

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**December 19, 2017, at 1:30 p.m.**

---

1. [17-27751](#)-E-13      **MISAEL/LUZ BAUTISTA**      **MOTION FOR RELIEF FROM**  
**LHL-1**                      **Harry Roth**                      **AUTOMATIC STAY**  
  
**MORTGAGE RELIEF SERVICES,**                      **12-1-17 [9]**  
**LLC VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----  
Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee,, and Office of the United States Trustee on December 1, 2017. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
-----.

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

Mortgage Relief Services, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 205 Anderson Avenue, Winters, California (“Property”). The moving party has provided the Declaration of Laurie Howell to introduce evidence as a basis for Movant’s

contention that Misael Bautista and Luz Bautista (“Debtor”) do 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 Yolo. Exhibit B, Dckt. 12.

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 11, 2017. Dckt. 17. He states that he does not oppose the Motion.

## **DISCUSSION**

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at \*8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Mortgage Relief Services, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 205 Anderson Avenue, Winters, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

### **Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as**

**opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Mortgage Relief Services, LLC and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Mortgage Relief Services, LLC and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Mortgage Relief Services, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Mortgage Relief Services, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 205 Anderson Avenue, Winters, California.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. [14-29154-E-13](#)      **GARY/CHERYL PETERSEN**  
**JHW-1**                      **Brandon Johnston**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
**11-21-17 [68]**

**AMERICREDIT FINANCIAL  
SERVICES, INC. VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

Americredit Financial Services, Inc. dba GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2010 Hyundai Genesis, VIN ending in 5846 (“Vehicle”). The moving party has provided the Declaration of Angelo Aguilar to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Gary Petersen and Cheryl Petersen (“Debtor”).

The Aguilar Declaration provides testimony that the Vehicle was involved in a collision on October 23, 2017, being declared a total loss by Debtor’s insurance carrier. Movant is named as the loss payee and seeks relief from the automatic stay to apply \$10,025.20 in insurance proceeds to the remaining balances on its secured claim with any overage being sent to the Chapter 13 Trustee.

**CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 5, 2017. Dckt. 75. The Chapter 13 Trustee argues that insurance proceeds are property of the Estate that should be provided to him to be disbursed to Movant pursuant to the confirmed plan that treats Movant’s claim in Class 2.

Additionally, the Chapter 13 Trustee notes that there is no cause for relief cited in the Motion; Debtor is current on plan payments, and the Chapter 13 Trustee has distributed \$12,015.76 in principal and \$1,989.48 in interest to Movant's secured claim and \$238.21 on the unsecured claim, with \$10,025.20 as the remaining balance.

The Chapter 13 Trustee argues that the Motion presents an improper modification of the Plan by which Movant's claim would be treated as if under Class 4. As a side note, the Chapter 13 Trustee notes that Debtor's counsel is deceased, but no motion to substitute another counsel has been filed.

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

The Chapter 13 Trustee filed a Supplemental Response on December 11, 2017. Dckt. 78. He states that he has communicated with Movant's attorney, who indicated that the insurance proceeds will be forwarded to the Chapter 13 Trustee.

The Chapter 13 Trustee moves that the Motion be denied and that the court order the insurance proceeds to be turned over to the Chapter 13 Trustee and be treated as an additional payment under § 1.02 of the Plan.

## **DISCUSSION**

Neither the Motion, the Aguilar Declaration, the exhibits, nor the Memorandum of Points and Authorities indicate whether Movant has received the insurance proceeds already, but the Chapter 13 Trustee's Supplemental Response indicates that Movant has received the funds. Those funds are property of the bankruptcy estate, and they are to be administered according to the confirmed plan in this case. 11 U.S.C. § 541(a)(7). The Bankruptcy Code requires Movant to provide those funds to the Chapter 13 Trustee, specifically stating:

Except as provided in subsection (c) or (d) of this section, an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a).

The Motion is denied without prejudice, Movant having advised the court that it no longer seeks to have insurance proceeds disbursed directly to it.

With respect to the Chapter 13 Trustee's request in opposition that the court issue a mandatory injunction or turnover order, neither an adversary proceeding nor a counter motion for a turnover order have been filed.

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. dba GM Financial (“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 Motion is denied without prejudice.

3. [16-27854-E-11](#) **GARY STEINGROOT** **CONFIRMATION OF AMENDED PLAN**  
**TBG-8** **Stephan Brown** **OF REORGANIZATION FILED BY**  
**DEBTOR IN POSSESSION**  
**9-14-17 [101]**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----  
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 creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2017. By the court’s calculation, 96 days’ notice was provided. 42 days’ notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Confirmation of Plan of Reorganization is XXXXXXXXXXXX.**

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 2, 2017 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 4, 2017 Last Day for Submitting Written Acceptances or Rejections

December 4, 2017 Last Day to File Objections to Confirmation

December 11, 2017 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

<b>Administrative Expenses</b>	<b>Estimated Amount Owed</b>	<b>Treatment</b>
Expenses arising in the ordinary course of business after petition date	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Broker's professional fees, as approved by the court	Estimated to be 5% of the fair market value of the 1055 Hutley Way, Granite Bay, California, property sale, or \$37,500.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Debtor in Possession's attorney's fees, as approved by the court	Estimated to be \$35,000.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Other administrative expenses	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later, subject to court approval
Clerk's office fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
<b>TOTAL</b>	\$72,500.00	

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1: Secured Claim of SunTrust Mortgage, Inc.	<b>Claim Amount</b>	\$455,042.01
	<b>Impairment</b>	Impaired

Mortgage, Inc.

	<p>Claim No. 1 filed on December 14, 2016. The claim was filed in the amount of \$455,042.01 and is secured by a first priority deed of trust against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-petition interest shall accrue pursuant to the underlying loan documents filed. Proof of Claim 1, pp. 2, 48. The value of 1055 Hutley Way is estimated at \$750,000.00 per Debtor in Possession's amended schedules. Dckt. 16, p.12. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. The Class 1 secured claim will be paid through escrow upon court approval of a motion to sell 1055 Hutley Way.</p> <p>To provide adequate protection, Debtor in Possession will make monthly interest payments to the Class 1 secured claim at the contract rate of 4.5%. Payments will commence on the first of the month following the effective date of the Plan.</p>	
Class 2: Secured Claim of Capital One	<b>Claim Amount</b>	\$5,603.00
	<b>Impairment</b>	Impaired
	<p>No claim has been filed. This claim was scheduled as claim 2.1 in Debtor in Possession's amended petition. This claim is valued in the amount of \$5,603.00 secured by a judgment lien against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-judgment interest, from before and after Debtor's petition filing date, will continue to accrue pursuant to applicable nonbankruptcy law, California Code of Civil Procedure § 685.010. The Class 2 secured claim of Capital One is junior to Class 1. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. Each holder of a Class 2 secured claim will be paid in full through escrow upon court approval of a motion to sell 1055 Hutley Way.</p>	
Class 3: General Unsecured Claim of CACH, LLC (Allowed)	<b>Claim Amount</b>	\$9,874.79
	<b>Impairment</b>	Unimpaired
	<p>No claim has been filed. This claim is scheduled as claim 4.3 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Allowed Class 3 claims total \$9,874.79. Each holder of a Class 3 claim will be paid in full on the effective date of the Plan out of the funds available in Debtor in Possession's bank account.</p>	

Class 4: General Unsecured Claims (Not Allowed)	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	No claims have been filed. These claims schedules as claims 4.1, 4.2, and 4.4 through 4.11 in Debtor in Possession’s amended Schedule E, filed January 19, 2017. Dckt. 30. Each holder of a Class 4 general unsecured claim is not an allowed claim under 11 U.S.C. § 502(b)(1) because these claims are time-barred pursuant to applicable non-bankruptcy law, California Code of Civil Procedure § 337.	
Class 5: Interest of the individual Debtor in property of the Estate	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	To be distributed upon successful completion of the Plan.	

**CREDITOR’S OBJECTION**

Citizens Bank, N.A. FKA RBS Citizens (“Creditor”) filed an Objection on December 5, 2017. Dckt. 140. FN.1. Creditor argues that the Plan does satisfy 11 U.S.C. § 1129(a)(8) because Class 1 (containing Creditor’s claim) has rejected the Plan. Additionally, Creditor argues that the Plan violates 11 U.S.C. § 1129(a)(3) & (11) because Debtor in Possession has proposed an “illusory” plan that calls for sale of property within six months, even though the property is not being marketed in any meaningful way. Creditor argues that the Plan is merely an attempt to delay Creditor from exercising its rights.

FN.1. Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion, but a consistent Docket Control Number when responding to a particular motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party used a new Docket Control Number. That is not correct. The Court will consider the objection, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny relief. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

**TABULATION OF BALLOTS**

Class	Voting	Result
Class 1 (Impaired)	For: 0 Against: 1	Rejected
Class 2 (Impaired)	For: 0 Against: 0	No ballots cast

Class 3 (Unimpaired)	For: 0 Against: 0	No ballots cast
Class 4 (Unimpaired)	For: x Against: x	
Class 5 (Unimpaired)	For: x Against: x	

Debtor in Possession argues that even though Creditor rejected the Plan originally, it indicated at the December 7, 2017 hearing that it was open to plan amendments. Dckt. 152. Debtor in Possession's counsel indicated that amendments would be proposed to satisfy Creditor's objection, which presumably would lead to Creditor accepting the Plan.

### **DEBTOR IN POSSESSION'S REPLY**

Debtor in Possession filed a Reply on December 11, 2017. Dckt. 149. Debtor in Possession argues that terms were presented at the December 7, 2017 hearing that address Creditor's objection. Debtor in Possession states that an amended plan will be filed to include the terms of the amendments. Debtor in Possession argues that Creditor's objection is now moot because it will presumably accept the amendments.

Debtor in Possession requests that the court confirm the Plan, as later amended. *Id.* at 2:9.5.

### **SECOND AMENDED PLAN**

Debtor in Possession filed a Second Amended Plan on December 12, 2017. Dckt. 156. It contains two major changes. First, Class 1 contained adequate protection language that has been changed to read:

Pursuant to the Court Order dated December 7, 2017, Docket Number 145, Debtor will make monthly payments to Creditors in Class 1 in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.

If a monthly payment is not timely made by the 15th day of the month, Creditor may seek relief from the automatic stay by a supplemental ex parte motion to amend the adequate protection order of the court. This motion shall be supported by competent, credible evidence of such default in timely payment. The ex parte motion and supporting pleadings [*sic*] shall be served on the Debtor in Possession, counsel for Debtor in Possession, and the U.S. Trustee.

The Debtor in Possession shall have 10 days to file an opposition to the ex parte motion, with the only issue being whether the Debtor in Possession failed to make the timely payment. The Debtor in Possession shall notice a hearing on the ex parte motion to amend the Court's order for the first regular law and motion hearing date

on this court's Modesto calendar which is at least 10 days after service of the ex parte Motion by the Class 1 Creditor. The only issues for the Court at the hearing is whether the Debtor in Possession defaulted in timely making the monthly payment as asserted in the ex parte motion and supporting evidence.

If no opposition is timely filed, Creditor shall lodge with the Court a proposed order granting relief from the automatic stay.

Dckt. 156 at 6–7. Article VIII also contains new language. Section 8.02 adds a sentence at the end that reads “These remedies are in addition to, and not limited by, those remedies outlined in Articles II through IV. Section 8.03 reads:

Modification of Automatic Stay by Court Order. Unless otherwise ordered by the Court, pursuant to the order dated December 7, 2017, Docket Number 145, the automatic stay is modified effective July 1, 2018, to allow the Class 1 Creditor to foreclose on, and the buyer to obtain possession of, 1055 Hutley Way.

*Id.* at 11.

## **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONFIRMATION**

The Memorandum of Points and Authorities filed in support of confirmation provides argument (but not evidence) of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

### **11 U.S.C. § 1129(a)**

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

**Argument:** Dckt. 151, pg. 7

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

**Argument:** Dckt. 151, pg. 7

3. The plan has been proposed in good faith and not by any means forbidden by law.

**Argument:** Dckt. 151, pg. 9

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

**Argument:** Dckt. 151, pg. 9

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

**Argument:** Dckt. 151, pg. 9 (stating that this provision is inapplicable)

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

**Argument:** Dckt. 151, pg. 9 (stating that this provision is inapplicable)

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

**Argument:** Dckt. 151, pg. 10

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

**Argument:** Dckt. 151, pg. 10

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

**Argument:** Dckt. 151, pg. 10

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim;  
or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

**Argument:** Dckt. 151, pg. 10

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

**Argument:** Dckt. 151, pg. 10

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

**Argument:** Dckt. 151, pg. 10–11

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**Argument:** Dckt. 151, pg. 11

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

**Argument:** Dckt. 151, pg. 11

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

**11 U.S.C. § 1129(b)**

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

**Argument:** Dckt. 151, pg. 12–13

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

**Argument:** Dckt. 151, pg. 12–13

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

**Argument:** Dckt. 151, pg. 13

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

**Argument:** Dckt. 151, pg. 13

## **DISCUSSION**

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Nothing on the docket indicates that Creditor has accepted the Plan at this time. At the December 7, 2017 hearing on Creditor's Motion for Relief from the Automatic Stay, the parties stipulated to the following terms:

- A. Debtor shall make monthly payments to Creditor in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.

- B. If a monthly payment is not timely made by the fifteenth day of the month, Creditor may seek relief from the automatic stay by a supplemental *ex parte* motion to amend the court's adequate protection order. That supplemental *ex parte* motion shall be filed using the Docket Control Number for the Motion for Relief contested matter (ASW-1), and no additional filing fee would be required. The *ex parte* motion and supporting pleadings shall be served on Debtor in Possession, Debtor in Possession's counsel, and the United States Trustee.
  
- C. Debtor in Possession shall have ten days to file an opposition to the *ex parte* motion, with the only issue being whether Debtor in Possession failed to make the timely payment. Debtor in Possession shall notice a hearing on the *ex parte* motion to amend the court's order for the first regular law and motion hearing date on the court's Modesto calendar that is at least ten days after service of the *ex parte* motion.
  - 1. The only issue for the court at the hearing would be whether Debtor in Possession defaulted in timely making the monthly payment as asserted in the *ex parte* motion and supporting evidence.
  
- D. If no opposition is timely filed, Creditor shall lodge with the court a proposed order granting relief from the automatic stay.
  
- E. The automatic stay is modified effective July 1, 2018, to allow Creditor to foreclose on, and the buyer obtain possession of, 1055 Hutley Way, Granite Bay, California.

Dckt. 145.

At the hearing, Creditor **confirmed that it now accepts the Plan.**

4. [17-23464-E-13](#)      **JOSEPHINE MELONE**  
**DVW-1**                      **Mary Ellen Terranella**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
12-1-17 [110]**

**U.S. BANK, N.A. VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----  
Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 1, 2017. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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

U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Movant”) seeks relief from the automatic stay with respect to Josephine Melone’s (“Debtor”) real property commonly known as 1049 Star Lilly Court, Vacaville, California (“Property”). Movant has provided the Declaration of Gloria Rocha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rocha Declaration states that there are six post-petition defaults in the payments on the obligation secured by the Property, with a total of \$14,679.36 in post-petition payments past due. The Declaration also provides evidence that there are fifty-six pre-petition payments in default, with a pre-petition arrearage of \$42,181.51.

## CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 5, 2017. Dckt. 116. The Chapter 13 Trustee asserts that Debtor is \$5,225.00 delinquent in plan payments. He states that \$3,160.00 has been disbursed to Movant.

### DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$692,044.89 (including \$548,427.99 secured by Movant’s first deed of trust), as stated in the Rocha Declaration and Schedule D. The value of the Property is determined to be \$550,000.00, as stated in Amended Schedule 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.

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

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 Armando Leyva is listed as a co-debtor on the securing note.

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

### **Request for Attorneys' Fees**

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust, 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 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 real property commonly known as 1049 Star Lilly Court, Vacaville, California.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Armando Leyva 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 the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

**IT IS FURTHER ORDERED** that Movant’s request for attorney’s fees is denied.

No other or additional relief is granted.

5. [16-90500-E-11](#) **ELENA DELGADILLO**  
**HSM-18** **Len ReidReynoso**

**CONTINUED MOTION TO SELL FREE  
AND CLEAR OF LIENS AND/OR  
MOTION TO PAY**  
**11-14-17 [260]**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

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 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court’s calculation, 30 days’ notice was provided. The court required service by November 15, 2017. Dckt. 267.

The Motion to Sell Property 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 to Sell Property is ~~XXXXX~~.**

The Bankruptcy Code permits Irma Edmonds, the Chapter 11 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 9115 International Boulevard, Oakland, California (“Property”).

The proposed purchaser of the Property is Mohsen Mohamed, and the terms of the sale are:

- A. Purchase price of \$275,000.00;
- B. Deposit of \$9,000.00, which shall be nonrefundable if Buyer fails to close;
- C. Escrow to close within fifteen days of court approval;
- D. Seller to pay prorated share of real property taxes;
- E. Buyer to purchase the Property with tenants in place;

- F. Buyer shall assume EBMUD sewer lateral compliance fees;
- G. Property sold as is, where is, with all faults;
- H. Broker's commission of 6.00% to Coldwell Banker Residential Brokerage; and
- I. From the sale proceeds, Movant intends to pay the claim of Creditor Sacramento Lopez.

The Motion seeks to sell the Property free and clear of the lien of Sacramento Lopez ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

"(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)-(5).

For this Motion, Movant has established that Creditor consents to the sale free and clear of its lien. Dckt. 260 at 6-7. Additionally, Creditor filed a Statement of Consent on November 17, 2017. Dckt. 270.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 30, 2017. Dckt. 276. Debtor argues that she has acquired sufficient funds to satisfy the remaining balance of claims. Debtor states that her daughter received a loan against the daughter's property and then gave \$240,000.00 to Debtor. *Id.* at 3. Now, Debtor wants to use those funds to pay the claims in this case and retain the remaining real property assets.

## MOVANT'S REPLY

Movant filed a Reply on December 7, 2017. Dckt. 283. Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does not believe Debtor. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is \$684,988.04. Creditor is owed \$423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

## DECEMBER 14, 2017 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 19, 2017, specially set to be heard in Courtroom 33 of the Sacramento Division of the court. Dckt. 290.

## DISCUSSION

Debtor opposes the present Motion, having her attorney argue that Debtor tells him that she has obtained \$240,000.00 from her daughter that she will pay to Movant to fund the final distribution to all creditors in this case. Opposition ¶ 15, Dckt. 276. These arguments are unsupported by any evidence—either in the form of a declaration or proof of such funds being available. Further, nothing is presented to the court to show that Debtor, acting through her counsel, has tendered the \$240,000.00 to Movant.

In response to the Opposition, Movant has provided her declaration. Dckt. 281. Movant's testimony addresses the status of the prior approved sales of property of the estate, advising the court, Debtor, and parties in interest that two sales have closed. However, the sale of the Bancroft Property (as referenced by Debtor) did not close and that property continues to be property of the bankruptcy estate.

In her declaration, Movant also points out several concerns she has with respect to the unauthenticated loan documents by which the purported loan was obtained by Debtor's daughter.

### Appointment of Movant

Debtor's eleventh and one-half hour opposition argued by her counsel is considered in light of Debtor's performance of her fiduciary duties as the debtor in possession and her prosecution of this case prior to the appointment of Movant. The court addressed this in its ruling on the Motion to Appoint a Trustee or Convert the Case. Civil Minutes, Dckt. 76.

The findings and conclusions of the court stated in the Civil Minutes for the hearing on the Motion to Appoint a Trustee or Convert the Case include the following:

Here, both a party in interest (Creditor) and the U.S. Trustee have requested the appointment of a trustee, and they have established both cause for appointment of a trustee and that such appointment is in the best interest of creditors. **Debtor in Possession was to administer the Estate according to a stipulation, but has failed to do so. Debtor in Possession transferred eleven properties,** then expressed

intention to sell them, **but has since not reconveyed all of the properties** and has not filed a motion to employ a realtor. Debtor in Possession also has not filed a disclosure statement, a plan, or the required monthly operating reports. **Debtor in Possession's conduct is evidence of gross mismanagement**, and there is cause for the court to appoint a trustee in this case.

...  
A Status Conference was conducted on November 22, 2016, with counsel for the Debtor in Possession appearing. As stated in the U.S. Trustee's pleading, the **Debtor in Possession has not been filing monthly operating reports (being in default for the months of July 2016 and each month thereafter through November 2016)** and has **not taken steps to engage a real estate broker** to market the property or advance a Chapter 11 Plan. Counsel for the Debtor in Possession reports that the Debtor in Possession has limited English language skills and everything is translated through her son. However, **no explanation is provided for why an accountant or other professional has not been hired to assist in the preparation of the necessary reports**, why the son or other family member is not working with the Debtor in Possession to prosecute this case, or why or how the Debtor can fulfill the duties of a debtor in possession given her conduct to date.

Cause has been shown for the appointment of a Chapter 11 trustee in this case. **Debtor has not fulfilled her basic duties as a debtor in possession and has not advanced a plan in this case.** Though some properties have been recovered from the family members to which they were transferred, nothing further is developing.

Civil Minutes, Dckt. 76 (emphasis added).

While “promising” there is money, it appears that the opposition is being prosecuted solely for the sake of delay and in an attempt to derail the administration of this case.

### **Reported Status of Properties, Sales, and Claims**

Movant testifies that Debtor’s arguments about the sales proceeds is inaccurate as one of the sales has fallen through. Movant also provides her testimony of the monies on hand, payment of secured claims to date, projected monies necessary to pay administrative expenses, and the amount necessary to pay the claims in this case.

Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does concur in Debtor’s projection. First, Debtor’s contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is \$684,988.04. Creditor is owed \$423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

Movant argues that Debtor has assumed incorrectly that all of the property sales in this case have closed. The sales of real property at Orchard Road, Vernalis, California, and at 1920 82nd Avenue, Oakland,

California, have closed, but a proposed sale for real property at 5319 Bancroft Avenue, Oakland, California, did not close. Dckt. 281. From the two completed sales, Movant has distributed \$684,988.04 to Creditor, leaving \$423,454.50 to be paid.

Movant has retained \$347,748.00 in this case to cover all administrative expenses for the case, including Movant's commission, compensation for professionals, and post-petition taxes due by the Estate. Movant does not know if that amount will be sufficient to pay all administrative expenses, which total approximately \$374,900.00 at this time. Movant estimates the administrative expenses as follows:

- A. Movant's commission—not less than \$65,000.00;
- B. Movant's attorneys' fees and costs—\$28,000.00;
- C. Movant's CPA's fees and costs—\$47,000.00;
- D. Federal and state taxes—\$217,400.00; and
- E. Quarterly U.S. Trustee fees—\$17,500.00.

Movant estimates that at least \$815,669.62 will be required to pay all claims in this case. With the Estate retaining \$353,785.20, there is a shortage of \$461,884.42. Even with \$240,000.00 purportedly being given to Debtor, Movant argues that there would still not be enough funds to pay all claims in this case.

#### **Reported Status of Chapter 11 Plan or Conversion to Chapter 7 If Claims to be Paid Through Liquidation of Properties Outside of a Chapter 11 Plan**

At the hearing, Movant reported that prosecuting a Chapter 11 Plan in this case is not warranted in light of the costs of a plan, this having been coordinated with Debtor. Debtor agrees, and as stated at the hearing, Debtor has obtained \$240,000.00 in funds from her daughter to fund the Estate and provide for payment in full, when added to the proceeds of this sale and prior sales.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

The court has approved prior sales of property in this case, but now Debtor requests that the court not allow more sales because Debtor has acquired funds that are sufficient to pay the claims in this case. Based on the evidence before the court, the Motion is **XXXXXXXXXX**.

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 Sell Property filed by Irma Edmonds, the Chapter 11 Trustee (“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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(f) to Mohsen Mohamed or nominee (“Buyer”), the Property commonly known as 9115 International Blvd., Oakland, California (“Property”), on the following terms:

- ~~A. The Property shall be sold to Buyer for \$275,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 264, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.~~
- ~~C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~D. Movant is authorized to pay a real estate broker’s commission in an amount equal not to exceed six percent of the actual purchase price upon consummation of the sale. The commission shall be paid to Movant’s broker, Coldwell Banker Residential Brokerage, agent Stephanie Davis, and Buyer’s broker as provided in the Purchase Agreement.~~
- ~~E. The sale of the property is made pursuant to 11 U.S.C. § 363(f)(2) (consent of Sacramento Lopez having been given (Dckt. 270)) and § 363(f)(3) [sales proceeds exceeding the amount of the secured claim] free and clear of the lien of Sacramento Lopez, which lien shall attach to all remaining proceeds from the sale of the Property to the extent of his secured claim in this case. Movant shall direct the disbursement directly from escrow to Sacramento Lopez in an amount not to exceed Mr. Lopez’s secured claim in this case and such disbursement shall be applied to Mr. Lopez’s secured claim in this bankruptcy case. Sacramento Lopez shall provide his concurrence to the amount of the disbursement directly from escrow for the final amount owing on his secured claim. In the event of a disagreement as to the total amount, Movant and Sacramento Lopez shall provide their consent to the undisputed portion of such disbursement, with any~~

disputes as to the amount of Mr. Lopez's secured claim to be subsequently determined by this court.

---

~~IT IS FURTHER ORDERED~~ that ~~xxxxxxxxxxxx~~ (or nominee), the proposed purchaser in the Motion, is approved as the backup buyer in the amount of ~~\$xxxxxxxxxx~~ and on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 255, as amended by this Order, and as further provided in this Order in the event that ~~Mohsen Mohamed~~ did not close escrow and complete the purchase within ~~xxx~~ days after the entry of the order approving the sale of the property. In the event that Mohsen Mohamed does not timely close the purchase and the ~~xxx~~-day contingency occurs, ~~xxxxxx~~ (or nominee) shall complete the purchase with the period not more than ~~xxx~~ days after the entry of this order.