

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 9, 2018, at 1:30 p.m.

1. **17-27250-E-13 VIKTOR KRIVOSHEY**
RDW-1 Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-14-17 [\[22\]](#)**

CAM XVIII TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 14, 2017. By the court's calculation, 26 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, -----

<p>The Motion for Relief from the Automatic Stay is granted.</p>

CAM XVIII Trust ("Movant") seeks relief from the automatic stay with respect to Viktor Krivoshey's ("Debtor") real property commonly known as 4443 Bogart Way, Antelope, California ("Property"). Movant alleges that Tatyana Krivoshey is also a co-debtor. Movant has provided the

Declaration of Brian Sindell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. FN.1.

FN.1. Movant filed the Declaration and Exhibits 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.

The court notes that counsel for Movant regularly appears in this court and is well aware of the Local Bankruptcy Rules. A *bona fide* reason for failing to comply with these simple rules is not apparent. Though counsel may assert that “this is a simple enough combined document for the court staff to understand,” the court does not leave attorneys to “guess when the Rules apply, and guess when you can ignore the Rules.”

The Sindell Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of \$2,226.25 in post-petition payments past due. The Declaration also provides evidence that there are seventy-three pre-petition payments in default, with a pre-petition arrearage of \$125,035.23.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 19, 2017, in which he states that he does not oppose the Motion because the Plan is not confirmed and because Debtor has not made any plan payments. Dckt. 29.

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 \$395,546.08 (including Movant’s first deed of trust), as stated in the Sindell Declaration. The value of the Property is determined to be \$277,600.00, as stated in 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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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.

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 Tatyana Krivoshey is the party listed on the Note and Deed of Trust, even though Debtor claimed the Property as part of this case.

Prospective Relief from Future Stays

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 creditor or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan N. Resnick & Henry H. Sommer eds. 16th ed.).

Here, Movant argues that Tatyana Krivoshey filed a bankruptcy case affecting the Property on June 9, 2017, that was dismissed on September 8, 2017. Case No. 17-23881.

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 the prior bankruptcy case being filed and the more-than-seventy missed payments to support a finding that Debtor is trying to hinder or defraud Creditor.

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 the 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(d)(4). That would ensure that Debtor, to the extent that some bona fide reason exists, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

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

Because Movant has established that there is no equity in the Property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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 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 CAM XVIII 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 CAM XVIII 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 4443 Bogart Way, Antelope, California.

IT IS FURTHER ORDERED that the relief granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable state laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Tatyana Krivoshey 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 waived for cause.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

2. [17-27250-E-13](#) **VIKTOR KRIVOSHEY** **MOTION TO DISMISS CASE**
 Pro Se **12-19-17 [31]**

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—No Opposition Filed.

Sufficient Notice Not Provided. No Proof of Service was filed for the Motion. 28 days' notice is required.

The Motion to Dismiss has been set for hearing by the court on the notice required by Local Bankruptcy Rule 9014-1(f)(1). No opposition has been filed. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXX.

Viktor Krivoshey ("Debtor") filed this Motion to dismiss his Chapter 13 case on December 19, 2017. The Motion states: "Whereas this case has not been converted to a chapter 13 case under 11 U.S.C. §§ 706, 1112, or 1208, the undersigned hereby requests an order dismissing this case." Dckt. 31. No other grounds or arguments are presented to the court.

ORDER SETTING HEARING

On December 19, 2017, the court entered an Order Setting Hearing for this Motion at 1:30 p.m. on January 9, 2018. Dckt. 32.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on January 2, 2018. Dckt. 42. The Chapter 13 Trustee states that there is cause to dismiss this case because Debtor has not made any plan payments, that he failed to attend the Meeting of Creditors, and that he claimed exemptions that do not exist.

DISCUSSION

A review of the Chapter 13 Trustee's report from the first Meeting of Creditors shows that Debtor did not appear at the meeting on December 14, 2017. The Meeting was continued to 11:00 on January 25, 2018. On January 2, 2018, Debtor filed a second motion to dismiss this case, again not providing any grounds in support. Dckt. 45.

At the hearing, Debtor argued that the court should grant the Motion and dismiss the case because **XXXXXXXXXXXX**.

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 Dismiss the Chapter 13 case filed by Viktor Krivoshey ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXX**.

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—No Opposition Filed.

Sufficient Notice Not Provided. No Proof of Service was filed for the Motion. 28 days' notice is required.

The Motion to Dismiss has been set for hearing by the court on the notice required by Local Bankruptcy Rule 9014-1(f)(1). No opposition has been filed. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXX.
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Viktor Krivoshey ("Debtor") filed this Motion to Dismiss his Chapter 13 case on January 2, 2018. This is the second Motion to Dismiss that Debtor has filed. *See* Dckt. 31. The Motion states: "Whereas this case has not been converted to a chapter 13 case under 11 U.S.C. §§ 706, 1112, or 1208, the undersigned hereby requests an order dismissing this case." Dckt. 45 (identical to Debtor's prior Motion to Dismiss). No other grounds or arguments are presented to the court.

ORDER FOR HEARING

On January 4, 2018, the court entered an Order for Hearing on this Motion at 1:30 p.m. on January 9, 2018. Dckt. 46. The court noted that a Motion for Relief from the Automatic Stay had been filed and set for hearing at 1:30 p.m. on January 9, 2018, which could be affected by Debtor's Motion to Dismiss. Instead of dismissing this motion without prejudice as duplicative, the court set it for hearing at the same time as the Motion for Relief from the Automatic Stay and as Debtor's first Motion to Dismiss.

DISCUSSION

A review of the Chapter 13 Trustee's report from the first Meeting of Creditors shows that Debtor did not appear at the meeting on December 14, 2017. The Meeting was continued to 11:00 on January 25, 2018. Twice now, Debtor has moved for this case to be dismissed without providing any grounds that justify dismissing this case.

At the hearing, Debtor argued that the court should grant the Motion and dismiss the case because XXXXXXXXXXXXX.

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 Dismiss the Chapter 13 case filed by Viktor Krivoshey (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxx**.

4.	<u>17-24979-E-13</u> VVF-2	MARIO LOPEZ AND LEAH ALBERTO Lucas Garcia	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 12-6-17 <u>[42]</u>
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HONDA LEASE TRUST VS.

Final Ruling: No appearance at the January 9, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 6, 2017. 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). 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Honda Lease Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Honda Civic, VIN ending in 8688 (“Vehicle”). The moving party has provided the

Declaration of Adrian Lopez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mario Lopez and Leah Alberto (“Debtor”).

The Adrian Lopez Declaration provides testimony that Debtor has not made four post-petition payments, with a total of \$1,499.20 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$348.86.

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

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 \$21,085.12, as stated in the Adrian Lopez Declaration, while the value of the Vehicle is determined to be \$16,425.00, as stated in the NADA Valuation Report, which is less than the retail value of \$17,432.00 as stated on Schedule B.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on December 19, 2017. Dckt. 60. The Chapter 13 Trustee notes that Debtor has filed an Amended Plan that lists in Movant in Class 3 to be satisfied by surrender of the Vehicle. *See* Dckt. 58 at 3.

DISCUSSION

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, 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 pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Honda Lease 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Honda Civic (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

WELLS FARGO BANK, N.A. VS.

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

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 7 Trustee, and Office of the United States Trustee on October 17, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Daniel Martinez's ("Debtor") real property commonly known as 600 5th Avenue, Sacramento, California ("Property"). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Bracy Declaration states that there are sixteen pre-petition payments in default, with a pre-petition arrearage of \$27,525.94.

DEBTOR'S RESPONSE

Debtor filed a Response on November 8, 2017. Dckt. 23. Debtor notes that Movant claims to be owed \$329,991 against property that Debtor has valued at \$410,000.00, leaving significant equity to protect Movant's interest.

Debtor argues that the Property is necessary for an effective reorganization because he lives at the Property. Debtor intends to convert the case to Chapter 13 and file a plan that provides for full payment of the arrears.

Debtor argues that he has experienced a significant change to his finances that would allow him to propose a Chapter 13 plan because his girlfriend moved in with him is sharing monthly household and living expenses. Debtor estimates that she provides approximately \$2,500.00 per month.

NOVEMBER 22, 2017 HEARING

At the hearing, the court continued the matter to December 20, 2017, at the parties' request. Dckt. 31.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on December 8, 2017. Dckt. 53. The Chapter 13 Trustee states that since conversion to Chapter 13 on November 22, 2017, the first Meeting of Creditors has been set for January 4, 2018. He notes that the proposed Chapter 13 plan calls for monthly dividends of \$1,229.17 to Movant to begin in the fourth month of the Plan, but the fourth month is not defined. December 2017 is the fourth month since the case was filed, but the Plan appears to treat December as the first month for payments to be due (because the case was converted in November).

DECEMBER 20, 2017 HEARING

At the hearing, the court noted that the case had been converted to Chapter 13 and transferred to Department E. Dckt. 60. The court continued the hearing to 1:30 p.m. on January 9, 2018. *Id.*

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 \$397,712.52 (including \$329,991.52 secured by Movant's first deed of trust), as stated in the Bracy Declaration and Schedule D. The value of the Property is determined to be \$410,000.00, as stated in Schedules A and D.

Movant's contention that mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that a debtor has no equity in the estate is not sufficient standing alone to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass'n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981). Moving party has not adequately pleaded or provided an evidentiary basis for granting relief for "cause."

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not

sufficiently established an evidentiary basis for granting relief from the automatic stay for “cause” pursuant to 11 U.S.C. § 362(d)(1).

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, the court determines that there is sufficient equity in the Property to secure the debt owed to Movant.

Here, Movant agrees with Debtor’s valuation of the Property on Schedule (\$410,000.00), but it asserts that there is not sufficient equity to adequately protect its interest (\$329,991.52). Movant bases that assertion after considering the total amount of all liens on the Property, but as discussed above, Movant’s calculation as a senior lienor should actually be based upon its lien alone. Movant has not argued what costs of sale may total, but assuming 6.00% costs of sale at \$410,000.00, there would be approximately \$24,600.00 in sales costs. Movant’s lien and the costs of sale total \$354,591.52, which leaves \$55,408.48 in equity. Movant is adequately protected and has not shown any other cause for granting relief.

Additionally, Debtor’s case has been converted to Chapter 13, and Debtor has proposed a plan to cure the arrears owed to Movant. Debtor has not listed any ongoing payments to Movant, though, and the Chapter 13 Trustee has questioned when arrears payments are to begin. If Debtor needs to amend the proposed plan, that can be done and set for its own separate hearing. For purposes of determining whether to grant relief from the automatic stay, the court has sufficient evidence and argument to determine that Movant’s interest is adequately protected and that there is not cause to grant relief.

The Motion is denied.

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

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

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

IT IS ORDERED that the Motion is denied.