

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**March 28, 2019 at 10:00 a.m.**

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1. **19-90022-E-7**                      **ASHLEY MILLER**                      **MOTION FOR RELIEF FROM**  
**CJO-1**                                      **Pro Se**                                      **AUTOMATIC STAY**  
**PENNYMAC LOAN SERVICES, LLC**                                      **3-5-19 [23]**  
**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).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Chapter 7 Trustee, on March 5, 2019. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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

PennyMac Loan Services, LLC (“Movant”) seeks relief from the automatic stay with respect to Ashley Miller’s (“Debtor”) real property commonly known as 515 Datewood Court, Los Banos, California

(“Property”). Movant has provided the Declaration of Regina T. Chatman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

- A. PennyMac Loan Services, LLC, and its successor and/or assignees, moves for relief from the automatic stay under 11 U.S.C. § 362 and for relief pursuant to 11 U.S.C. § 364(d)(4).
- B. The relief pursuant to 11 U.S.C. § 362(d)(4) is based on the current bankruptcy petition being used as part of a scheme to delay, hinder or defraud the Movant. As grounds for such legal statement, the Motion continues, stating with particularity:
  1. “Debtor is not the borrower on the Note and Deed of Trust.”
  2. Debtor “purportedly acquired interest in the property by an unauthorized Grant Deed.”
  3. “In addition to the unauthorized transfer of interests to the Debtor, Movant has been informed of an additional three (3) other unauthorized purported transfer of interest in the Property.”
  4. “The Instant Bankruptcy Case is the fifth bankruptcy case purporting to affect the Property.”
  5. “Movant asserts that the multiple unauthorized transfers of interest in the Property coupled with the multiple bankruptcy cases has been utilized as part of a scheme to delay, hinder or defraud Movant from being able to proceed with its available non-bankruptcy remedies.”
    - a. “Thus, Movant seeks relief pursuant to § 362(d)(4).”
  6. PennyMac requests relief from the stay for cause pursuant to 11 U.S.C. § 362(d)(1).
    - a. “Movant asserts that based on the facts and circumstances surrounding the unauthorized purported transfers of interest in the property and multiple bankruptcy cases purportedly affecting the Property, that the instant petition is being used to delay and hinder Movant, constituting an abuse of the bankruptcy process and is ‘cause’ to terminate the automatic stay.”

Motion, Dckt. 23.

The above “particularities” are very general and nonspecific in nature. What transfers? Not stated with particularity. What prior bankruptcy cases? Not stated with particularity.

That such particularity is lacking is admitted by Movant in its “Points and Authorities” which if filed merely in support of the Motion. Dckt. 27. In that “Points and Authorities” Movant states particular facts, makes particular allegations, and states with particularity the actual grounds (not merely non-specific allegations) in four pages of the six pages (not including the title page which does not include anything but giving “Notice” that a motion has been filed seeking relief from the stay) “Points and Authorities” contains the grounds stated with particularity that are required (Fed. R. Bank. P. 9013) to be in the Motion, which is a separate document from the points and authorities (L.B.R. 9004-2(c)(1), 9014-1(d)).

These basic pleading requirements imposed by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9013 follow the requirements imposed in Federal Rule of Civil Procedure 7(b).

The court is hard pressed to consider all of the grounds stated with particularity in the “Points and Authorities” as part of the Motion when Movant consciously chose not to include them as grounds in the Motion.

### **Need for Stating Grounds With Particularity**

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a “short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than “an unadorned, the-defendant-unlawfully-harmed-me accusation” is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere “labels and conclusions” of a “formulaic recitations of the elements of a cause of action” are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, “to state a claim to relief that is plausible on its face.” *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the

law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic

postulations” not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

The court has uniformly applied the Federal Rules of Civil Procedure, Federal Rule of Bankruptcy Procedure, Local Bankruptcy Rules, and Federal Rules of Evidence to all parties over the past nine years. Counsel and her firm have regularly appeared in this court and know of such application of the Rules. Here, they appear to be probing to see if after nine years they can skirt the Rules, develop their own pleading style, and circumvent what has been adopted by the U.S. Supreme Court. They cannot.

The Motion is denied without prejudice. While the grounds stated in the “Points and Authorities” may form a basis for the relief sought, the court will not amend the Motion and assemble such grounds for Movant.

### **Referral to the U.S. Trustee for Region 17**

The grounds stated with the legal points and authorities may well indicate that the Debtor in this case and the purported debtors in other cases may be the victims of identity highjacking. Or they may be actively working as part of a scheme to not merely delay, hinder, or defraud creditor, but defraud the federal courts in the filing of bankruptcy petitions with no intention of them being prosecuted.

The bankruptcy cases stated with particularity in the Points and Authorities are, and a review of the dockets for those cases include the following information:

1. Joanna Alcala filed a Chapter 13 Bankruptcy in the Eastern District of California (Fresno) assigned Case No. 18-11925 (“First Case”).
  - a. Filed.....May 14, 2018
  - b. Dismissed.....May 25, 2018
  - c. No Chapter 13 Plan, Statement of Monthly Income, Schedules, Statement of Financial Affairs, Summary of Assets and Liabilities, and Verification and Master Address List were filed.
  - d. Joanna Alcala stated under penalty of perjury that she lived at the 515 Datewood Court, Los Banos, California Property. 18-11925; Petition, Dckt. 1 at 2.
  - e. The Joanna Alcala case was dismissed for failure to file the basic required documents.
2. Christopher Wright, the purported grantee by the First Transfer, filed a Chapter 7 Bankruptcy in the Eastern District of California (Fresno) assigned Case No. 18-12972 (“Second Case”).
  - a. Filed.....July 20, 2018

- b. Dismissed.....September 17, 2018
  - c. In his Petition, Mr. Wright states that he lives at 1259 N. Calaveras St, Fresno, California, but has a mailing address of 44823 Guadalupe Dr, #199, Indian Wells, California. 18-12972; Petition, Dckt. 1 at 2.
  - d. Mr. Wright filed Schedules and Statement of Financial Affairs, which includes the following information under penalty of perjury:
    - (1) No interest in the 515 Datewood Court, Los Banos, California Property is stated on Schedule A/B. *Id.*, Dckt. 15 at 3-4.
    - (2) On Schedule D Mr. Wright there are no creditors who have any claims secured by property he owns. *Id.* at 15.
    - (3) On Schedule H Mr. Wright states that he has no codebtors. *Id.* at 22.
  - e. Mr. Wright’s bankruptcy case was dismissed due to his failure to attend his Meeting of Creditors.
3. Joshua Vergara, the purported grantee by the Second Transfer, and Monica Vergara filed a Chapter 7 Bankruptcy in the Northern District of California (Santa Rosa) assigned Case No. 18-10596 (“Third Case”).
- a. Filed.....August 31, 2018
  - b. Dismissed.....October 16, 2018
  - c. On the Petition Mr. and Mrs. Vergara state that their residences are 4312 Kathy Ave, Riverside, California and 3315 Canyonlands Ave, Santa Rosa, California (stating that they are going through a separation). 18-10596; Petition, Dckt. 1 at 2.
  - d. No Summary of Assets and Liabilities, Schedules, Statement of Financial Affairs, Statement of Current Monthly Income, and Means Test were filed in the Vergara bankruptcy case.
  - e. The Vergara debtors failed to attend the required Meeting of Creditors.
  - f. The bankruptcy case was dismissed due to the Vergaras failing to attend the Meeting of Creditors (with the Vergaras debtors failing to file the above basic required documents to prosecute a bankruptcy case).

4. Karina Soto, the purported grantee by the Third Transfer, and Juan Soto filed a Chapter 7 Bankruptcy in the Northern District of California (Oakland) assigned Case No. 18-42376 (“Fourth Case”).
  - a. Filed.....October 10, 2018
  - b. Dismissed.....October 25, 2018
  - c. Karina and Juan Soto state on their Petition that they live at 722 E. Walnut Street #72, Santa Ana, California and 2425 66<sup>th</sup> Ave, Oakland, California (stating that they are going through a separation and living in different places).
  - d. No Summary of Assets and Liabilities, Schedules, Statement of Financial Affairs, Statement of Current Monthly Income, and Means Test were filed in the Soto bankruptcy case.
  - e. The Soto bankruptcy case was dismissed due to the failure to file the above basic documents necessary to prosecute a bankruptcy case.

In the current bankruptcy case filed by Ashley Miller, the Debtor, she states that she lives at 1121 Oberlin Circle, Modesto California, but receives her mail at 11903 Rialto St., Sun Valley, California. Petition, Dckt. 1 at 2.

Debtor filed her Schedules on January 25, 2019. On Schedule A/B she lists as having real property identified as 15355 Michael Crest Dr., Santa Clarita, California. Dckt. 15 at 3. No interest in the 515 Datewood Court, Los Banos, California Property is stated on Schedule A/B. On Schedule D Debtor states no creditor have claimed by any property in which she has an interest. *Id.* at 14.

Notwithstanding the debtors in the prior cases or in the current case stating under penalty of perjury that they do not live in the 515 Datewood Court, Los Banos, California Property, and for those filing Schedules state no interest in said property, Movant includes in the Points and Authorities the particular information that the above bankruptcy cases are being asserted as imposing the automatic stay to stop the then pending nonjudicial foreclosure sale of the 515 Datewood Court, Los Banos, California Property.

The Exhibits include the notice of the bankruptcy filing and demand to stop the nonjudicial foreclosure sale, which include the following information:

- A. Current Bankruptcy Case No. 19-90022 - filed in the name of Ashley Miller as debtor. Exhibit 8, Dckt. 26.
  1. Facsimile demanding stopping the sale sent by Joanna Alcala, dated January 16, 2019.
  2. Facsimile sending number redacted.

3. Contact number for Joanna Alcala left blank.
  4. The enclosures included a purported Grant Deed with a recording date of January 16, 2019, by which Joanna Alcala, as a married woman as her sole and separate property, grants to herself and Ashley Miller the 515 Datewood Ct., Los Banos, California Property.
  5. The signature line of the Grant Deed has a date of January 10, 2019, which is the day before the bankruptcy case in the name of Ashley Miller was filed.
- B. For prior bankruptcy case 18-42376 filed in the names of Karina and Juan Soto. Exhibit 7, *Id.*
1. Facsimile demanding stopping the sale sent by Joanna Alcala, dated October 17, 2018.
  2. Facsimile sending number redacted.
  3. Contact number for Joanna Alcala left blank.
  4. The enclosures included a purported Grant Deed with a recording date of October 15, 2018, which Joanna Alcala, as a married woman as her sole and separate property, grants to herself and Karina Soto the 515 Datewood Ct., Los Banos, California Property.
  5. The signature line of the Grant Deed has a date of October 10, 2018, which is the day before the bankruptcy case in the names of Karina and Juan Soto was filed.
- C. For prior bankruptcy case 18-10596 filed in the names of Joshua and Monica Vergara. Exhibit 6, *Id.*
1. Facsimile demanding stopping the sale sent by Joanna Alcala, dated September 5, 2018.
  2. Facsimile sending number redacted.
  3. Contact number for Joanna Alcala left blank.
  4. The enclosures included a purported Grant Deed with a recording date of September 5, 2018, which Joanna Alcala, as a married woman as her sole and separate property, grants to herself and Joshua Vergara the 515 Datewood Ct., Los Banos, California Property.

5. The signature line of the Grant Deed has a date of August 30, 2018, which is the day before the bankruptcy case in the name of Joshua and Monica Vergara was filed.
- D. For prior bankruptcy case 18-12972 filed in the name of Christopher Wright. Exhibit 5, *Id.*
1. Facsimile demanding stopping the sale sent by Joanna Alcala, dated July 25, 2018.
  2. Facsimile sending number redacted.
  3. Contact number for Joanna Alcala left blank.
  4. The enclosures included a purported Grant Deed with a recording date of July 25, 2018, which Joanna Alcala, as a married woman as her sole and separate property, grants to herself Christopher Wright the 515 Datewood Ct., Los Banos, California Property.
  5. The signature line of the Grant Deed has a date of July 16, 2018, which is five days day before the bankruptcy case in the name of Christopher Wright was filed.

A consistent theme in the purported transfers is that they are dated the day on which the deeds are purported to be executed are just one day before (in one case five days) the bankruptcy case is filed, but all of the recordings of the grant deed are not until days after the bankruptcy cases are filed.

The Movant has not provided the court with a title history for the 515 Datewood Court, Los Banos Property, showing the above purported transfers and if the deeds were recorded and the transfers made, what Joanna Alcala and her purported transferees did after the various bankruptcy cases were dismissed.

#### Referral to the U.S. Trustee

The information provided by Movant, while not presented in a manner for which relief may be granted pursuant to the pleading currently filed as the “motion,” is very significant in showing what may well not only be an abuse of the Movant, but identity theft or identity highjacking by creating false purported transfers and a fraud on the federal judicial system.

The court refers this matter to the U.S. Trustee for investigation and action given that this spans multiple District in Region 17, as well as purported debtors who have addresses in other U.S. Trustee Regions.

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 PennyMac Loan Services, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**IT IS FURTHER ORDERED** that the court refers the purported transfers of the real property commonly known as 515 Datewood Court, Los Banos, California by Joanna Alcala to persons who have filed bankruptcy (with the deeds purported dated and notarized the day before the bankruptcy case) and the deeds recorded after the bankruptcy cases filed for investigation and action, as the U.S. Trustee determines appropriate, for issues including: Identity Theft and the filing of bankruptcy cases, Hijacking of Identity of persons who have filed bankruptcy, Sale of Bankruptcy filings by debtors, Use of Interstate Commerce to falsely represent transfers of property, and Fraud committed on and in the name of the United States Bankruptcy Court, a Unit of the United States District Court.

The Clerk of the Court shall serve a copy of this Referral to the U.S. Trustee for Region 17 and a copy of the Minutes from the March 28, 2019 hearing in this Contested Matter on:

Tracy Hope Davis, U.S. Trustee for Region 17  
Office of The United States Trustee  
450 Golden Gate Avenue, 5th Floor, Suite #05-0153  
San Francisco, CA 94102

Gregory Powell, Assistant U.S. Trustee  
Office of the United States Trustee  
2500 Tulare Street, Suite 1401  
Fresno, CA 93721



2. [19-90183-E-7](#)                      **STEPHANIE ALLEN-CASTANO**                      **MOTION FOR RELIEF FROM**  
[VVF-1](#)                                      **Thomas Hogan**                                      **AUTOMATIC STAY**  
3-13-19 [10]

**AMERICAN HONDA FINANCE  
CORPORATION 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).**

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Local Rule 9014-1(f)(2) 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 7 Trustee, and Office of the United States Trustee on March 13, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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**The Motion for Relief from the Automatic Stay is granted.**

American Honda Finance Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2013 Honda Pilot, VIN ending in 3967 (“Vehicle”). The moving party has provided the Declaration of Crystal Estrada to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Stephanie Marie Allen-Castano (“Debtor”).

The Estrada Declaration provides testimony that Debtor has not made 3 pre-petition payments, totaling \$1,541.31. The Estrada Declaration further states that the Movant has possession of the Vehicle, which was recovered pre-petition on February 10, 2019. Dckt. 12.

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).

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 \$24,331.32, as stated in the Estrada Declaration. Based on the NADA report, the retail value of the Vehicle is \$17,525.00.

## **DISCUSSION**

A review of Debtor's Schedules demonstrates Debtor's intent to surrender the Vehicle. The Vehicle is not listed as Debtor's property on Schedule B. Dckt. 1. Furthermore, Movant's claim is listed on Schedule E/F as unsecured, and not Schedule D. *Id.*

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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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 Debtor's intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted due to the eroding nature of the Vehicle, pre-petition defaults, lack of equity, lack of evidence showing the Vehicle is necessary for an effective reorganization, and Movant already having obtained possession of the Vehicle.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by American Honda Finance 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 2013 Honda Pilot (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

3. [19-90183-E-7](#)  
[VVF-2](#)

STEPHANIE ALLEN-CASTANO  
Thomas Hogan

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
3-14-19 [17]

AMERICAN HONDA FINANCE  
CORPORATION 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).**

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Local Rule 9014-1(f)(2) 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 7 Trustee, and Office of the United States Trustee on March 14, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Civic, VIN ending in 5648 ("Vehicle"). The moving party has provided the Declaration of Crystal Estrada to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Stephanie Marie Allen-Castano ("Debtor").

The Estrada Declaration provides testimony that Debtor has not made 2 pre-petition payments, with a total of \$851.98 in pre-petition payments past due.

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).

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 \$25,402.31 as stated in the Estrada Declaration. While the value of the Vehicle is asserted to be \$23,000.00, as stated in Schedules B and D filed by Debtor, the NADA Valuation Report provides evidence that base MSRP for the Vehicle was only \$18,740.00. The more accurate present value for the Vehicle is \$16,250.00, which is the clean-retail value advanced by Movant.

## **DISCUSSION**

### **Relief Based on Good 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).

Here, Movant has in support of good cause for relief argued only that Movant (1) is not protected by an equity cushion, and (2) payments are not being made to Movant to adequately protect Movant’s interest in the rapidly depreciating Vehicle.

Movant’s contention that mere lack of equity is “cause,” as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that a debtor has no equity in the estate is not sufficient standing alone to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass’n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981). Moving party has not adequately pleaded or provided an evidentiary basis for granting relief for “cause.”

Furthermore, Movant presented no evidence of post-petition delinquency in payments. Delinquency in pre-petition payments is not unusual for a bankruptcy filing. Here, 2 missed payments do not demonstrate that good cause for relief.

### **Relief Based on Lack of Equity**

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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant cites, amongst other things, the eroding nature of vehicles for why it is necessary to waive the 14-day stay of enforcement, which this court is in agreement with.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by American Honda Finance 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 2017 Honda Civic (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.