

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 16, 2019 at 1:30 p.m.

Notice

**The court has reorganized the cases, placing all of the
Final Rulings in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 3.**

1.	19-22049-C-13 DBJ-1	WENDY MORGAN Catherine King	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 6-11-19 [20]
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LYLE/CARLA VERRY 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 Counsel, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 11, 2019. By the court's calculation, 35 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.

Lyle Verry and Carla Verry ("Movant") seek relief from the automatic stay with respect to Wendy Kristine Morgan's ("Debtor") real property commonly known as 0000 Dunstone, Palermo, California 95968 ("Property"). Movant has provided the Declaration of Lyle Verry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 2 post-petition payments, with a total of \$1,590.96 in post-

July 16, 2019 at 1:30 p.m.
Page 1 of 13

petition payments past due. Declaration, Dckt. 23. Movant also provides evidence that there are 9 pre-petition payments in default, with a pre-petition arrearage of \$7,159.32. *Id.* Debtor's Promissory note called for monthly payments of \$795.78, including 5% interest per annum. Debtor is in default of her obligations under the Note for failure to make the payments due on August 1, 2018 and payments due thereafter. There is now due a sum of \$81,212.36 plus additional interest and attorney fees. Debtor received default notices from Movant, but failed to act. Movant has now started a non-judicial foreclosure as a result of non-payment.

Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5th wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition. Movant also takes issue with the fact that Debtor lists the property as her "homestead" in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 1, 2019. Dckt. 28. The Chapter 13 Trustee states that Debtor is delinquent \$1,230.00 under the proposed plan. Debtor has paid a total of \$1,230.00 to date. The Chapter 13 Trustee received payments from Debtor on June 3, 2019 and June 4, 2019. The Chapter 13 Trustee has a balance on hand of \$351.28 net of Trustee fees. Movant is included as creditor in Class 1 of the proposed plan with Post-Petition Monthly Payment of \$800.00. Dckt. 11. The Chapter 13 Trustee has generated a disbursement of \$800.00 to Movant on June 28, 2019. The Chapter 13 Trustee requests that the Court consider these matters.

DEBTOR'S RESPONSE

Debtor filed an Opposition on July 2, 2019. Dckt. 32. Debtor concedes that she entered into a Promissory note with Movant on May 1, 2018 secured by the subject Property. Debtor also concedes that she was delinquent in her payments as noted in the Motion. Debtor argues that Movant is adequately protected because Movant is provided for as a Class 1 claim, paying post-petition ongoing payments along with \$296.67 per month to be applied to the arrears. Debtor concedes that if she fails to perform her payments on the Promissory note that Movant can foreclose on the property. Debtor notes that the deadline to file claims was June 11, 2019 and Movant failed to file a claim by then. Debtor shall file a claim then enabling the Chapter 13 Trustee to make payments on the mortgage arrears.

In response to "Lack of Equity," Debtor believes that the property value in the area is increasing after the devastating Camp Fires in November 2018. Debtor plans to remove the Vehicles and install some permanent structures on the Property once the Note is paid.

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 \$81,212.36 (Declaration, Dckt. 23), while the value of the Property is determined to be \$110,000, as stated in Schedules A/B filed by the Debtor.

Debtor lists the total value of the Property at \$110,000 and lists the obligation to Movant at \$79,541.85. Movant argues that Debtor owes \$81,212.36 in addition to costs and advances because of interest. According to Movant, Debtor has committed waste on the property. The Property is an unimproved lot that is used primarily for pastureland with no structures or other miscellaneous junk on

the property at the date of sale. Since the sale in April 2019, Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5th wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition.

Movant also takes issue with the fact that Debtor lists the property as her “homestead” in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally. Debtor’s filed Response rebuts this assumption and states that the Camp Fire in November 2018 caused her to leave the property, but she plans on returning and making the 5th wheel her permanent residence. Dckt. 32.

At the hearing the parties addressed whether Debtor’s delinquency has been cured and the allegations of waste to the property....

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

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

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 Lyle Verry and Carla Verry (“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 0000 Dunstone, Palermo, California 95968 , (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.

**JPMORGAN CHASE 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.

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Counsel, and Chapter 13 Trustee on June 25, 2019. By the court's calculation, 21 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, -----.

The Motion for Relief from the Automatic Stay is granted.

JP Morgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Jared Matthew Varney and Stacey Varney's ("Debtor") real property commonly known as 10713 Beclan Drive, Rancho Cordova, California 95670 ("Property"). Movant has provided the Declaration of Della Walker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 3 post-petition payments, with a total of \$4,134.81 in post-petition payments past due. Declaration, Dckt. 81. Movant also notes that there are ten (10) pre-petition payments that were not made totaling \$15,185.69. The Declaration notes that there is a lease suspense of \$751.94.

Neither the Debtor nor the Chapter 13 Trustee filed a Response or an Opposition to the Motion.

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 \$162,771.65 (Declaration, Dckt. 81), while the value of the Property is determined to be \$220,684.00, as stated in Schedules A/B filed by Debtor.

The court notes that Debtor's confirmed Modified Plan elects to sell the subject property. Dckt. 65, Second Modified Plan.

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

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

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

IT IS ORDERED 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 10713 Beclan Drive, Rancho Cordova, California 95670, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.

FINAL RULINGS

3. [19-22728-C-13](#) **JAMES CASTON AND DEBORAH** **MOTION FOR RELIEF FROM**
[JHW-1](#) **CLARK-CASTON** **AUTOMATIC STAY**
 Peter G. Macaluso **6-13-19 [26]**

**SANTANDER CONSUMER USA ,
INC. VS.**

Final Ruling: No appearance at the July 16, 2019 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 Counsel, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 13, 2019. By the court’s calculation, 33 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.

Santander Consumer USA Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Dodge Ram 1500, VIN ending in 8249 (“Vehicle”). The moving party has provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by James Willie Caston and Deborah Lynn-Clark Caston (“Debtor”).

Movant argues Debtor has not made 1 post-petition payment, with a total of \$917.46 in post-petition payments past due. Declaration, Dckt. 29. Movant also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$4,215.75. *Id.*

At the date of the Declaration, Debtor is in default to Movant for partial payment coming due for January 30, 2019 for \$915.84 and for regular payments of \$917.46 per month for payments coming due February 28, 2019 through May 30, 2019. The total delinquency is \$5,133.21. Debtor has made no post-petition payments. The last payment to Movant was received on January 10, 2019. As of June 3, 2019, the payoff was \$47,746.18. Movant obtained possession of the Vehicle on April 29, 2019 and the Vehicle is being held pending relief from stay.

Movant has did not to provide any evidence for the valuation of the Vehicle. Movant did not attach any exhibit showing a market value of the Vehicle, either through Kelly Blue Book or a NADA Valuation Report. Attached to Movant's Exhibits are a Retail Motor Vehicle Contract (Ex. A), Electronic title information from the California DMV (Ex. B), Notice of Intent to File Motion for Relief (Ex. C), Debtor's Chapter 13 Plan (Ex. D) and Debtor's account payment history with Movant (Ex. E). Dckt. 30. Movant provides no evidence as to the value of the Vehicle. Only Debtor's Schedules speak to the value of the Vehicle. Dckt. 14. Debtor's Schedule A/B claims the value of the Vehicle at the time of the filing of the petition was \$35,000.00.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("The Chapter 13 Trustee") filed a Response on July 1, 2019. Dckt. 35. 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 debt secured by this asset is determined to be \$47,746.18 (Declaration, Dckt. 29), the value of the Vehicle is determined to be \$35,000.00, as stated in Schedules B and D filed by Debtor. Movant notes, and the court agrees, that Debtor's Statement of Intention contemplates the surrender of the Vehicle. Movant also state it already has possession of the Vehicle.

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

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

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 Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED 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 Dodge Ram 1500, VIN

July 16, 2019 at 1:30 p.m.

Page 9 of 13

ending in 8249 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the July 16, 2019 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 Counsel, and Chapter 13 Trustee on June 10, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

JP Morgan Chase Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Mazda CX-5, VIN ending in 3620 (the “Vehicle”). The moving party has provided the Declaration of Robert L. Kammeyer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Paul Matzelle (“Debtor”).

Movant argues Debtor owes to Movant \$17,167.80 (contractual obligation) and \$300 (disposition fee), for a total of \$17,822.48. Declaration, Dckt. 26. Movant states that there are no payments currently due as the Lease matured on April 28, 2019 and was subsequently terminated on May 6, 2019.

The Robert L. Kammeyer Declaration also seeks to introduce evidence establishing the Vehicle’s value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated. Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the “market reports and similar commercial publications” exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will

presume the Declaration of Robert L. Kammeyer to be that he obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("The Chapter 13 Trustee") filed a Response on July 1, 2019. Dckt. 31. The Chapter 13 Trustee notes that Debtor's Plan (Dckt. 5) was confirmed on September 12, 2017. Debtor includes Chase Auto Finance in section 3.02 with regular payments of \$354.68 and \$0.00 in pre-petition arrears. Movant filed claim #6 for \$23,045.37 with the basis of the claim as the Auto Lease. No arrears were reported and there is a maturity date of April 28, 2019. The Chapter 13 Trustee requests the Court consider these matters.

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 \$17,822.48 (Declaration, Dckt. 26), while the value of the Vehicle is determined to be \$17,602.00, as stated in Schedules B and D filed by Debtor, which is almost exactly the same as the Kelly Blue Book valuation.

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

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)

(stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Mazda CX-5 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.