

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

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

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1. [17-22333](#)-E-13 THOMAS WARREN CONTINUED MOTION FOR RELIEF  
[JCW-1](#) Lucas Garcia FROM AUTOMATIC STAY  
5-24-19 [71]  
SELECT PORTFOLIO SERVICING,  
INC. VS.

**The continued hearing on the Motion for Relief from the Automatic Stay is continued to 3:00p.m. calendar on July 30, 2019, to be conducted in conjunction with the Chapter 13 Trustee's Motion To Dismiss.**

2. [19-22639](#)-E-7 COLBY/REBECCA TOMS REAFFIRMATION AGREEMENT WITH  
OREGON COMMUNITY CREDIT  
UNION  
7-2-19 [15]

Specially set time and date [Order, Dckt. 16]  
Attorney: Bruce Dwiggin

Negative equity in vehicle of \$-181.90  
Negative monthly income of \$-305.35

Colby Toms and Rebecca Toms, the Debtors, and Bruce Dwiggin, Debtors' Counsel, to appear at the hearing. Telephonic Appearances Permitted. Debtors and Counsel to address basis for a certification that reaffirming the obligation does not impose an undue hardship on the Debtors.

An agreement to reaffirm a debt owed to Oregon Community Credit Union, which is secured by a 2008 Dodge Ram 3500 (with 198,700 miles) having a value of \$19,000 (stated to be the Kelly Blue Book Value), was filed by Colby Toms and Rebecca Toms ("Debtor"). A hearing on this reaffirmation was conducted pursuant to order of the court.

Though the Reaffirmation Agreement has been certified by Counsel for Debtor and Creditor is a credit union, in reviewing the Reaffirmation Agreement and Schedules, the court has identified some points of concern.

First, the vehicle is a 2008 Dodge Ram 3500. This vehicle is now more than ten model years old. On Schedule A/B Debtor states that the vehicle has 198,700 miles on it. Dckt. 1 at 13. Debtor states the vehicle has a value of \$19,000.00 based on "KBB" (Kelly Blue Book, a recognized market report/publication for values of vehicles generally relied upon by the public and persons in the vehicle purchase/sale business.)

Seeing a vehicle with 198,700 miles, a question arises about the reliability of such a vehicle and the need for costly repairs. Even if such a vehicle has been regularly maintained, at 200,000 miles major repairs (such as transmission, head gasket, valves, and the like) are not unexpected.

On Schedule I, Debtor lists having \$3,620 in wage income and the Co-Debtor having \$600 in "wage" income, but the Co-Debtor states she is "self-employed." Reviewing Schedules I and J, no provision is made for any self-employment taxes. Dckt. 1 at 33-36. Looking at the expenses on Schedule J, Debtor is showing a negative (\$305) in Monthly Net Income. It is not obvious what, if any expenses, can be cut so that Debtor has the ability to get to having expenses low enough to equal income. There is no leeway in the budget for any major vehicle expense.

The 2008 Ram 3500 is the only vehicle shown on Schedule I and the only vehicle for which there are expenses on Schedule J. Thus, it appears that the vehicle is the two debtors' only means of transportation. On the Statement of Financial Affairs, Debtor reports having a 2014 Nissan Pathfinder repossessed in the year prior to filing the bankruptcy case.

If the vehicle were to suffer major damage, it appears questionable how Debtor could have the vehicle repaired. Further, if the vehicle could not be repaired, then the Debtor would still be obligated on the loan for the undriveable vehicle, have that debt to pay, and would appear to be without funds to purchase a replacement vehicle.

Additionally, as to the value of the vehicle, Kelly Blue Book reports that for a 2008 Ford 3500 with 200,000 miles on it, the retail used car value is \$14,000.<sup>1</sup> On the Reaffirmation Agreement it appears that the Creditor states the value of the vehicle is stated to be \$23,339.81. This is inconsistent with the Kelly Blue Book value.

The amount of the debt to be reaffirmed is (\$19,000), which is coincidentally the value of the vehicle stated by Debtor on Schedule A/B (which amount is not consistent with the retail value stated by Kelly Blue Book). To pay (\$19,000) for a vehicle having a retail sale value (assuming it was in showroom ready sale condition) of \$14,000 creates an actual effective interest rate of 19.5% (computed using the Microsoft Excel Loan Calculation using the \$14,000 value as the "loan amount").

The value for Creditor in this reaffirmation is even greater than a 19.5% effective interest rate. If repossessed, Creditor could not expect to get the showroom floor ready retail sale value. Kelly Blue Book states that the trade-in value would be \$7,000 to \$9,402. While Creditor would not be trading it in, this would be closer to an auction value, where an auto broker would buy it to resell. By the Reaffirmation Agreement, Creditor is getting \$10,000 more paid than it could expect if it repossessed the vehicle (without taking into account repossession, clean-up, and auction fees).

Though it appears that there is an undue burden on the Debtor with this reaffirmation, given Debtor's Counsel's certification and that the Creditor is a Credit Union, the decertification provisions of 11 U.S.C. Section 524(m) do not apply. However, that does not limit the court's authority to have a hearing on this Reaffirmation and ensure that this is not a mistake or something that Debtor and Counsel do not want to revisit (having the power to rescind or renegotiate the reaffirmation terms) this Reaffirmation Agreement.

No additional evidence was presented by Debtor in support of the reaffirmation.

[Notwithstanding no demonstrated ability to pay, an interest rate of \_\_\_%, and there being a negative equity the Debtor in the collateral of (\$\_\_\_\_\_), counsel for Debtor has certified that reaffirmation of this obligation is not an undue burden on the Debtor or dependants, and the counsel has advised Debtor of the legal consequences of reaffirming the debt on these terms given the financial ability of Debtor. With this certification, there is not a basis for the court to disapprove the reaffirmation and the matter is removed from the calendar.]

The court having reviewed the reaffirmation agreement, the reaffirmation agreement having been certified by an attorney for Debtor, evidence provided, the value of the collateral, the interest rate, the amount of the obligation, the income and expenses of Debtor, the presumption of 11 U.S.C. § 524(m) not arising and [not having been rebutted], and finding that the proposed reaffirmation is not in the best interests of Debtor and does not create an undue hardship for Debtor, **the reaffirmation agreement is not [dis]approved pursuant to 11 U.S.C. §524(m).**

**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, Chapter 13 Trustee, co-debtor, and Office of the United States Trustee on June 28, 2019. By the court’s calculation, 32 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. (“Movant”), seeks relief from the automatic stay with respect to the debtor Evangelina Clariza’s (“Debtor”) real property commonly known as 5328 Buckwood Way, Sacramento, California (“Property”). Movant has provided the Declarations of Tameka Green and Alexander Lee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckts. 43, 44.

Movant primarily argues that the relief from stay is permitted pursuant to Sections 6.09 through 6.11 of the Confirmed Plan because Debtor failed to provide adequate documentation for a loan modification. The Confirmed Plan Provides the following:

6.09 Denial of Loan Modification

If Wells Fargo Home Mortgage determines that a loan modification is not approved, it shall communicate the denial of a modification in writing to the Debtors and counsel for the Debtors by USPS First Class Mail, postage prepaid. In the event of a denial, the Debtors shall have fourteen (14) days from the mailing of the denial of the modification to file a modified plan and motion to confirm modified plan to provide for payment of Wells Fargo Home Mortgage.

6.10 Events of Default, Failure to Modify Plan Upon Rejection of Modification, Failure to Prosecution Loan Modification

**The Debtor shall be in default under the terms of this Plan, and Wells Fargo Home Mortgage entitled to exercise its rights to conduct a nonjudicial foreclosure sale**, as described in the modification of the automatic stay of the Property in the event of any of the following defaults.

1. Default in timely adequate protection payment.
2. Default in the payment terms in a court approved loan modification agreement (if not a Class 4 claim for which the Plan terminates the automatic stay).
3. **Failure to file and serve a modified plan and motion to confirm modified plan within fourteen (14) days of the mailing of the denial of loan modification.**
4. Post- Petition non monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition property taxes or property insurance.
5. **Failure to diligently prosecute the loan modification application.** For purposes of these Additional Provisions, the failure to diligently prosecute the loan modification application shall be documented by Wells Fargo Home Mortgage that forms, documents, records, or other information relating to the requested loan modification were requested in writing from the Debtor, and not provided by the Debtor within 30 days of the written request having been mailed to or delivered personally, by facsimile, or email to the Debtor or designated representative of the Debtor.

6.11 Modification of the Automatic Stay.

If Wells Fargo Home Mortgage 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 Wells Fargo Home Mortgage secured claim, Wells Fargo Home Mortgage may serve and file an ex parte application for relief from the automatic stay to allow it to conduct a non-judicial 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 Wells Fargo Home Mortgage 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.

Confirmed Plan, Dckt. 13(emphasis added).

The Declaration of Tameka Green provides testimony that Debtor has not made two post-petition payments, with a total of \$2,994.97 in post-petition payments past due. Declaration, Dckt. 43. The Green Declaration also provides testimony to authenticate the Exhibits filed.

Exhibits 7 is correspondence sent from Movant indicating that insufficient documentation was provided for consideration of a loan modification. Dckt. 47. Exhibit 8 is a letter dated April 23, 2019, informing Debtor that assistance options (which the court construes to mean a loan modification) is no longer being considered due to the failure to provide necessary documentation. *Id.*

Movant also argues cause for relief exists pursuant to 11 U.S.C. § 362(d)(1) because Debtor is in material breach of the Confirmed Plan, and is not receiving full post-petition payments.

Additionally, Movant argues relief from the co-debtor stay under 11 U.S.C. § 1301 is warranted to prevent irreparable harm.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on July 12, 2019. Dckt. 49. Trustee states that Debtor is current as to plan payments, but that the plan only provides adequate protection payments to Movant. Proof of Claim, No. 2 filed by Movant asserts a claim of \$470,330.65 and a prepetition arrearage of \$149,013.68.

Trustee also notes that the Confirmed Plan relied on a loan modification and that Movant may be entitled to relief under the plan given the denial of loan modification.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the value of the Property is determined to be \$369,000.00, as stated in Schedules B and D filed by Debtor. The debt secured by the Property is \$470,330.65, as stated in Proof of Claim, No. 2.

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 because Debtor is in material default of the Confirmed Plan terms, as well as delinquency in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Movant has also established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted.

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.

No other or additional relief is granted by the court.

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

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

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

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow 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 5328 Buckwood Way, 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 request to terminate the co-debtor stay of Freddie Clariza of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

SANTANDER CONSUMER USA INC.  
VS.

**Final Ruling:** No appearance at the July 30, 2019 hearing is required.

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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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 21, 2019. By the court’s calculation, 39 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. dba Chrysler Capital (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2011 Jeep Grand Cherokee, VIN ending in 1733 (“Vehicle”). The moving party has provided the Declaration of Kim Miller to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Larry Darnell Robertson (“Debtor”).

Movant argues that the Vehicle was determined a “total loss” after a collision, and is requesting relief from the stay to assist Debtor’s insurance in obtaining and applying the available proceeds, stated to be \$7,826.89, to Movant’s secured claim.

#### TRUSTEE’S RESPONSE

Trustee filed a Response on July 15, 2019. Dckt. 41. Trustee states that the debtor is current under the confirmed plan and has paid a total of \$5,232.00 to date. Trustee asserts further Movant’s secured claim was determined to be \$12,315.00, which remaining balance is \$10,130.12. Dckt. 30.



## DISCUSSION

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 because the Vehicle was involved in a collision and was determined a “total loss.” 11 U.S.C. § 362(d)(1).

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, because the Vehicle is totaled, that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 Santander Consumer USA INC., dba Chrysler Capital (“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 2011 Jeep Grand Cherokee, VIN ending in 1733 (“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.

5. [18-26585-E-13](#) JULIAN PEREZ

**POST-DISMISSAL STATUS  
CONFERENCE RE: VOLUNTARY  
PETITION  
10-19-18 [1]**

**DEBTOR DISMISSED: 06/21/2019**

Debtor’s Atty: Mark A. Wolf

Notes:

Set by order of the court filed 7/2/19 [Dckt 105]. The court will consider whether or not this case should be closed, whether there is ongoing action by the U.S. Trustee or other Office of the United States Government concerning the reported conduct of the persons paid for legal and petition preparer services provided to Julian Perez in his multiple bankruptcy cases in this District. Status reports, if any, and recommendations concerning this case and proceedings relating thereto to be filed and served on or before 7/23/19.

Adv. Proc. 19-2087 *U.S. Trustee v. Alan Davis*: Complaint for (I) Fines, (II) Forfeiture of Fees, (III) Damages, and (IV) Injunctive Relief, Pursuant to 11 U.S.C. § 110 filed 7/12/19 (Dckt. 1]

Status Report of the United States Trustee filed 7/22/19 [Dckt 110]

On October 19, 2019, this Chapter 13 case was commenced by Julian Perez, purportedly in *pro se*. What came to light in these proceedings was that it appeared that Mr. Perez and his bankruptcy case were being used as part of a scheme to abuse the bankruptcy laws. It appeared that Mr. Perez was made, by his statements unwittingly, part of the scheme.

The court issued an Order to Show Cause detailing the conduct in the prior and the current Chapter 13 cases for Mr. Perez. Order to Show Cause, Dckt. 40. The Order to Show Cause required not only the appearance of Mr. Perez, but Hong Vo, a repeat bankruptcy filer in the Northern District of

California who purported to be the trustee of a trust for which Mr. Perez was a beneficiary and the trust corpus was a note secured by a deed of trust against Hong Vo's property. Hong Vo, purportedly as trustee of the trust, was advising Hong Vo's creditors could not foreclose on Hong Vo's property because of Mr. Perez's bankruptcy filing. It appeared that Mr. Perez's bankruptcy case filings were part of a multi-district scheme being conducted with Hong Vo.

Neither Mr. Perez nor Hong Vo appeared as ordered by the court at the January 29, 2019 hearing on the Order to Show Cause. Civil Minutes, Dckt. 50. The Civil Minutes for the January 29, 2019 hearing contains a detailed discussion of the documents and evidence in the court's files and the Hong Vo proceedings in the Northern District of California.

The court ordered the hearing on the Order to Show Cause continued, and that failure to appear would result in the imposition of a corrective sanction. Order, Dckt. 51.

For the continued hearing on April 4, 2019, a Response was "filed by" Mr. Perez. Dckt. 59. As discussed in the Minutes for the continued hearing, the Response asserted sophisticated, but legally inaccurate arguments. Civil Minutes, Dckt. 63 at 16-17. Mr. Perez appeared and explained his conduct and the legal advice he was being provided by an Alan (or Allen) Davis in Southern California.

The court discharged the Order to Show Cause as to the Debtor and ordered corrective sanctions to be paid by Hong Vo. The court granted Debtor's motion to dismiss this case, and set this status conference to ensure that the closure of this case not impair any action being taken by the U.S. Trustee or U.S. Attorney, if any.

### **U.S. Trustee Status Report**

On July 22, 2019, the U.S. Trustee filed a Status Report advising the court that an adversary proceeding has been commenced in which significant fees, damages, and injunctive relief are sought against Mr. Davis. Dckt. 110. The U.S. Trustee requests that this bankruptcy case not be closed until after the adversary proceeding is concluded.

At the Status Conference **XXXXXXXXXXXXXXXXXXXX**

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 Post Dismissal Status Conference having been conducted by the Court, the U.S. Trustee having filed a Status Report, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is **XXXXXXX**.

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 Chapter 13 Trustee on June 21, 2019. By the court's calculation, 39 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.**

Creditor, Wells Fargo Bank N.A. ("Movant"), seeks relief from the automatic stay with respect to the debtors, Paul Jason Brown and Ashanna Olga Brown's ("Debtor"), real property commonly known as 563 Gregory Drive, Vacaville, California ("Property").

Movant argues cause for relief exists based on a post-petition payment delinquency. Movant filed the Declaration of Sasha Anderson to provide testimony Debtor has not made 4 post-petition payments, totaling \$6,383.08. Declaration, Dckt. 35.

#### CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on July 12, 2019. Dckt. 39. Trustee asserts that because the Confirmed Plan provides for Movant's claim as a Class 4, relief may not be necessary.

#### DEBTOR'S REPLY

Debtor filed a Reply on July 16, 2019. Dckt 41. Debtor argues that the relief requested is moot because Movant is provided for as a Class 4. Movant objects to any request for attorney's fees due to mootness. Debtor also argues that Debtor is current in payments, having paid \$4,737.36 sine June 29, 2019. Declaration, Dckt. 42.

## DISCUSSION

The Plan confirmed on January 31, 2018, states that “Upon Confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract . . .” Chapter 13 Plan, Dckt. 5.

Under the plain language of the Class 4 treatment, the automatic stay has only been Modified, not terminated, by operation of that provision. The modification is for the limited purpose, “to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.” The automatic stay exists, but it is modified.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic stay when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic “discretion is the better part of valor” principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, (Dckt. 5) in this bankruptcy case, “the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are modified to allow Movant, and its agents and successors, as the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.”

While Debtor asserts attorney’s fees should not be awarded, the Motion filed by Movant does not make such request. No other or further relief is granted.

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 to Confirm Absence of the Automatic Stay filed by Ditech Financial 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 relief is granted pursuant to the Motion, the court confirming that “the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) have been and are modified to allow Movant, and its agents and successors, as the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.” Confirmed Chapter 13 Plan, Dckt. 5; Order Confirming, Dckt. 16.

No other or further relief is granted.