UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 3, 2019 at 10:00 a.m.

1.	**18-90836-E-7** **CJO-1**	**ANGEL/MIRTZA LEGRANDE** **Martha Passalaqua**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **8-29-19 [24]**

CALIBER HOME LOANS, INC. VS.

Appearance of Nathan F. Smith and Christina J. O., Attorneys for Movant Caliber Home Loans, Inc Required for Hearing

Telephonic Appearances Permitted

Tentative Ruling: No appearance at the October 3, 2019 hearing is required.

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 7 Trustee on August 29, 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). 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) .

The Motion for Relief from the Automatic Stay is denied without prejudice.

Caliber Home Loans, Inc. ("Movant") seeks relief from the automatic stay with respect to Angel Jerry Legrande and Mirtza Abisag Legrande's ("Debtor") real property commonly known as 3516 Soda Canyon Drive, Ceres, California ("Property"). Movant has provided the Declaration of Karla Price to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

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

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and

> every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

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

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

> A. Caliber requests relief from stay in the above numbered Chapter 7 case pursuant to Section §362(d)(1) for "cause" because there is no adequate equity cushion and the Debtors have failed to maintain regular monthly mortgage payments. The total amount owed to Movant is $269,363.97, while the Debtors' schedule the value of the Property at $307,612.00. Based upon this, the equity cushion of only $38,248.03 or 12.4% is insufficient to provide Movant adequate protection. Furthermore, the Debtors have failed to maintain the regular monthly payments, thus Movant submits this is cause to grant relief from the automatic stay.

B. This Motion is based upon the attached Declaration and the Memorandum of Points and Authorities attached hereto, as well as upon the documents filed in support of the Motion.

Motion, Dckt. 24.

The above consists of conclusions, and leaves out the actual necessary grounds for relief. While it is asserted generally "Debtors have failed to maintain monthly mortgage payments," the Motion does not state what payment or payments were missed.

In substance, Movant has assigned to the court the junior associate duties of going through all of the supporting documents to determine what grounds should be stated in support of the Motion, assemble those grounds, state those grounds, and then advocate for Movant.

Movant's Points and Authorities providing the court with the applicable statutes and on-point case law fails to cite to any statutes or cases - with the exception of making reference to "Section 362(d)(1)" and telling the court to "See In re Mellor, 743 F.2d 1396 (9th Cir. 1984)." Rather, the legal points and authorities consists of three long pages alleging facts and stating "grounds." Dckt. 27.

When the court went to re-re-reread *In re Mellor* and looked it up by the citation provided, 743 F.3d 1396 (9th Cir. 1984), relied upon by Movant, the court discovered that the citation is not to In re Mellor, but to *Livermore v. Heckler, Secretary of Health and Human Services*, 743 F.2d 1396 (9th Cir. 1984).

It appears that the mis-citation is one of merely transposing two digits in the citation, a human mistake that is easily rectified in this era of online fingertip legal research resources. The non-transposed digit citation is *Mellor v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984). Movant cites to *Mellor* for the proposition that an equity cushion of less than twenty percent (20%) shows that a creditor is not adequately protected. However, that is not exactly what the Ninth Circuit said in *Mellor*.

The Ninth Circuit concluded that since there was a twenty percent equity cushion, there was more than adequate protection - not that twenty percent was the minium adequate protection as a matter of law. *Mellor v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984). In *Mellor* the Circuit discussed other decisions in which adequate protection existed even though the equity cushion was significantly less than twenty percent.

The assertion that there is a twenty percent minimum adequate protection for the purposes of 11 U.S.C. § 362(d)(1) is inconsistent with the holding of the Supreme Court in *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988). In that case the Supreme Court concluded that at least for the short run in a bankruptcy case (the first year), merely because there was not value in the property for the creditor to accrue post-petition interest was not a showing of a lack of adequate protection. The question was whether the value of the collateral was declining or such value was at risk. The analysis of the Supreme Court includes the following:

> Third, petitioner's interpretation of § 362(d)(1) makes nonsense of § 362(d)(2). On petitioner's theory, the undersecured creditor's inability to take immediate possession of his collateral is always "cause" for conditioning the stay (upon the payment of

> market rate interest) under § 362(d)(1), since there is, within the meaning of that paragraph, "lack of adequate protection of an interest in property." But § 362(d)(2) expressly provides a different standard for relief from a stay "of an act against property," which of course includes taking possession of collateral. It provides that the court shall grant relief "if ... (A) the debtor does not have an equity in such property [i.e., the creditor is undersecured]; and (B) such property is not necessary to an effective reorganization." (Emphasis added.) By applying the "adequate protection of an interest in property" provision of § 362(d)(1) to the alleged "interest" in the earning power of collateral, petitioner creates the strange consequence that § 362 entitles the secured creditor to relief from the stay (1) if he is undersecured (and thus not eligible for interest under § 506(b)), or (2) if he is undersecured and his collateral "is not necessary to an effective reorganization." This renders § 362(d)(2) a practical nullity and a theoretical absurdity. If § 362(d)(1) is interpreted in this fashion, an undersecured creditor would seek relief under § 362(d)(2) only if his collateral was not depreciating (or he was being compensated for depreciation) and it was receiving market rate interest on his collateral, but nonetheless wanted to foreclose. Petitioner offers no reason why Congress would want to provide relief for such an obstreperous and thoroughly unharmed creditor.

United Savings Association of Texas v. Timbers of Inwood Forest, 484 U.S. 365, 374-375 (1988).

While the Supreme Court "hints" at another possible legal theory that a creditor's attorney would advance for relief from the stay in a Chapter 7 case in which there is no equity in the collateral for the bankruptcy estate or debtor, Movant in this case has not asserted any alternative theory to the lack of adequate protection under 11 U.S.C. § 362(d)(1). The court again declines the opportunity to serve as the junior associate working on Movant's file and assembling other legal theories, stating them for Movant, and than advocating for Movant.

It may be that Movant's counsel's forms do not lend themselves to the actual statement of the grounds in the Motion to tie it to the law. While grounds could be stated, the "lack of adequate protection" chant of 11 U.S.C. § 362(d)(1) is more cost effective. This shows why the Rules require the grounds, not merely some legal conclusions, are to be stated in the motion itself, leaving the points and authorities to just that - the relevant legal authorities such as cases and statutes.

Based on these "grounds stated with particularity" in the Motion Movant demonstrates that there is a slight equity cushion to protect its interests. On the face of the pleadings, Movant has not provided the court with grounds for granting the relief requested. [FN. 1.]

FN. 1. Movant's counsel who regularly appears in this court and is well aware of the Federal Rules of Bankruptcy Procedure enacted by the United States Supreme Court and the requirements of Federal Rule of Bankruptcy Procedure 9013. Counsel also wells knows that burying grounds in a points and authorities, hiding them in a declaration, and then telling the court to mine such other pleadings and assemble what the court thinks are the grounds that should be stated in the motion is highly improper. The court does not provide such legal services for the parties.

The court is shocked that two attorneys who have been members of the California Bar for more than ten years have so grossly failed to comply with the basic pleading requirements under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure.

This is counsel's and her firm's recent "second strike" on complying with the basic pleading requirements under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

The Motion is denied without prejudice.

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 For Relief From Stay filed by Caliber Home Loans, 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** that the Motion to For Relief From Stay is denied without prejudice.

2. 19-90750-E-7 **JOHNA BRADEN** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
VVF-1 **Pro Se** **9-12-19 [22]**

MECHANICS BANK 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 (*pro se*), Chapter 7 Trustee, party requesting special notice, and Office of the United States Trustee on September 12, 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 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

Mechanics Bank, a California Banking Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Hyundai Elantra, VIN ending in 8113 ("Vehicle"). The moving party has provided the Declaration of Michelle Morris to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Johna Joann Braden ("Debtor").

Movant argues Debtor has not made 1 post-petition payments, with a total of $225.00 in post-petition payments past due. Declaration, Dckt. 24. Movant also provides evidence that there are roughly 2 pre-petition payments in default, with a pre-petition arrearage of $438.85. *Id*.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

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 $5,722.02 (Declaration, Dckt. 24), while the value of the Vehicle is determined to be $5,200.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report.

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.

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 reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because Debtor is not making payments, and there is no equity in the Vehicle while it rapidly depreciates.

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 Mechanics Bank, a California Banking Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Hyundai Elantra, VIN ending in 8113 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

3. **19-90731-E-7** **GLADIS VASQUEZ** **MOTION FOR RELIEF FROM**
VVF-1 **Pro Se** **AUTOMATIC STAY**
8-29-19 [10]

AMERICAN HONDA FINANCE CORPORATION VS.

Final Ruling: No appearance at the October 3, 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on August 29, 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). 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.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Shadow Aero, VIN ending in 0063 ("Vehicle"). The moving party has provided the Declaration of James Franklin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Gladis M. Vasquez ("Debtor").

Movant argues Debtor has not made 1 post-petition payments, with a total of $138.51 in post-petition payments past due. Declaration, Dckt. 12. Movant also provides evidence that Debtor voluntarily surrendered the Vehicle. *Id*.

On Debtor's Statement of Intention, Debtor indicates the Vehicle is to be surrendered. Dckt. 1.

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, including defaults in post-petition payments that have come due and Debtor expressed intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because of the depreciating nature of the Vehicle, the payment delinquency, and Debtor having already surrendered the Vehicle.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by American Honda Finance Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2015 Honda Shadow Aero, VIN ending in 0063 ("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.