

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

June 2, 2020 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC  
(Please see the court's website for instructions.)

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1. [20-22160](#)-C-13 BRANDON HINTZ MOTION FOR RELIEF FROM  
[SW-1](#) AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
5-5-20 [[12](#)]  
PS FUNDING, INC. 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.  
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Local Rule 9014-1(f)(1) Motion-Hearing Required.

**Sufficient Notice Not Provided.** The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 6, 2020. By the court's calculation, 27 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 ~~XXXXX~~.**

PS Funding, Inc., a Delaware corporation ("Movant") seeks relief from the automatic stay with respect to Brandon Hintz's ("Debtor") real property commonly known as 6350 Carolinda Drive, Granite Bay, California ("Property"). Movant has provided the Declaration of Gretchen Etzold to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues relief is warranted because (1) the borrower on the loan Veronica L. Faubion ("Borrower") and Debtor are not making payments on the fully matured loan; (2) the Borrower transferred an interest in the Property to Debtor on the eve of bankruptcy to hinder and delay.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 20, 2020. Dckt. 34. Debtor argues the Property, purchase March 22, 2019, pursuant to lease purchase option, was always jointly owned and financed, but Debtor was not listed due to predatory lending practices.

Debtor argues that after reviewing Zillow and Redfin.com estimates, Debtor believes the value of the Property to be \$1,757,342.00, which would leave \$87,858.83 in equity.

Debtor also argues the Property is Debtor's home office and residence, and therefore necessary for an effective reorganization.

Debtor also argues that due to the predatory nature of the loan to Borrower, relief should not be granted. Debtor argues that in extending credit Movant knew Borrower had no income and only received income from Debtor. Debtor is in the process of preparing an adversary complaint for predatory lending, fraud deceit, misrepresentation, negligence and breach of contract.

**TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response detailing facts about the case, including plan payments have not been commenced, and that a plan has not been served or set for confirmation hearing.

**MOVANT'S REPLY & EVIDENTIARY OBJECTION**

Movant filed a Reply and Evidentiary Objections on May 26, 2020. Dckts. 41, 42. The Reply argues (1) the Opposition was not timely filed 14 days prior to the hearing; (2) Debtor's valuation is inadmissible; (3) Movant's claim is not adequately protected; (4) the case was filed in bad faith; (5) even assuming the Debtor's higher

valuation, there is no equity when adding all liens, which total \$1,844,062.17; (6) Despite Debtor arguing the Property is necessary as his place of business, Movant argues Debtor could work somewhere else; (7) Debtor's reorganization does not seem likely given that no plan payments have been made and no confirmation hearing set; (8) Movant's argument that an interest was transferred to Debtor to hinder and delay has not been rebutted.

The evidentiary objections (Dckt. 42) are (1) Debtor's declaration was not sworn under penalty of perjury; (2) Debtor does not have personal knowledge as to this testimony; (3) the testimony is hearsay; (4) the testimony is not the best evidence; (5) the testimony is not relevant. A table of objections by paragraph of Debtor's declaration is provided.

## **DISCUSSION**

At outset, the court notes that 28 days' notice was required, and only 27 days' notice was provided. Ironically, Movant points out that Debtor's Opposition was filed less than 14 days prior to the hearing. But, this mistake was likely caused because generally a responding party has 14 days to respond to a motion brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). Here, 14 days from May 6, the date the Motion was served, is May 20, the day the Opposition was filed.

As to whether relief from stay is warranted, it appears the key disputes are over whether there is cause for relief based on lack of adequate protection and alleged bad faith, whether there is equity in the Property, whether the Property is necessary for a successful reorganization, and whether the Debtor received an interest in the Property as part of a scheme to hinder and delay Movant's recovery.

### Review of Schedules

Debtor's Amended Schedule A values the Property at \$1,799,000.00. Dckt. 31. This is up from the originally stated amount, which was \$1,550,000.00. Dckt. 22.

Schedule D listed the claims of Movant at \$1,687,330.00, Karen Scott at \$106,000.00, and Brenda Williams at \$68,579.00, for a total amount of liens of \$1,861,909.00.

Thus, it appears that under Debtor's own valuation there is no equity in the Property.

### Plan Treatment

The Plan provides for Movant's claim as a Class 1 with an arrearage payment of \$999.15 and post-petition payment of \$11,364.38. Dckt. 23.

But, Movant argues its claim fully matured on April 1, 2020. Declaration, Dckt. 16 at ¶ 5. Therefore it seems the plan will need to be amended to provide for the full claim as a Class 2.

Exclusive of Trustee's fees and at the 9% interest provided for in the plan, it would take 60 monthly dividends of \$35,026.20 for Debtor to pay off the \$1,687,330.00 claim in full within 5 years. Debtor's Schedules I and J show monthly disposable income of only \$13,758.00, which is not nearly enough to fund that plan.

It is not clear what kind of plan the Debtor could propose other than relying on litigation against the Movant. And not much detail has been provided about the facts giving rise to claims against Movant, and what the remedy would be if Debtor succeeds.

#### Necessary for Reorganization

The Creditor argues that the Property is not necessary because Debtor could simply find another place to live and work. While this argument generally ignores significant costs and time associated with a move, this point is probably well-taken in this case where the Debtor has significant income and Debtor's primary expense is the Property. A downsized living arrangement in this case would probably help Debtor successfully complete a Chapter 13 plan.

It is unclear if there are any special features about the Property that assist Debtor in Debtor's business.

#### Scheme to Hinder or Delay

The Movant argues that relief pursuant to 11 U.S.C. § 362(d)(4) is warranted because "Just two days before the Debtor's bankruptcy filing, the Borrower transferred part ownership interest in the Property to the Debtor, without PS Funding's knowledge or consent, which is required pursuant to the Loan Documents."

11 U.S.C. § 362(d)(4)(A) provides for in rem relief where "the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval."

Presumably, the argument is that the short time between the transfer of the Property interest and filing this case shows the case was filed as a part of a scheme to hinder and delay.

While that may be the necessary inference in many cases, it also notable here that Debtor seems to have already had a community interest in the Property even without the recent transfer.

Conversely, Debtor's opposition is lacking any explanation for the transferred interest, and whether this case was not file as part

of a scheme to hinder or delay.

Ruling

The court notes that Federal Rule of Bankruptcy Procedure 9014(d) provides that if there is a disputed material factual issue, testimony of witnesses "shall be taken in the same manner as testimony in an adversary proceeding."

At the hearing, the parties reported whether there are material factual disputes **XXXXXXXXXXXXXXXXXX**.

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 PS Funding, Inc., a Delaware 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** that **XXXXXXXXXXXXXXXXXX**

WELLS FARGO BANK N.A. VS.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.  
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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, and the Chapter 13 Trustee on May 5, 2020. By the court's calculation, 28 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.**

WELLS FARGO BANK N.A., AS TRUSTEE, FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET-BACKED PASS-THROUGH CERTIFICATES ("Movant") seeks relief from the automatic stay with respect to Richard George Strom and Linda Rose Strom's ("Debtor") real property commonly known as 3045 9th Avenue, Sacramento, California ("Property"). Movant has provided the Declaration of Cassandra Richey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Movant was required to advance \$1,580.44 for 2018 taxes, and that while Debtor was pursuing loan modification a denial letter was sent on February 17, 2018 for failure to provide all necessary documentation. Declaration, Dckt. 118. The total debt secured by the Property totals \$323,184.63. *Id.*

## **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on May 20, 2020. Dckt. 125. Trustee notes Debtor is current in plan payments, but that the confirmed plan only provides adequate protection payments pending a loan modification. Trustee also notes that since there was a denial issued, relief may be warranted.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 26, 2020. Dckt. 128. Debtor's counsel reports that the parties have met and come to a resolution for this Motion, and that a modified plan will be filed.

## **DISCUSSION**

Section 7.08 of the Confirmed Chapter 13 Plan states:

If Carrington Mortgage Services, LLC denies in writing Debtor's loan modification request and Debtor does not file an Amended Plan and Motion to Confirm Amended Plan within 14 days of the mailing of that denial, served on the Debtor [and Debtor's bankruptcy counsel], or other grounds for modification exist under the terms of these Additional Provisions for the Carrington Mortgage Services, LLC's secured claim, Carrington Mortgage Services, LLC may serve and file an ex parte application for relief from the automatic stay to allow it to conduct a nonjudicial foreclosure sale of the property and lodge a proposed order with the court. The ex parte motion shall be limited to the grounds set forth in these Additional Provisions. Any opposition to the ex parte motion shall be in writing, filed with the court within 14 days of the mailing of the ex parte motion to the Debtor [and Debtor's counsel], and limited to disputing the grounds arising under these Additional Provisions. The Debtor shall set a hearing on its opposition to the ex parte motion for the first available regular Chapter 13 motion for relief calendar for this court that is more than 14 days after the date the ex parte motion was mailed to the Debtor. The grounds for modification of the automatic stay and ex parte motion procedure are without prejudice to Carrington Mortgage Services, LLC filing a motion for relief from the automatic stay on any other grounds and setting the motion for hearing pursuant to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule.

Dckt. 89.

Movant has provided evidence of a denial of loan modification. Exhibit 4, Dckt. 119. And, no amended plan was filed thereafter.

Thus, it appears that the terms of the Confirmed Plan provide that relief from stay is warranted.

While Debtor has represented the parties are working on settlement, the Movant has not withdrawn its Motion.

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 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. 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 Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant 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 WELLS FARGO BANK N.A., AS TRUSTEE, FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC3 ASSET-BACKED PASS-THROUGH CERTIFICATES ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3045 9th Avenue, Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**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.

CIVIC HOLDINGS III TRUST 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, Chapter 13 Trustee, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 22 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 13 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.**

CIVIC HOLDINGS III TRUST ("Movant") seeks relief from the automatic stay with respect to Leana Hodge's ("Debtor") real property commonly known as 3604 Georgia Street, Vallejo, California ("Property"). Movant has provided the Declaration of Lindsey Dallmer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that the entire debt matured on July 1, 2019,

and is due in the amount of \$346,665.19. Declaration, Dckt. 48.

Movant also notes the debtor filed a complaint against Movant in the Superior Court of California, Case No. FCS054186, which included a request for temporary restraining order.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$346,665.19 (Declaration, Dckt. 48), while the value of the Property is determined to be \$371,000.00, as stated in Schedules A filed by Debtor. Dckt. 11.

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 Debtor's failure to make any payments on the fully matured loan.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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 Attorneys' Fees**

Movant also requests attorney fees and costs pursuant to the note and deed of trust securing Movant's claim.

A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054. Additionally, while Movant concludes the note and deed of trust allows for attorney fees to be recovered, Movant has not cited to any provision, nor has Movant cited to the applicable state law provision allowing recovery of those fees pursuant to a contract.

Based on the foregoing, fees may be sought by subsequent motion if at all.

### **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 CIVIC HOLDINGS III TRUST ("Movant") having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3604 Georgia Street, Vallejo, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**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.

US BANK TRUST NA VS.  
DEBTOR DISMISSED: 04/07/2020

**Final Ruling:** No appearance at the June 2, 2020, hearing is required.  
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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, Chapter 13 Trustee, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 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.**

US Bank Trust NA as trustee of the Lodge Series III Trust ("Movant") seeks relief from the automatic stay with respect to Yevgeniy Zhilovskiy's ("Debtor") real property commonly known as 6764 Olive Point Way, Roseville, California ("Property").

Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(4) because Debtor has filed for bankruptcy 6 times in the last 11 years; this bankruptcy is debtor's third filing since 2018; all 3 filings have been on the eve of a scheduled foreclosure sale; none of the three filings have resulted in confirmed plan; and Debtor has not made a payment on the loan since his 2018 case (case #18-23207) was closed.

**DISCUSSION**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

- A. Case No. 20-21659
  - 1. Filed: 3/19/2020
  - 2. Chapter 13
  - 3. Dismissal Date: 4/7/2020
  - 4. Reason for Dismissal: failure to timely file documents
  
- B. Case No. 19-27189
  - 1. Filed: 11/19/2019
  - 2. Chapter 13
  - 3. Dismissal Date: 3/13/2020
  - 4. Reason for Dismissal: delinquency and unreasonable delay
  
- C. Case No. 18-23207
  - 1. Filed: 5/22/2018
  - 2. Chapter 13
  - 3. Dismissal Date: 9/10/2018
  - 4. Reason for Dismissal: delinquency and unreasonable delay
  
- D. Case No. 13-29153
  - 1. Filed: 7/10/2013
  - 2. Chapter 13
  - 3. Dismissal Date: 9/30/2013
  - 4. Reason for Dismissal: ineligible under 109(e)
  
- E. Case No. 11-44128
  - 1. Filed: 10/7/2011
  - 2. Chapter 13
  - 3. Dismissal Date: 6/25/2012
  - 4. Reason for Dismissal: unreasonable delay
  
- F. Case No. 11-31336
  - 1. Filed: 5/6/2011
  - 2. Chapter 13
  - 3. Dismissal Date: 9/8/2011
  - 4. Reason for Dismissal: delinquency and unreasonable delay

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern



District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason given the number of cases filed, none of which were prosecuted, and most of which were filed on the eve of foreclosure proceedings.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Movant also requests waiver of the 14-day stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3). Based on the foregoing discussion of the scheme to hinder and delay, this part of the requested relief is also warranted and 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 US Bank Trust NA as trustee of the Lodge Series III Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 6764 Olive Point Way, Roseville California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale

and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that relief from the automatic stay provisions of 11 U.S.C. § 362(a) is granted pursuant to 11 U.S.C. § 362(d)(4), the court finding that the debtor Yevgeniy Zhilovskiy filed this bankruptcy case as part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting such real property. The court notes 11 U.S.C. § 362(d)(4) further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

**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.