



## **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on January 8, 2018. Dckt. 35. The Chapter 13 Trustee states that Debtor is delinquent on plan payments, that the Plan includes Movant in Class 1, that \$4,621.92 has been disbursed to Movant for ongoing mortgage payments, and that \$0.00 in principal has been disbursed on Movant’s pre-petition arrearages.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 9, 2018. Dckt. 38. Debtor asserts that there is no legal basis to support Movant’s Motion for Relief from the Automatic Stay, including that there is no Local Bankruptcy Rule 4001-1(b)(C), Movant’s claim of default relates only to pre-bankruptcy arrearages and four regularly scheduled mortgage payments due post-petition, and that a debtor’s material default constituting cause to terminate an automatic stay is not supported by 11 U.S.C. § 362(d)(1). Additionally, Debtor’s confirmed plan allows for \$18,903.00 in arrearages and Movant’s claim states only \$16,670.27 in arrearages.

## **JANUARY 23, 2018 HEARING**

At the hearing, the parties requested that the hearing be continued to allow the parties to address the issues in light of a pending motion to dismiss set for hearing on February 21, 2018. Dckt. 49. The court continued the hearing to 1:30 p.m. on February 27, 2018. Dckt. 51.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$193,730.00 (including \$192,480.00 secured by Movant’s first deed of trust), as stated in Schedule D. The value of the Property is determined to be \$294,400.00, as stated in Schedules A and D.

Debtor’s counsel argues in the Opposition (no evidence having been submitted) that the grounds for the Motion are asserted “only” as to three pre-petition arrearages and four post-petition arrearages. Opposition ¶¶ 3, 4, Dckt. 38. The Motion alleges:

“6. As of November 28, 2017, the loan is in default for the months of September 01, 2017 through and including November 01, 2017 at \$1,170.45 each, less suspense of \$1,125.54, for a total of \$2,385.81. Another payment of \$1,170.45 will come due on December 01, 2017.”

Motion ¶ 6, Dckt. 29. With this bankruptcy case having been filed on June 26, 2017, September and November 2017 are post-petition months in which there is an alleged default. It is asserted that these alleged post-petition defaults constitute “cause” for termination of the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The post-petition default allegation is supported by evidence consisting of LaKeidra Barber’s testimony under penalty of perjury. Declaration, Dckt. 31. Ms. Barber’s testimony includes:

7. The following sets forth the post-petition payments, due pursuant to the terms of the Debt Agreement that have been missed by the Debtor as of November 28, 2017:

Number of Missed Payments	From	To	Missed Principal and Interest	Missed Escrow (if applicable)	Monthly Payment Amount	Total Amounts Missed
3	09/01/17	11/01/17	\$820.11	\$350.34	\$1,170.45	\$3,511.35
Less post-petition partial payments (suspense balance):				(\$1,125.54)		

Total: \$2,385.81

8. As of November 28, 2017, the total post-petition arrearage/delinquency and amount necessary to cure the post-petition default alleged in the Motion is \$2,385.81, consisting of (I) the foregoing total of missed post-petition payments in the amount of \$2,385.81, . . .<sup>1</sup>

<sup>1</sup> The total of missed post-petition payments for this impounded loan include any missed escrow payments. Such missed escrow payments include amounts assessed for taxes and insurance and any previously assessed escrow shortage amount (if applicable). To avoid duplication, post-petition advances (if any) made for insurance, real estate taxes, or similar charges are not listed separately to the extent such advances would have been paid from the missed escrow payments. . . .”

*Id.*, ¶¶ 7, 8.

The Chapter 13 Trustee has weighed in on the Motion, stating that Debtor is \$7,275.00 delinquent under the confirmed plan, with required monthly plan payments being \$2,425.00. Reply and Declaration, Dckts. 35, 36. A \$7,275.00 delinquency represents three monthly plan payments being in default. This is consistent with the allegations in the Motion and testimony in support of the Motion that there are three post-petition payments in default.

There is no dispute that three post-petition defaults exist. Debtor’s confirmed Chapter 13 Plan requires Debtor to make the monthly plan payment, and from said payment, Movant will be paid \$1,155.48 (or such amount as updated under the terms of the note) for its current mortgage payment and a \$315.05 monthly payment on the pre-petition arrearage. Plan ¶ 2.08(c), Dckt. 7. Those have not been made.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property’s equity. *Id.*

Here, Debtor does not argue that the equity cushion is adequate, but only “There is no legal basis to support Creditor’s Motion for Relief from the Automatic stay.” Opposition ¶ 7, Dckt. 38. Other than that legal conclusion, Debtor offers no legal arguments as to why the failure to make three post-petition plan payments is not cause for terminating the automatic stay.

A review of the Docket in this case does not show any proposed modified plan being filed, no motion to confirm a modified plan, nor any action being taken to address a three-month default in Plan payments.

Conceivably, Debtor may have argued that because the value of the property securing Movant’s claim is \$294,000 (Schedule A/B, Dckt. 1 at 11) and because Movant’s secured claim is only (\$117,135.70), the amount stated on the non-evidentiary Relief from Stay Summary Sheet, the apparently \$177,264.30 in “equity” provides Movant with adequate protection while Debtor diligently prosecutes this bankruptcy case. But Debtor has not made that argument. Whether this is because Debtor now questions the value or does not intend to diligently prosecute the bankruptcy case, Debtor has chosen not to make that argument.

Debtor had a prior Chapter 13 case, No. 17-20245, (“First Bankruptcy Case”) that was filed on January 16, 2017. On April 14, 2017, the Chapter 13 Trustee filed a Motion to Dismiss the First Bankruptcy Case, asserting that Debtor was \$1,490.00 (approximately one month) in default in monthly Plan payments. No opposition was filed to the Motion (Debtor being represented by different counsel than in the present case), and the court dismissed the case. 17-20245; Order filed June 5, 2017, Civil Minutes, Dckts. 45, 43.

Debtor then commenced this bankruptcy on June 26, 2017, and promptly confirmed his Chapter 13 Plan. Order filed August 7, 2017, Dckt. 24. The court also extended the automatic stay as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(B), concluding that Debtor had resulted the presumption of bad faith flowing from the dismissal of the First Bankruptcy Case under 11 U.S.C. § 362(c)(3)(C). Order, Civil Minutes, Dckts. 22, 20. The findings of the court include:

“Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor alleges that there was miscommunication with his prior attorney that caused him to miss payments, but now, Debtor is represented by another attorney.”

Civil Minutes, Dckt. 20.

Under the Debtor’s confirmed Plan in this case, the first Chapter 13 payment was due in July 2017. As of the December 26, 2017 filing of the Motion for Relief from the Automatic Stay there were five monthly plan payments that had come due for disbursement through the Chapter 13 Trustee (July—November 2017). Debtor had defaulted in three of the five payments (60% of the payments that had come due), having made only one payment.

Under the Chapter 13 Plan there are three debts provided for. First, Movant’s. Then for Sacramento County for the property taxes on Movant’s collateral. Third, payments on the secured claim of “Santander” for which Debtor’s vehicle is the collateral. There is also a 2% dividend for creditors, which is a *de minimis* amount. Essentially, the focus of the Plan is to pay Movant.

Debtor's financial information upon which the Chapter 13 Plan was confirmed includes the Income and Expense information on Schedules I and J. Dckt. 1 at 30–31 and 32–33. For Income on Schedule I, Debtor states that he has take-home pay of \$3,226.18 and \$1,100.00 in net rental income. That rental income is for the recent rental of a “portion of his house for \$1,100 per month. . . .” Schedule I, Question 13.

Moving to Schedule J, Debtor lists having two dependents, two minor children. The expenses listed on Schedule J do not appear to be unrealistic, though no provision is made for taxes on rental income of \$13,200.00 per year. For a family of three, Debtor lists monthly expenses (excluding mortgage, taxes, and insurance) of (\$1,901.00). With those expenses and the additional rental income, Debtor was able to show having \$2,425.18 of Net Month Income to fund the Plan.

Something has happened, and Debtor does not have \$2,425.18 to fund his Chapter 13 Plan.

In light of the defaults in plan payments that directly cause the defaults in post-petition payments due to Movant, cause exists to terminate the automatic stay. While there is an equity cushion, Debtor has taken no steps to save that equity cushion, but instead appears to have the “plan” of living in the house payment free protected by his confirmed Chapter 13 Plan (which he has breached 60% of the time since this case was filed).

~~Cause pursuant to 11 U.S.C. § 362(d)(1) exists to modify the automatic stay to allow Wells Fargo Bank, N.A. and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4837 Propitious Court, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.~~

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

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

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

### **Request for Prospective Injunctive Relief**

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

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

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

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

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

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

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

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

#### **ADDITIONAL ACTION BY DEBTOR**

At the hearing, Debtor's counsel advanced the following with respect to Debtor's multiple defaults under the Plan and the action to be taken not to lose the equity in the Property for Debtor.

**XXXXXXXXXXXXXXXX**

No other or additional relief is granted by the court.

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

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

~~The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4837 Propitious Court, Sacramento, California.~~

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

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

2. [17-25834-E-13](#)      **BRANDON HEATON**  
MDE-1                      **Gabriel Liberman**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
1-17-18 [37]**

**DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.**

**Final Ruling:** No appearance at the February 27, 2018 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 17, 2018. By the court’s calculation, 41 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.**

Deutsche Bank National Trust Company, solely as Trustee for MortgageIT Trust 2005-4, Mortgage-Backed Notes, Series 2005-4, (“Movant”) seeks relief from the automatic stay with respect to Brandon Heaton’s (“Debtor”) real property commonly known as 5121 Thoroe Court, Elk Grove, California (“Property”). Movant has provided the Declaration of Shane Ellis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ellis Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$6,241.06 in post-petition payments past due. The Declaration also asserts that Jacqueline Heaton is a non-filing co-debtor to the securing note.

## CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on February 12, 2018. Dckt. 43. The Chapter 13 Trustee asserts that Debtor’s plan is not confirmed and that it includes Specialized Loan Servicing in Class 3 regarding the Property. The Chapter 13 Trustee does not oppose the Motion.

### DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$331,301.35 secured by Movant’s first deed of trust, as stated in the Ellis Declaration and Schedule D. The value of the Property is determined to be \$289,000.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 Jacqueline Heaton is listed a non-filing co-debtor on the Note.

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

### Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for

grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

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

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

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

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

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

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

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Deutsche Bank National Trust Company, solely as Trustee for MortgageIT Trust 2005-4, Mortgage-Backed Notes, Series 2005-4, and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Deutsche Bank National Trust Company, solely as Trustee for MortgageIT Trust 2005-4, Mortgage-Backed Notes, Series 2005-4, and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, solely as Trustee for MortgageIT Trust 2005-4, Mortgage-Backed Notes, Series 2005-4, (“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 Deutsche Bank National Trust Company, solely as Trustee for MortgageIT Trust 2005-4, Mortgage-Backed Notes, Series 2005-4, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 5121 Thoroe Court, Elk Grove, California.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Jacqueline Heaton 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.

3. [18-20339-E-13](#) RAQUEL THOMAS  
GME-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-27-18 [9]

IDEAN, 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on January 27, 2018. By the court’s calculation, 31 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.**

Idean, Inc., and Moshen Mashhadialireza (“Movant”) seek relief from the automatic stay with respect to Raquel Thomas’s (“Debtor”) real property commonly known as 4900 Blossom Ranch Drive, Elk Grove, California (“Property”). Movant has provided the Declaration of George Eckert to introduce evidence as a basis for Movant’s contention that 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 October 10, 2017. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit A, Dckt. 14.

Movant provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate a claim of ownership. Exhibit A1, Dckt. 14. 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).

The court shall issue an order terminating and vacating the automatic stay to allow Idean, Inc., and Moshen Mashhadialireza, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4900 Blossom Ranch Drive, Elk Grove, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Idean, Inc., and Moshen Mashhadialireza (“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 Idean, Inc., and Moshen Mashhadialireza, its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4900 Blossom Ranch Drive, Elk Grove, California.

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

No other or additional relief is granted.

4. [18-20368](#)-E-13      **WILLIAM CARLISLE**  
PP-1                      **Ronald Holland**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY O.S.T.**  
2-12-18 [26]

**CAROL CARLISLE 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.

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

-----

Local Rule 9014-1(f)(3) 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 February 13, 2018. By the court’s calculation, 14 days’ notice was provided. The court required that opposition be filed by February 25, 2018. Dckt. 35.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were required to file a written response or opposition to the motion by February 25, 2018. If any of these potential respondents file opposition and appear at the hearing for the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion and pleadings. At the hearing -----.

**The Motion for Relief from the Automatic Stay is granted.**

Carol Carlisle (“Movant”) seeks relief from the automatic stay to allow *Carlisle v. Carlisle* (“State Court Litigation”) to be concluded. Movant has provided the Declarations of Carol Carlise and Beau Hodson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by William Carlisle (“Debtor”).

The Carol Carlisle Declaration states that the State Court Litigation has resulted in a Statement of Decision that cannot be enforced against real property commonly known as 3220 Paladin Drive, Garden Valley, California, and 6341 Peacock Way, Pilot Hill, California (“Property”) while the automatic stay is pending in this case.

## CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on February 13, 2018. Dckt. 36. The Chapter 13 Trustee asserts that he has no basis to oppose the Motion.

### DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been litigated already, and a decision was issued by the state court judge. Exhibit 1, Dckt. 32. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation and enforce the state court’s decision. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, the Chapter 13 Trustee, or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

### 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 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 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 Carol Carlisle (“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 modified as applicable to William Carlisle (“Debtor”) to allow Carol Carlisle, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Carlisle v. Carlisle*.

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

**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.

5. [16-23476-E-13](#) **FELIPA DE JIMENEZ**  
TJS-1 **Gabriel Liberman**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY**  
12-12-17 [19]

**LOBEL FINANCIAL CORP. VS.**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

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 12, 2017. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is XXXXXXXXXX.**

Lobel Financial Corp. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2004 Infiniti G35, VIN ending in 0490 (“Vehicle”). The moving party has provided the Declaration of Heidi Viramontes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Felipa Martin De Jimenez (“Debtor”).

The Heidi Viramontes Declaration provides testimony that Debtor has not made four post-petition payments, with a total of \$1,104.93 in post-petition payments past due. Another payment will be due on December 12, 2017.

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 \$3,109.49, as stated in the Heidi Viramontes Declaration, while the value of the Vehicle is determined to be \$7,650.00, as stated in Schedules B and D filed by Debtor.

**CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on January 08, 2018. Dckt. 28. The Chapter 13 Trustee asserts that Debtor is \$520.00 delinquent under the confirmed plan where the last

payment posted December 12, 2017, in the amount of \$390.00. Debtor's plan payments are \$390.00 for thirty-six months beginning June 25, 2016. A total of \$5,510.00 in ongoing payments have disbursed to the creditor with a current principal due of \$290.00.

### **JANUARY 23, 2018 HEARING**

At the hearing, the court continued the matter to 1:30 p.m. on February 27, 2018, noting that the court would consider Movant's request for issuance of an adequate protection order, even if Debtor has cured all defaults. Dckt. 34.

### **CHAPTER 13 TRUSTEE'S SUPPLEMENTAL RESPONSE**

The Chapter 13 Trustee filed a Supplemental Response on February 12, 2018. Dckt. 35. He states that Debtor is \$130.00 delinquent in plan payments, with another \$390.00 due before the hearing. He also notes that Movant has not filed a proof of claim and has received \$5,800.00 in ongoing payments.

### **DISCUSSION**

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Vehicle for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

At the hearing, Movant reported that Debtor **has / has not** cured the default. The Motion is **XXXXXXXXXXXX**.

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 Lobel Financial Corp. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** and the Motion for Relief from Automatic Stay is **XXXXXXXXXXXX**.

6. [17-24484-E-13](#)      **MELISSA CHAMBERS**  
**JSO-1**                      **Bonnie Baker**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-22-18 [53]**

**MARK GWALTNEY 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 22, 2018. 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is granted.**

Mark Gwaltney (“Movant”) seeks relief from the automatic stay to allow *Gwaltney v. Gwaltney* (“State Court Litigation”) to be concluded. Movant has provided the Declaration of Mark Gwaltney to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Melissa Chambers (“Debtor”).

The Mark Gwaltney Declaration states that after a dissolution judgment was entered in the State Court Litigation, Mr. Gwaltney and Debtor have been engaged in post-judgment litigation about child custody and visitation, child support, spousal support, attorney fees and costs, property matters, and whether to set the dissolution judgment aside.

The Gwaltney Declaration states that real property was sold on January 3, 2017, which resulted in payment of two liens and net proceeds of \$98,479.38 held in an attorney-client trust account. While Debtor contends that a state court determination of how to divide and release those funds is subject to the automatic stay, Mr. Gwaltney contends that relief from the automatic stay is appropriate for family law matters to be resolved judiciously and equitably.

## CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on February 12, 2018. Dckt. 59. The Chapter 13 Trustee asserts that he does not oppose the Motion for Mark Gwaltney to enforce remedies under non-bankruptcy law in Shasta County Superior Court Case No. 176573.

## DEBTOR'S RESPONSE

Debtor filed a Response on February 14, 2018. Dckt. 61. Debtor introduces a lengthy recitation of “background facts” about the events leading up to this bankruptcy case, but Debtor does not provide any supporting evidence for the various statements, most of which are inadmissible legal conclusions. *Id.* at 1–4. Debtor’s introductory statements do not appear to bear upon the instant Motion. *Id.*

Near the end of the Response, Debtor addresses the Motion, stating that she “does not object to the lifting of the stay for the sole purpose of allocation of the assets,” but she moves the court to issue an order limiting the state court’s jurisdiction to only be for allocating assets, with distributions to be protected by Debtor’s bankruptcy exemptions. *Id.* at 5:10–11. Debtor seeks a court order prohibiting the state court from enforcing a ruling that awarded sanctions in state court at a date after this bankruptcy case was filed. *Id.* at 5:14–15.

Additionally, Debtor seeks a court order limiting judgment creditors from collecting any funds from the State Court Litigation, subject to this bankruptcy case.

## DISCUSSION

Debtor has not provided a single legal citation for the various limitations she seeks for the court to order as part of its decision on this Motion. Debtor does not present the court with any basis for being able to limit the jurisdiction of a state court from enforcing its own rulings according to California law. Additionally, Debtor has not provided the court with a basis for preemptively prohibiting judgment creditors from enforcing their state law rights; Debtor notes that a motion to avoid a judicial lien is set for hearing at the end of March 2018, but just because that motion is filed does not entitle Debtor to prevent creditors from enforcing valid liens.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson*

*Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. What has been presented to the court is that there have been significant post-judgment proceedings following a state court dissolution decision that relate to matters of the dissolution. Those are a type of proceeding better served in state court, rather than in bankruptcy court. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Mark Gwaltney (“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 modified as applicable to Melissa Chambers (“Debtor”) to allow Mark Gwaltney, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Gwaltney v. Gwaltney*, Shasta County Superior Court Case No. 176573.

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.