |

| | | | | |
|---|---|---|---|---|
| 12 | Webcollex LLC D/B/A CKS Financial | | | ($8,577.83) |
| | | | | |
| | | Total Non-Tax General Unsecured Claims | | ($62,988.50) |

Fortunately, Debtor has "only" ($62,988.50) in general unsecured claims. Assuming a 50% general unsecured claim dividend and reasonable attorney's fees, costs, Trustee fees, and accountant fees, if the Bankruptcy Estate were to have $60,000 (stating high for sake of the discussion) for those expenses, the Trustee might well see it as an opportunity to approach the taxing agencies about agreeing not only to a carve out of that amount for non-tax claims, but the two taxing agencies agreeing to waive some portion of their priority claims if the Trustee were to proceed with an immediate liquidation, accepting the 55% forfeiture so long as the "hurt" was spread around to everyone.

Debtor and Debtor's counsel might, as part of working with the Trustee, put together an agreed payment plan for any unpaid, non-waived nondischargeable taxes, that Debtor could (relatively) easily pay, and with a possible final forgiveness if a specified amount is timely paid.

Given the nature of the bitcoin investment, even the United States Government might not want to hang out for several, or more years, and try to track that down.

Quite possibly like that philosopher from the 1950's who would say, "Hey Rocky, watch me pull a rabbit out of my hat," the Trustee and Debtor might well show BJM that a financial rabbit could come out of the hat in this case.

**MOTION TO COMPEL DISCOVERY**

At the February 11, 2020 final hearing, the parties reported **xxxxxxxxxx**

# FINAL RULINGS

**3.** **19-24003-E-13 KMM-1** **MARITZA CRUZ**
**Tom Gillis**

**MOTION FOR RELIEF FROM AUTOMATIC STAY**
**1-13-20 [21]**

**TOYOTA MOTOR CREDIT CORPORATION VS.**

**Final Ruling:** No appearance at the February 11, 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 January 13, 2020. By the court's calculation, 29 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.**

Toyota Motor Creditor Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Scion FRS, VIN ending in 0919("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Maritza Cruz ("Debtor").

Movant argues the lease over the Vehicle expired on November 16, 2019 and the Debtor and non-filing Co-Debtor have retained the Vehicle and not paid the purchased option due of $16,835.49.

**TRUSTEE RESPONSE**

Trustee filed a Response on January 28, 2020. Dckt. 27. Trustee asserts that Debtor is current under the Plan and Movant is included in Section 4.02 of the confirmed Plan.

**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 $16,835.49 (Declaration, Dckt. 24), while the value of the Vehicle is determined to be $10,528.00, as stated in Schedules B and D filed by Debtor.

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

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.

**Co-Debtor Stay**

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant's interest in the Vehicle is not adequately protected as neither Debtor nor co-Debtor have paid the purchase option due of $16,835.49.

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.

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 Toyota Motor Creditor Corporation ("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 2016 Toyota Scion FRS ("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 request to terminate the co-debtor stay of Luis G. Ruiz of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

**4.** **19-21310-E-13 AP-1** **WANDA COLLIER-ABBOTT** **Richard Jare** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **1-13-20 [139]**

**JPMORGAN CHASE BANK, N.A.**
**VS.**

**Final Ruling:** No appearance at the February 11, 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 January 13, 2020. By the court's calculation, 29 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.**

Creditor J.P. Morgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Mazda Mazda6, VIN ending in 6833 ("Vehicle"). The moving party has provided the Declaration of Robert L. Kammeyer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Wanda Collier-Abbott ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of $629.02 in post-petition payments past due. Declaration, Dckt. 142. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of $314.02. *Id.*

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

**TRUSTEE'S RESPONSE**

Trustee filed a Response on January 28, 2020. Dckt. 159. Trustee asserts that:

1. Debtor is delinquent in plan payments.

2. The hearing on the Motion to Confirm was continued to January 28, 2020.

3. Creditor/Movant is included in Section 4.02 of the proposed Plan.

**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 $11,572.10 (Declaration, Dckt. 142), while the value of the Vehicle is determined to be $12,300.00 as stated on the NADA Valuation Report.

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

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 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.

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 J.P. Morgan Chase Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2015 Mazda Mazda6 ("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.

No other or additional relief is granted.