

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 24, 2020 at 1:30 p.m.

1. [20-21910-E-13](#) **TIMOTHY TROCKE** **CONTINUED MOTION FOR RELIEF**
[GLF-2](#) **Gary Fraley** **FROM AUTOMATIC STAY AND/OR**
ABLP PROPERTIES VISALIA LLC VS. **MOTION FOR ADEQUATE**
PROTECTION
10-7-20 [99]

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 Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 7, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 ("Movant") seeks relief from the automatic stay with respect to Timothy Tobias Trocke's ("Debtor") real property commonly known as 1671 Rosalind St., Sacramento, California ("Property").^{FN.1} Movant has provided the Declaration of Roger Anderson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN. 1. In the Notice of *Errata*, Dckt. 117, Movant corrects a typographical error in the Motion filed on October 7, 2020, in which the Movant is misidentified.

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$4,677.50 in post-petition payments past due. Declaration, Dckt. 102.

CHAPTER 13 TRUSTEE’S RESPONSE

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on October 26, 2020. Dckt. 108. Trustee requests that the court take into consideration that the Debtor is delinquent \$7,965.00 under the last proposed plan and that the Debtor is \$4,677.50 delinquent to Movant. *Id.*, at 2. Moreover, Trustee notes that there is no plan pending, with Debtor’s last proposed plan having been denied confirmation on September 29, 2020. *Id.*, at 1.

CHAPTER 13 DEBTOR’S RESPONSE

The Chapter 13 Debtor filed a Response on October 27, 2020. Dckt. 111. Debtor asserts that an offer of \$243,000 for the Property was accepted on October 16, 2020 and requests a continuance of this Motion to after December 15, 2020 so as to allow for the lender documents to be received and the escrow and sale be completed. *Id.*, ¶¶ 5-6. Debtor explains that the Movant is completely protected with Movant having a claim of \$159,000 which will pay off with this sale and Debtor will still have equity of \$71,850 to be distributed to him. *Id.*, ¶ 5.

Reply of Movant

Movant’s Reply (Dckt. 119) asserts that while the Debtor has now been in Chapter 13 for seven months, there has been no plan confirmed. That Debtor is in default in plan payments since September 2020. Movant asserts that the opposition is somewhat cryptic.

Further, it is asserted that if the court does not grant the relief requested, Debtor should be making an adequate protection payment to Movant.

DISCUSSION

In the Motion for Relief from the Stay, Movant does not assert that cause exists because Movant is not adequately protected due to the amount of the secured claim being in excess of the value of the Property. The Motion is devoid of any allegation as to the value of the Property.

The Motion does clearly state that Movant asserts the right not only to the 10% non-default rate of interest in the Note that is secured by the Property, but also the 18% default rate of interest. This loan was made in 2018, and it appears that by extracting a 10% interest rate and an 18% default rate, Movant was well aware of a high likelihood of a default and delay in foreclosure, and has built that into the Note. Additionally, such may reflect that Movant was well aware of a limited financial acumen of the Debtor and limited ability to handle his finances.

The Motion states that pursuant to the longstanding defaults by Debtor, a non-judicial foreclosure sale was recorded on December 4, 2019. Motion, p. 2:22-24, Dckt. 99; Declaration, ¶ 9, Dckt. 102. Debtor's prior Chapter 7 case and this Chapter 13 case have stayed Movant from conducting the foreclosure sale. Declaration, ¶ 10; Dckt. 102.

Debtor's Opposition is simple – some unidentified person made an offer on October 16, 2020, to purchase the Property for \$243,000.00. Opposition, ¶ 2; Dckt. 111. This was after the Property was “put on the market” on September 27, 2020. *Id.*, ¶ 1. But due to the COVID-19 pandemic, an unidentified lender is “running behind on document preparation.” *Id.*, ¶ 4.

The sales price is stated to be \$243,000, and after costs of sale, there is \$71,850.00 in equity in the Property to adequately protect Movant's claim. *Id.*, ¶ 5. Debtor seeks to have the hearing continued to December 15, 2020, so the loan documents can be completed and the sale closed.

A Declaration purporting to state Debtor's testimony under penalty of perjury is provided. Dckt. 112. However, this appears to merely be a cut and paste of Debtor's Counsel's arguments in the Opposition.

Debtor filed exhibits for his Opposition on October 10, 2020. Dckt. 114. The exhibits appear to bleed over into “Support Documents” filed with the exhibits. Dckts. 115, 116. Unfortunately, none of the exhibits have been authenticated as required by Federal Rules of Evidence 901 et seq.

Questionable Prosecution of Case

A review of the Docket indicates that notwithstanding Debtor's Counsel arguing that the Property was “put on the market on September 27, 2020, and a offer was received on October 16, 2020,” Debtor has not sought to obtain authorization to employ a real estate broker (such authorization necessary for such professional to be compensated for the services provided), nor has the Debtor filed a motion for authorization to sell the property for a sale Debtor hopes to quickly close.

Ignoring these legal requirements under the Bankruptcy Codes is not indicative of a Debtor who is diligently pursuing a sale in good faith.

Looking at the original Schedules filed, Debtor stated under penalty of perjury that the Property had a value of only \$210,000. Schedule A/B, Dckt. 11 at 3. On Schedule D Debtor listed Movant as having a secured claim of (\$100,000). *Id.* at 11. This would then leave a \$110,000 in equity which Debtor could claim as exempt on Schedule C, citing California Code of Civil Procedure § 704.730 as the basis for the exemption. California Code of Civil Procedure § 704.730 provides:

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted

sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

Debtor does not state which provision is applicable, but two of them clearly are less than the \$110,000 he is claiming.

As this court addressed in connection with Movant and the 18% interest for what appears to have been a foreseen troubled lender and delayed payment, Movant appears to be more than adequately protected—if there was a financially competent debtor prosecuting a bankruptcy case. Civil Minutes, Dckt. 106.

However, Debtor has demonstrated that he does not have the financial and business knowledge to prosecute this case (the court giving the Debtor and Counsel the benefit of the doubt that the failure to obtain authorization to employ a real estate broker was mere inadvertence and not part of a

scheme to get “free” real estate broker services). At this juncture, it appears the court has three choices:

1. Grant Relief From the Stay and Allow Movant, who clearly knew that this Debtor would not be able to pay the loan back, to foreclose and take nearly \$100,000 in equity as a “bonus” for having made a loan with an 18% interest rate;
2. Order the appointment of a personal representative as provided in Federal Rule of Civil Procedure 25, as incorporated into Federal Rules of Bankruptcy Procedure 7025 and 9014, and then have that personal representative hire legal counsel to prosecute the sale of the Property, pay the claims in this case, and “save” for Debtor his exempt equity (after paying the costs and expenses of the personal representative and the professionals hired by the personal representative); or
3. Convert this case to Chapter 7, in which Debtor could not get a discharge in light of his December 2019 Chapter 7 case in which he was granted a discharge, and have the Chapter 7 trustee conduct hire the professionals, conduct the sale, have all of the trustee’s and trustee’s professionals expenses and fees paid, and “save” the debtor the equity in the property.

Though normally the court would order a debtor in this situation to make adequate protection payments from the monthly plan payments, Debtor’s defaults have documented that he is bereft of the financial ability to pay. As show on the original and various amended Schedules I filed in this case, Debtor has no income and is dependant upon gifts from his significant other and his sister to survive from day to day. See latest Amended Schedule I; Dckt. 83, in which Debtor lists having \$942 a month in Social Security, which is only 22.7% of his stated monthly income. His sister provides \$1,760, which is 42% of the stated monthly income, and his significant other provides \$942 (exactly the same as the stated amount of Social Security benefit received), which is an additional 22.7%. The balance of monthly income is stated to be \$500 in room rent paid by “Girlfriend’s Sister”). ^{FN.2.}

FN. 2. As shown on the Statement of Financial Affairs, Debtor’s lack of income is not a new turn of events. On the Statement of Financial Affairs, in response to Question 4, Debtor states having the following income from employment or business in the current year the case was filed and in the two preceding years:

YTD 2020	NONE
2019	NONE
2018	NONE

Dckt. 11 at 21. For other income, in response to Question 5, Debtor states receiving Social Security of \$11,000 +/- a year, plus some “income” form his “significant other.” *Id.* at 22.

In the Statement of Financial Affairs for his 2019 bankruptcy states that for 2017 that he had

no income from employment or a business. 19–27969; Stmt. Fin. Affs., Question 4, Dckt. 1 at 31. His only other income stated in the prior case for 2019, 2018, and 2017 are the Social Security benefits. *Id.* at 32.

Creditor has filed Proof of Claim No. 2–1 stating that the secured claim was (\$126,635) as of the commencement of this case. That has increased due to the accruing interest (even at the “meager” 10% non-default rate) and recoverable costs for Movant due to Debtor’s inability to prosecute this case over the past seven months. If the Property sells for \$243,000, and if the court authorizes the employment of a real estate broker for the personal representative or the Chapter 7 trustee, after allowing 8% for costs of sale, that would generate net sales proceeds of \$223,500 (this assumes that Debtor is current on the property taxes and there would not be a significant amount to be paid from the gross sales proceeds through the closing escrow).

From the \$223,500, if Movant’s claim has increased to (\$135,000), Movant not providing that amount in the Motion and Mr. Anderson not testifying as to the total amount in his Declaration, that would leave \$88,000 in proceeds. Assuming reasonable Chapter 7 trustee fees and professionals as necessary to close the purported sale of less than \$6,000.00 (for which the court will have the Debtor expressly agree to being paid from any proceeds in which an exemption could be claimed to avoid an argument later of whether such proceeds could be “surcharged” or the court could sanction the Debtor such amounts to pay the necessary trustee fees and professionals to “save” some of the exempt amount for Debtor and not have it lost to the impending foreclosure sale), Debtor would still walk away with more than \$80,000 of proceeds in which he could claim an exemption as may legally be claimed under California law.

At the hearing, Debtor’s counsel addressed the court and that the Debtor has suffered a heart attack, has had treatment, and is to be released on November 10, 2020.

The court addressed with Debtor’s counsel the need to prosecute this case. Though he did not have authorization from his client, counsel stating that he had not been able to communicate with him due to the hospitalization, counsel said that conversion was “okay.” Given that for such conversion the Debtor would have to expressly consent to the Chapter 7 trustee fees and other expenses (such as trustee counsel) be paid from what would otherwise be exempt proceeds, the court did not have counsel also consent without client authorization to such.

The court continues the hearing to 1:30 p.m. on November 24, 2020, for a final hearing. As ordered from the bench, the Debtor shall get on file: (1) the motion to approve the employment of a broker, (2) a declaration of the real estate agent as to the status of the escrow (such as whether the contingency period has close, and if not what matters remain, and any she has been told of concerning “delays” in the lender processing and funding the loan), and (3) a declaration of the Debtor explaining where the monies have gone since June 2020 that he has been receiving from his tenant (\$500 a month) and from his significant other (\$942) who live the property for which the post-petition current mortgage payments are in default.

SUPPLEMENTAL DECLARATIONS AND EXHIBITS

Debtor filed a Declaration on November 17, 2020. Dckt. 130. Debtor asserts that an offer to purchase the home was accepted on October 16, 2020 for the purchase price of \$235,000.00. *Id.*, ¶ 3.

The expected closing date is December 5, 2020, provided that Debtor receive court approval of the sale. *Id.*, ¶ 6. Additionally, there is a back-up offer in place for \$235,000.00. *Id.* Upon review of the court's docket, a Motion to Sell Property has not been filed with the court.

In his Declaration, Debtor also testifies that after making the plan payments for May, June and July, the monies received since then have gone to pay for his truck (until his sister took over the payment on September), gas, food and household bills and expenses. *Id.*, ¶¶ 11, 17. Additionally, Debtor testifies that his sister Penelope moved out September 2020 and has not made any financial contributions since August; and his significant other's sister, Anna moved out in August and since then he has not collected any rental income. *Id.*, ¶¶ 12–13.

Debtor filed a Declaration of Cheree Hort, a Realtor for Lyon Real Estate in Support of Debtor's Opposition to Motion for Relief from Automatic Stay on November 17, 2020. Declaration, Dckt. 131. The Declaration provides that nine offers to purchase the property were received, the offer to purchase the home was accepted for the price of \$235,000.00, the expected closing date is December 5, 2020, and the Buyer has deposited \$4,000.00 into escrow. Declaration, Dckt. 131.

The court granted the Motion to Employ Ceree Hort of Lyon Real Estate as a Real Estate Agent for Debtor on November 20, 2020. Dckt. 143.

November 24, 2020 Hearing

At the hearing, xxxxxxxxxxxxxxxx

2. [20-23023-E-13](#) BARBARA DANIELS
[JHK-1](#) Mary Ellen Terranella
AMERICREDIT FINANCIAL
SERVICES, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-22-20 [\[34\]](#)

**POSTED AS A TENTATIVE TO ALLOW TRUSTEE
TO ADDRESS THE DISTRIBUTION OF THE AMOUNTS
IN EXCESS OF THE SECURED CLAIM
BEFORE THE ORDER IS ENTERED**

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—No Opposition Filed.

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 October 22, 2020. 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 is denied without prejudice, the court ordering adequate protection by ordering the Debtor and the Chapter 13 Trustee to obtain payment of the insurance proceeds directly to the Chapter 13 Trustee, the Trustee to them disburse the monies under the Plan to pay Movant’s secured claim, and **xxxxxxx.**

Americredit Financial Services, Inc (“Movant”) seeks relief from the automatic stay to allow Movant to continue advancing a claim with Debtor’s automobile insurance carrier, State Farm Insurance, with respect to an asset identified as a 2017 GMC Terrain, VIN ending in 9739 (“Vehicle”). The moving party has provided the Declaration of Lorenzo Nunez to introduce evidence to authenticate the

documents upon which it bases the claim and the obligation owed by Barbara Nell Daniels (“Debtor”).

Movant argues that as lienholder of the Vehicle, Movant is the named loss payee. Thus, relief is needed so that they may obtain and apply the insurance proceeds to the remaining balance on the secured claim (estimated payoff is \$14,108.98). Declaration, Dckt. 34. According to the insurance carrier, the net settlement amount is \$16,246.93; and Movant adds that any overage will be sent to the Trustee’s office. *Id.*

CHAPTER 13 TRUSTEE’S RESPONSE

Trustee filed a Response on November 9, 2020. Dckt. 41. Trustee asserts that Debtor is delinquent under the confirmed plan in the amount of \$275 (1/3 of a plan payment) and has paid a total of \$19,619.93. *Id.*, at 1. Movant claims the vehicle payoff is \$14,108.98 as of October 8, 2020. According to Trustee’s records, the approximate payoff of debtor’s vehicle, as of November 2020, totals \$14,559.02. *Id.*, at 2. Trustee does not oppose the motion so long as this amount is paid into the plan to be distributed to the creditor pursuant to the confirmed plan, and the balance of the insurance proceeds being paid to Debtor. *Id.*

On Schedule C, Debtor claims an exemption of \$2,325.00 in a vehicle described as a 2013 Honda Accord with 200,000 miles. Dckt. 1 at 17. No other exemptions are claimed in any other vehicles. The Honda is unencumbered, with no secured claim listed on Schedule D. *Id.* at 19–20.

While stating that the Trustee suggests distributing what may be non-exempt insurance proceeds to the Debtor, the basis for such is not clear. At the hearing, the Trustee explained **XXXXXXX** .

MOVANT’S REPLY

Movant filed a Reply on November 17, 2020. Dckt. 44. Movant does not oppose Trustee’s request that the insurance proceeds be paid to Trustee. *Id.*

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommerds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty*

Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, the vehicle has been destroyed and now there are insurance proceeds that are to be paid for the vehicle. Debtor has filed no opposition to the auto insurance proceeds being paid directly to the Chapter 13 Trustee, and for the Trustee to use the proceeds to pay Movant's secured claim. The balance of the monies, **XXXXXXX**

The Motion is denied without prejudice, the court providing adequate protection in the form of having the insurance proceeds disbursed directly to the Chapter 13 Trustee, all rights to and interest in said proceeds of Movant attaching to the insurance proceeds, and the Chapter 13 Trustee then disbursing such proceeds in the amounts necessary to pay Movant's secured claim.

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 Americredit Financial Services, 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 is denied, the court providing adequate protection in the insurance proceeds as provided herein.

IT IS FURTHER ORDERED that:

- (1). The Debtor shall, and the Chapter 13 Trustee is authorized to, independently pursue the payment of the insurance claim for the loss of the 2017 GMC Terrain, VIN ending in 9739;
- (2). That the insurance company shall pay all of the insurance proceeds of said claim directly to the Chapter the Chapter 13 Trustee in this case;
- (3). The Chapter 13 Trustee shall first disburse such portion of the insurance proceeds to Movant to pay its secured claims; and
- (4). Upon payment of the secured claim, the remaining amount of the insurance proceeds shall **XXXXXXX**

IT IS FURTHER ORDERED that, State Farm Insurance Company, or any other insurance company making payment for the damage or loss to said vehicle, is authorized to make payment of all insurance proceeds for

such loss directly to the Chapter 13 Trustee, and that all such payments shall be made directly to the Chapter 13 Trustee.

3. [20-23866-E-13](#) ANNE PRICE
[KMM-1](#) Mary Anderson
MEDALLION BANK VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-14-20 [23]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 14, 2020. By the court’s calculation, 41 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.

Medallion Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2004 Supra Comp LTS 20, VIN ending in I304 (“Vehicle”).^{FN.1.} The moving party has provided the Declaration of Megan S. Grace to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Anne Marie Price (“Debtor”).

FN. 1. The court notes that the Motion only asks for relief as to the 2004 Supra Comp that was purchased pursuant to a “Motor Vehicle Contract.” Motion, p. 2:19-23; Dckt. 23. However, in looking at the “Motor Vehicle Contract,” in addition to the 2004 Supra Comp LTS 20, the personal property purchased and the lien given included the separately identified goods stated to be: “Motor . . .Used 2004 INDMAR 5.7L” and “Trailer . . . Used 2004 Boatmate Tandem 2.” The Motion does not seek relief as to the Motor or the Trailer.” Exhibit A, Retail Installment Contract Security Agreement (which the Motion identifies as a “Motor Vehicle Contract”), p. 2, unnumbered paragraphs titled SALE and SECURITY (which states that the

security interest is in the Goods” purchased; Dckt. Exhibit A, 24 at 3-4.

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$383.54 in post-petition payments past due. Declaration, Dckt. 23.

Housekeeping Matters

Movant filed the Relief from Stay Summary Sheet, the Declaration, the Motion, and the Notice of Motion in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court. ^{Fn.1.}

FN. 1. Though the court has waived the failure to comply with the well established Local Bankruptcy Rules, counsel for Movant and Movant’s counsel should not be misled into thinking that “the rules do not apply to us.” The senior attorney whose name appears on the pleadings, but has not signed them, is well aware of the Rules. There is no excuse for filings a (in the order of the documents mushed together into one pleading) SumDecMoTice. The court presumes that the senior attorney is unaware of his office not complying with the Local Bankruptcy Rules.

In the future, if such is repeated, there are several possible outcomes. Denial of the motion without prejudice. More likely, continuance of the hearing until the court can have the attorneys (both senior and junior) come into court (whenever the Courthouse reopens) to address such a pleading and the failure to comply with the Local Rules before granting or denying the motion (with the court deeming such a failure to comply a waiver of 11 U.S.C. § 362(e)(1)).

TRUSTEE’S NON-OPPOSITION

Trustee does not oppose the motion but notes that the creditor is included in Class 3 of the Plan but is uncertain as to the exact nature of the property where the plan says 2012 SupraSupreme ZS and Proof of Claim 6-2 states 2004 Supra Comp LTS 20, 2004 Indmar 5.7L and 2004 Boatmate Tandem 2. Dckt. 31, at 1. Additionally, Trustee states that no payments have been disbursed to Movant. *Id.*, at 2.

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 \$25,814.02 (Declaration, Dckt. 23), while the value of the Vehicle is determined to be \$5,000, as stated in Schedules A/B and D filed by Debtor.

According to Debtor's Plan, Movant has been classified as a Class 3 and this will satisfy the claim by the surrender of the collateral. Dckt. 11.

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.

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.

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 Medallion Bank ("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 2004 Supra Comp LTS 20, VIN ending in I304 ("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.

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 15, 2020. By the court’s calculation, 40 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.

1900 Capital Trust III, by U.S. Bank National Association, not in its individual capacity but solely as Certificate Trustee (“Movant”) seeks relief from the automatic stay with respect to Anthony Hemenes, III (“Debtor”) and Carolyn Hemenes’s (“Co-Debtor”) real property commonly known as 2225 Washington Ave., South Lake Tahoe, California (“Property”). Movant has provided the Declaration of Carrie Dockter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion seeks relief from the stay in this case pursuant to 11 U.S.C. § 362(d)(1), for cause, and also pursuant to 11 U.S.C. § 362(d)(4), imposing a two year bar on the automatic stay going into effect upon the filing of a subsequent case involving this property.

Termination of the Stay Upon Dismissal of This Bankruptcy Case

The instant case is being dismissed on the basis that:

- A. Debtor failed to appear at the Meeting of Creditors.
- B. Debtor was delinquent in plan payments.

- C. Debtor's chapter 13 documents were incomplete.
- D. Debtor failed to provide tax returns.
- E. Debtor failed to file documents related to Business.
- F. Debtor is a serial filer.
- G. Debtor's Mortgage payment was delinquent due to Debtor's failure to make plan payments timely.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section

510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Though the automatic stay may not apply to the Property and the Debtor upon the dismissal of the case, it still exists to be addressed by the court.

**Relief for Cause, 11 U.S.C. § 362(d)(1),
11 U.S.C. § 1301(a).**

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.

Here, as discussed below in the portion of this Decision granting relief pursuant to 11 U.S.C. § 362(d)(4), cause exists to grant relief from the stay in this case. Though the stay would also terminate upon the dismissal of the case, cause has been shown to grant relief pursuant to 11 U.S.C. § 362(d)(1). Debtor use of bankruptcy filings, without any good faith prosecution of a Chapter 13 Plan, is cause for such relief.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has 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 because of the repeated filings and failure to prosecute the multiple bankruptcy cases. The co-debtor is identified as Carolyn Hemenes.

Relief Requested Pursuant to 11 U.S.C. § 362(d)(4)

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

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

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

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* In the Motion, Movant states with particularity the following grounds for relief pursuant to 11 U.S.C. § 362(d)(4):

¶ 5. The Debtor is not a Borrower on the Note or Deed of Trust but states having an interest in the Property as listed on the Schedules and Debtor identifying it as Debtor's principal residence.

¶ 6. Debtor's First Chapter 13 Bankruptcy Case.

A. On September 7, 2011, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland Division; Case No. 11-49636-MEH.

B. Debtor's First Chapter 13 Bankruptcy Case was dismissed on November

2, 2012.

¶ 7. Debtor's Second Chapter 13 Bankruptcy Case.

A. On November 26, 2012, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland Division; Case No. 12-49414-RLE.

B. Debtor's Second Chapter 13 Bankruptcy Case was dismissed on January 31, 2013.

¶ 8. Debtor's Third Chapter 13 Bankruptcy Case.

A. On March 14, 2013, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland ; Case No. 13-41534-MEH.

B. Debtor's Third Chapter 13 Bankruptcy Case was dismissed on May 2, 2013.

¶ 9. Debtor's Fourth Chapter 13 Bankruptcy Case.

A. On September 3, 2013, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland Division; Case No. 13-45016-WJL.

B. Debtor's Fourth Chapter 13 Bankruptcy Case was dismissed on March 19, 2014.

¶ 10. Debtor's Fifth Chapter 13 Bankruptcy Case.

A. On June 14, 2017, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division, Case No. 17-23971.

B. Debtor's Fifth Chapter 13 Bankruptcy Case was dismissed on August 31, 2017.

¶ 11. Debtor's Sixth Chapter 13 Bankruptcy Case.

A. On December 12, 2019, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division; Case No. 19-27664.

B. Debtor's Sixth Chapter 13 Bankruptcy Case was dismissed on March 7, 2020.

¶ 12. Debtor's Seventh Chapter 13 Bankruptcy Case.

- A. On May 1, 2020, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division; Case No. 20-22339.
- B. Debtor's Seventh Chapter 13 Bankruptcy Case was dismissed on May 19, 2020.

¶ 13. Debtor's Eighth Chapter 13 Bankruptcy Case (the instant case before this court).

- A. On or about August 10, 2020, Debtor filed a voluntary petition for protection under Chapter 13 of the United States Bankruptcy Code.
- B. Debtor's Eighth Chapter 13 Bankruptcy Case was dismissed on November 20, 2020.

Motion, identified by paragraph number in the Motion, Dckt. 42.

In dismissing the Eighth Bankruptcy Chapter 13 Case before this court, as stated in the Civil Minutes the grounds and the court's finding included the following:

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Anthony Hemenes, III ("Debtor"), failed to appear at the Section 341 Meeting of Creditors.
2. Debtor is delinquent in plan payments.
3. Debtor's chapter 13 documents are incomplete.
4. Debtor is a serial filer.
5. Debtor has failed to provide tax returns.
6. Debtor has failed to provide business documents.
7. Mortgage payment is delinquent due to Debtor's failure to make plan payments timely.

...

Multiple Bankruptcy Filings

This is Debtor's third recent Chapter 13 case [in this District] he has attempted to prosecute in *pro se*. The prior case was filed by Debtor on May 1, 2020 and dismissed on May 19, 2020 due to the failure to file the basic required documents to prosecute a Chapter 13 case: Chapter 13 Plan; Statement of Monthly Income; Schedules A/B, C, D, E, F, G, H, I, J; and the Statement of Financial Affairs. 20-22339; Ntc of Incomplete Filing and Order, Dckts. 9, 11.

The Debtor's other bankruptcy filings appear to be similar, cases filed, stay obtained, but then not prosecuted.

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

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. Here, the filing of the current Chapter 13 case, and the prior filings, cannot have been for any bona fide, good faith reason in light of the wholesale failure of Debtor to fulfill the minimum obligations to file the required documents and to attempt to prosecute Chapter 13 plans. There have been a bankruptcy case filings in which there has been no prosecution of the cases.^{FN.1.}

FN. 1. In the current case Debtor has filed a Chapter 13 Plan Form. Dckt. 13. Not all pages of the Chapter 13 Plan are included. No provision is made for the payment of any plan payments by Debtor, that amount left blank. Plan, ¶2.01; Dckt. 13. The Plan is for an unstated term, that information left blank. *Id.*, ¶ 2.03. For the Class 1 secured claims, while listing the post-petition current mortgage payments totaling \$1,925.00, Debtor does not provide for curing the stated \$53,800.00 in pre-petition arrearages on the two secured claims. *Id.*, ¶ 3.07. Debtor then lists the Class 1 claims again in Class 2, providing for an additional \$3,875 a month plan distribution. *Id.*, ¶ 3.08. For Class 5 priority claims, Debtor lists \$54,800.00 (which may be the stated arrearage amounts). *Id.*, ¶ 3.12.

Page 6 of the Plan is not included and the Form is not signed by Debtor.

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

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

Further, after having tried multiple times and failing to prosecute a Chapter 13 case, if Debtor has the actual ability to perform a plan, then it is likely that an attorney can be hired to prosecute such a plan (and be paid substantially through the plan).

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 Anthony Hemenes, III (“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 2225 Washington Ave., South Lake Tahoe, California, 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 Carolyn Hemenes 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).

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with respect to the real property commonly known 2225 Washington Ave., South Lake Tahoe, California (the “Property”), with such relief pursuant to 11 U.S.C. § 362(d)(4) providing:

“If [this Order] recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) [of 11 U.S.C. § 362(d)(4)] shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

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

FINAL RULINGS

5. [19-27459-E-13](#) CYNTHIA ROSS
[JCW-1](#) Mark Briden
NATIONSTAR MORTGAGE LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
10-21-20 [\[103\]](#)

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 24, 2020 hearing is required.

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

Nationstar Mortgage LLC d/b/a Mr. Cooper (“Creditor”) having filed a Notice of Voluntary Dismissal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on November 3, 2020, Dckt. 116; no prejudice to the responding party appearing by the dismissal of the Motion; the Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Cynthia Leeann Ross (“Debtor”); the Ex Parte Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Nationstar Mortgage LLC d/b/a Mr. Cooper (“Creditor”) having been presented to the court, the Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 116, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.

Final Ruling: No appearance at the November 24, 2020 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 13 Trustee, on October 22, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Select Portfolio Servicing Inc., servicing Agent for Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006–11 Asset-Backed Certificates, Series 2006–11 (“Movant”) seeks relief from the automatic stay with respect to Patricia Claire Shields’ (“Debtor”) real property commonly known as 79 Aiken Way, Sacramento, California (“Property”). Movant has provided the Declaration of Maria G. Fritz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

DISCUSSION

Movant asserts that cause exists pursuant to 11 U.S.C. § 362(d)(1) based on Debtor’s post-petition defaults in the post-petition current monthly payments that have come due on its secured claim. The monthly principle, interest, and escrow amounts (if any) total \$3,702.87, and Movant presents evidence that Debtor is in default for the monthly payments due for five months, with the post-petition arrearage totaling \$18,514.35. Motion, ¶ 13 and Declaration, ¶ 8; Dckts. 45, 47. These are for the months of June through October 2020. Declaration, ¶8, Dckt. 47.

The court has issued a conditional order of dismissal. Dckt. 51. The Trustee reports that the Debtor did not satisfy the condition and that the Trustee will proceed (filing a declaration documenting the failure to satisfy the condition and lodge a proposed order dismissing the case) with having the case dismissed. Reply and Declaration; Dckts. 52, 53.

However, the case has not yet been dismissed.

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.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests 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 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 Select Portfolio Servicing Inc., servicing Agent for Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006–11 Asset-Backed Certificates, Series 2006–11 (“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 Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006–11 Asset-Backed Certificates, Series 2006-11, Movant, and their respective 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 79 Aiken 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 fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

Final Ruling: No appearance at the November 24, 2020 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 13 Trustee, and Office of the United States Trustee on October 26, 2020. By the court’s calculation, 29 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.

Koraf Corporation (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 6937 Ellsworth Circle, Fair Oaks, California (“Property”). The moving party has provided the Declaration of Fred Azarbadi to introduce evidence as a basis for Movant’s contention that Colette Yvonne White (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and received a stipulation and order having been issued by that court on March 16, 2020 where Debtor agreed to vacate the premises and pay the past due rental and hold over damages in the amount of \$6,985.00. Exhibit 4, Dckt. 23.

Trustee filed a Response stating no opposition and noting that Movant is included in the proposed plan and a Proof of Claim was filed. Dckt. 31. Trustee further requests that the court into consideration that the meeting of creditors is scheduled for November 19, 2020 at 2:00 p.m. and that Debtor’s first plan payment is due November 25, 2020. *Id.*

The court shall issue an order terminating and vacating the automatic stay to allow Movant,

and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Koraf Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 6937 Ellsworth Circle, Fair Oaks, California.

No other or additional relief is granted.