

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

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

**January 11, 2024 at 10:00 a.m.**

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1. [23-24324-E-7](#)  
[NJI-1](#)

**MOHAMMAD IQBAL**  
**Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-7-23 [\[17\]](#)**

**1 thru 2**

**NAZIA IQBAL VS.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 7, 2023. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Relief from the Automatic Stay is granted and the Stay is modified to <span style="color: red;">XXXXXXX</span>.</b></p>
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Nazia Jabeen Iqbal ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2517 Westerness Road, Davis, California 95616 ("Property"). The moving party has provided her own Declaration to introduce evidence as a basis for Movant's contention that her

brother (and debtor in this case), Mohammad Iqbal (“Debtor”), does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Declaration, Docket 19; Exhibits A-H, Docket 20.

The Chapter 7 Trustee stated her non-opposition to the Motion in a December 11, 2023 Docket Entry Statement.

No opposition has been filed by the Debtor. Debtor has filed a Motion to Enforce the Automatic Stay and for Sanctions in connection with the State Court Proceedings involving this Property, which the court addresses in the Ruling on that Motion.

### **Grounds Stated for Relief and Evidence**

Movant pleads facts with particularity (FED. R. BANKR. P. 9013) that are relevant to this Motion and include the following:

1. Debtor has been “squatting in” and refuses to vacate the Property. Debtor has no legal or equitable interest in the Property.
2. Movant legally owns the Property and used the Property to care for her elderly father.
3. Debtor unlawfully moved into the Property, and there was never any rental or lease agreement between Movant and Debtor. Debtor has never paid rent or any other bills while living in the Property.
4. Movant is prosecuting an unlawful detainer action in the California Superior Court for Yolo County, Case No. CV-22-1661 (“Unlawful Detainer Action”). The Unlawful Detainer Action was set for trial on December 14, 2023. The plaintiffs in the Unlawful Detainer Action are identified on the Pleadings as Nazia Iqbal and Muhammad Malik.
5. The filing of this Bankruptcy Case has imposed the automatic stay that has now delayed the Unlawful Detainer Action.
6. The filing of this Bankruptcy Case has also stayed a second Yolo County Superior Court Action, CV-2020-948, for which a trial setting conference was set for December 4, 2023.
  - a. Action CV-2020-948 is **XXXXXXX**
7. Other family members are also improperly occupying the Property and they are defendants in the Unlawful Detainer Action.
8. Movant provides a detailed review of the Unlawful Detainer Action and the grounds Movant is asserting therein to obtain possession of the Property.
9. Movant asserts that the filing of this Bankruptcy Case was fraudulent.

10. Cause exist under 11 U.S.C. §§ 362(d)(1) & (2) because Debtor has no interest in the Property owned by Movant.

Motion, Docket 17.

### **Movant's Declaration**

Movant asserts she is the rightful owner of the Property, which she used to care for her elderly father, and her brother moved into the home against her and their father's will. Declaration, Docket 19 ¶¶ 3, 13. According to Movant, the Property was owned by her father, Zafar Iqbal, and was placed into a living trust dated September 21, 2016. *Id.* at ¶ 4.

Movant and her father were trustees of the living trust, and on November 17, 2016, they transferred the Property from the trust to Movant under the condition that Movant provide for her father. *Id.* Movant then attempted to obtain a mortgage on the Property and transferred the Property to herself and her husband as a joint tenancy. *Id.* at ¶ 6. Once the mortgage loan was completed, Movant's husband transferred the Property back to Movant, and that deed was recorded on March 15, 2019, which remains the current deed to this day. *Id.* at ¶ 7.

Movant then explains that the other siblings, including Debtor, were not pleased that Movant gained title to the Property, and there have been a series of lawsuits unfolding ever since. Movant testifies that when Debtor illegally took possession of the Property, Movant "found [her] father in tears because Debtor . . . had been harassing him." *Id.* at ¶ 14. Movant testifies she had to move her father out and pay for two homes until his death on December 8, 2022, to remove him from distress caused by Debtor. *Id.* at ¶ 14.

Movant further testifies she commenced two unlawful detainer actions in California Superior Court, County of Yolo, to recover the Property from Debtor. *Id.* at ¶ 26. The first action was denied due to deficiencies in her notice. Of note, while the first action was ongoing, Debtor filed a bankruptcy case with this court (Case no. 21-21271) which was ultimately dismissed. The court also granted Movant a relief from stay during that case. The second unlawful detainer action was set for trial on December 14, 2023, when Debtor filed this instant case.

### **DISCUSSION**

Movant has provided a properly authenticated copy of the recorded deed to substantiate her claim of ownership. Exhibit D, Docket 20. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate as Debtor has no claim to the Property. 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-Mack, 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).

At the hearing, **XXXXXXXXXX**

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

### **Additional Relief Requested by Movant**

#### Bar on Debtor Filing Future Bankruptcy Petitions

Based on Debtor filing the present case on the eve of trial and the other grounds stated in the Motion, Movant requests that the court enter an order barring Debtor from filing future bankruptcy cases. In appropriate situations, this court has imposed a prefiling review by the Chief Bankruptcy Judge of the District when presented with a repeat bankruptcy filer.

Here, it appears clear that there is much vitriol and animosity between the family members and in the State Court litigation. The allegations in the Motion include that Debtor has modified his name in the filing of this Petition from that used previously and altered his Social Security number. In reviewing the Bankruptcy Petition; Part 2, ¶ 8, Dckt. 1; Debtor did disclose that he filed Bankruptcy Case 21-21271, stating it was filed in “04/2008.” Because the first two numbers for a bankruptcy case filed in the Eastern District of California state the year the case was filed, case 21-21271 was one filed in 2021 (the actual case number is 2021-21271, but case numbers are commonly shorted to the last two numbers of the year).

At this juncture, the court does not grant the request for imposing a bar or pre-filing review. This is without prejudice to the Movant, or the US Trustee or Chapter 7 Trustee, seeking such by separate motion. At this juncture there has “only” been this second bankruptcy case filed in the past two years and nine months.

In part, Congress has statutorily addressed a repeat bankruptcy filer who is not prosecuting the bankruptcy cases in good faith in 11 U.S.C. § 362(c)(3) and §362(c)(4). If this bankruptcy case is dismissed, the court will not presume that Debtor will seek the dismissal of this case, but will instead will prosecute it in good faith to avail himself of the bankruptcy relief that would be available to address his monetary obligations.

If this Bankruptcy Case was dismissed and within a one-year period after dismissal Debtor filed another case, the automatic stay in the second filed case would terminate as to the Debtor within 30 days of filing unless extended by the court.

To the extent that Debtor were to seek to dismiss this case, he must do so by a motion and setting a hearing thereon. 11 U.S.C. § 707(a), Movant, the Chapter 7 Trustee, the US Trustee, and other parties in interest would be provided with notice of the motion to dismiss, and then file a motion for a bar/prefiling review in response thereto.

The court denies without prejudice the request for a bar on Debtor filing another bankruptcy case.

#### Request for the Court to Refer the Filing of This Case For Criminal Prosecution Against the Debtor and Debtor’s Other Siblings

Movant further requests that this court refer this Bankruptcy Case to the U.S. Attorney for criminal prosecution pursuant to 18 U.S.C. § 157 against Debtor and Debtor's other siblings Shazia Jabeen, Mohammed Ashen Iqbal, and Sadia Naseem for conspiring with Debtor in the fraudulent filing of this Bankruptcy Case. While showing the diligence of Movant in researching bankruptcy law, it also shows the frustration, vitriol, antagonism, and anger that exists between the Parties.

At this juncture, if the court were to determine that based on the prosecution of this Bankruptcy Case such a referral was warranted, the court may do so. Additionally, such also falls within the powers of the U.S. Trustee. However, at this time, while Movant feels abused with the filing of the Bankruptcy Case to derail the trial (which is, as well as to stop a foreclosure sale, not an uncommon purpose underlying the filing of some bankruptcy cases) the court does not find such a referral warranted. At this time the court believes that there are adequate civil powers for the court to address such issues in connection with this case and will not be making such a referral.

#### Waiver of the Fourteen Day Stay of Enforcement

Movant also requests that this court waive the fourteen day stay of enforcement of an order modifying the automatic stay that arises pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3). In light of the grounds stated in the Motion and that Movant will have to petition the State Court to return matters to the Calendar and reschedule the trial, the court grants this relief and waives the fourteen day stay.

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 Nazia Jabeen Iqbal ("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 modified to allow Movant and Muhammad Malik, the co-plaintiff, and their respective agents, representatives and successors, to continue in the prosecution of and obtain a final judgment in California Superior County, County of Yolo, Case No. CV2020-948, and to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2517 Westernness Road, Davis, California 95616.

The stay is not modified to any and all rights and interests of the bankruptcy estate in the Property. See 11 U.S.C. § 541(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.

No other or additional relief is granted.

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

**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).**

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Nazia Iqbal and Muhammad Malik on December 21, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Notice was not provided to all interested parties, such as the Chapter 7 Trustee and United States Trustee, which is cause to deny the Motion. Movant has also not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion to Enforce the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<b>The Motion to Enforce the Automatic Stay is <span style="color: red;">XXXXXXX</span> .</b>
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Mohammed Iqbal ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) enforced in this case. This is Debtor's second bankruptcy petition pending in the past three years with the previous case having been dismissed. *See* Case no. 21-21271, Docket 42 (dismissing on August 20, 2021).

Debtor alleges in his Motion to Enforce:

1. Debtor filed his bankruptcy petition on December 1, 2023, which initiated the automatic stay of 11 U.S.C. § 362(a) on that date.
2. Debtor seeks an order from this court enforcing the directing the court in the California Superior Court for the County of Yolo, Case No. CV-2020-948, (“State Court Unlawful Detainer Action”) to set aside the adverse order entered on December 4, 2023 therein as being in violation of the Automatic Stay.
3. Nazia Iqbal and Mohammad Malik “blatantly disregarded the stay by continuing legal proceedings against the Debtor and co debtors.” Docket 35, p. 2:9-10. (The court notes there is no codebtor in this case).
4. Nazia Iqbal and Mohammad Malik are subject to sanctions under *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) for violating the automatic stay.
5. Debtor requests this court render void any orders or judgments passed by the state court that violated the automatic stay.

Docket 35.

In the Motion, Debtor does not identify the specific orders that are the subject of the Motion. However, these orders are referenced in the Motion for Relief From Stay filed by Nazia Iqbal and in the unauthenticated exhibits filed by Debtor.

Debtor’s unauthenticated Exhibits in support of his Motion are filed at Docket 31 in this Case. Exhibit A is the Notice of Stay Proceedings Debtor served on his creditors and the Yolo County Superior Court.

Exhibit B is the Yolo County Superior Court’s rulings on Motions in Limine that occurred on December 4, 2023, after the provisions of the automatic stay went into effect. According to unauthenticated Exhibit B, Judge Mock ruled that “[provisions of the automatic stay do] not stay ruling on Motions in Limine itself.” Exhibit B, Docket 31.

### **Debtor’s Previous Case**

Debtor filed a previous Chapter 7 case with this court on April 8, 2021. Case no. 21-21271. Debtor listed a different social security number in that case, listing 552-59-7367 in that case and 552-95-7387 in the current case at bar. Debtor’s previous case was dismissed for Debtor failing to appear at the Section 341 Meeting of Creditors. Creditor Nazia Iqbal filed a Motion for Relief from stay in that case (Docket 13, Case no. 21-21271) alleging largely similar facts as her present Motion, and the court granted her previous Motion on June 21, 2021. Order, Docket 31, Case no. 21-21271.

### **APPLICABLE LAW**

The automatic stay arises, as a matter of federal law, immediately upon the commencement of the bankruptcy case (with some exceptions for multiple case filers) and is wide reaching. This is a legal issue which both sides must be clear on and fully understand. Acts taken in violation of the automatic stay are void (not merely voidable). *See Far Out Productions, Inc., v. Oskar, et. al.*, 247 F.3d 986, 995 (9th Cir. 2001). 11 U.S.C. § 362(a)(1) states:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

The Ninth Circuit holds “[t]his statute is unambiguous. The plain language of § 362(a)(1) prohibits the continuation of judicial actions.” *Eskanos & Alder, P.C. v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002). Furthermore, “[t]he scope of protections embodied in the automatic stay is quite broad, and serves as one of the most important protections in bankruptcy law.” *Id.* The automatic stay calls for “an immediate freeze of the status *quo* by precluding and nullifying post-petition actions.” *Id.* (holding that a creditor who merely set a date on the calendar to hear the state court action still violated the automatic stay).

11 U.S.C. § 362(k) explains when sanctions are appropriate in violations of the automatic stay. According to that statute:

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

11 U.S.C. § 362(k). Damages may only be awarded for willful violations of the stay. A willful violation only occurs “if a party knew of the automatic stay, and its actions in violation of the stay were intentional.” *Eskanos* 309 F.3d at 1215. Furthermore, punitive damages are only an available remedy when extreme facts are present. *See Stinson v. Cook Perkiss & Lew, APC (In re Stinson)*, 128 F. App’x 30, 31-32 (9th Cir. 2005) (“Although § 362[(k)] permits the recovery of such damages in appropriate circumstances, this court has cautioned that punitive damages are only appropriate if there has been some showing of reckless or callous disregard for the law or rights of others .... The bankruptcy court has considerable discretion in granting or denying punitive damages under § 362[(k)] ....”) (internal quotations omitted).

## DISCUSSION

### Application of Automatic Stay to the State Court Action



In this Bankruptcy Case, the court finds that the automatic stay went into effect on December 1, 2023. The State Court Unlawful Detainer Action being prosecuted by Nazia Iqbal is an action against the Debtor. Under the plain language of 11 U.S.C. § 362(a)(1), the automatic stay “operates as a stay, applicable to all entities” for the “continuation . . . of a judicial . . . proceeding against the debtor . . .” which could have been commenced before the filing of the bankruptcy case.

Here, the State Court Unlawful Detainer Action was commenced by Nazia Iqbal on August 11, 2020 (See, Motion for Relief From Stay, ¶ 14; Dckt. 17), which was prior to the filing of this Bankruptcy Case on December 1, 2023. The automatic stay which went into effect as of the August 1, 2023 filing of this Bankruptcy Case stayed the Unlawful Detainer Action proceeding, in its entirety, as to the Debtor. (While there are certain exceptions provided in 11 U.S.C. § 362(b) to the stay, none have been asserted and none appear as applicable to this court.)

As discussed in Collier on Bankruptcy (16th Edition) ¶ 362.03, the automatic stay is very broad and applies to almost any type of form or informal action taken against a debtor or property of the bankruptcy estate. Further, with respect to litigation, it:

[p]rovides for a **broad stay of legal proceedings against the debtor** that were or could have been commenced prior to the commencement of the bankruptcy case, or that seek to recover a prepetition claim against the debtor. It includes a **stay against** the commencement or **continuation of** administrative, **judicial** and other actions or **proceedings against the debtor**, such as interception of tax refunds for payment of debts or revocation of a license due to failure to pay a debt. The stay includes actions seeking injunctive or similar relief as well as actions seeking money judgments. It stays appeals in actions against the debtor as well as initial lawsuits.

...

When litigation is pending against the debtor at the time a bankruptcy case is commenced, **the litigation is stayed automatically**. The nondebtor party has an obligation to notify the court in which the litigation is pending that the action is stayed and to take any other action necessary to assure that the action does not continue. . . In addition, **if the nonbankruptcy court continues the action** or enters a judgment notwithstanding the imposition of the automatic stay, the **action or judgment should be considered ineffective against the debtor**.

*Id.*, ¶ 362.03[3].

It is the proceeding itself, and not merely a final adjudication of rights or interests, that is stayed. As addressed above, Ninth Circuit case law is clear on this issue; any judicial action against a Debtor is immediately stayed. Though the State Court Judge, based on the information and arguments provided, may have concluded that the automatic stay did not stay the Unlawful Detainer Action with respect to motion in limine proceedings, such error in application of federal law does not alter the fact that such rulings are void.

The court shall issue an order that ruling on the Motions in Limine stating that the Formal Minute Order in the Unlawful Detainer Action, a copy of which is filed as Exhibit B (Dckt. 31), is void.

### **Request for Sanctions Denied**

Debtor requests sanctions for the December 4, 2023 proceedings in the Unlawful Detainer Action. It was at that hearing that the State Court Judge concluded that the automatic stay did not apply to motions in limine with respect to the proceedings against the Debtor. As noted above, such conclusion is in error and the orders entered that day are void.

However, Sanctions are not appropriate in this case. Zaria Iqbal moved expeditiously to file her Motion for Relief once Debtor filed this present case. There is no evidence of Creditor Zaria Iqbal taking any other or further action pending a ruling from this court on the Motion for Relief From the Stay. No actual damages have been pleaded to arise from the violation. Furthermore, Creditor Zaria Iqbal did not violate the stay willfully. She was likely unaware that there was any violation occurring as she had an explicit ruling from the state court judge informing her that ruling on a Motion in Limine was not a violation. Therefore, although a violation of the stay did occur, such violation was not willful.

At the hearing, **XXXXXXXXXX**

~~The request for Sanctions 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 to Enforce the Automatic Stay and for Sanctions filed by Mohammad Iqbal, the 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 Formal Minutes Order entered by the court, and the December 4, 2023 proceedings relating thereto, in the California Superior Court for the County of Yolo Action, Case No. CV2020-948, (“Unlawful Detainer Action”) are in violation of the automatic stay and are void.

The court by separate order having granted prospective relief from the automatic stay to Nazia Malik and Muhammad Malik, the plaintiffs in the Unlawful Detainer Action, will, after the Order granting relief from the stay is entered to allow the Unlawful Detainer Action proceedings to go forward, need to renotice the hearing on such motions and have the State Court adjudicate thereon.

**IT IS FURTHER ORDERED** that Debtor’s request for Sanctions against Nazia Iqbal for participating in and having the State Court Judge (who determined that the December 4, 2023 proceedings in the Unlawful Detainer Action and the State Court Judges entry of an order thereon were not stayed by the Automatic Stay) is denied.

RABO AGRIFINANCE LLC VS.  
WITHDRAWN BY M.P.

3 thru 4

**Final Ruling:** No appearance at the January 11, 2023 Hearing is required.  
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**The Motion for Relief from Automatic Stay is dismissed without prejudice.**

Rabo AgriFinance LLC (“Creditor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on December 27, 2023, Dckt. 458; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jeffrey Dyer and Jan Wing-Dyer (“Debtor in Possession”); the *Ex Parte* Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue 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 filed by Rabo AgriFinance LLC (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 458, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief is dismissed without prejudice.

Debtors' Atty: Stephen M. Reynolds

Notes:

Continued from 11/30/23 to be heard in conjunction with the continued hearing on the Motion for Relief from Stay.

Operating Report filed: 12/29/23

Chapter 12 Post Confirmation Status Conference Report filed 12/21/23 [Dckt 454]

[BPC-3] Notice of Withdrawal of Rabo Agrifinance LLC's Motion for Relief from the Automatic Stay filed 12/27/23 [Dckt 458]

<b>The Post Confirmation Status Conference is <span style="color: red;">XXXXXXX</span></b>
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#### **JANUARY 11, 2023 POST-CONFIRMATION STATUS CONFERENCE**

The Chapter 12 Debtor/Debtor in Possession filed a Post Confirmation Status Report on December 21, 2023. Dckt. 454. It reports that there are no outstanding motions, applications, or disputes being brought to the court.

At the Status Conference, XXXXXXX

#### **NOVEMBER 30, 2023 POST-CONFIRMATION STATUS CONFERENCE**

As of the court's November 28, 2023 review of the Docket, the post-confirmation Debtor has not provided the court with an updated Status Conference Statement. However, on November 22, 2023, the Debtor, Rabo AgriFinance, LLC, and Citizens Business Bank filed a pleading titled as a Stipulation requesting that the court continue a hearing in a contested matter. Dckt. 445.

In that Pleading, the post-confirmation Debtor informs the court as part of the grounds in requesting that the hearing be continued that:

- A. The following Plan payments have been made:
1. The July 31, 2022 Plan payment was made (a portion of it made late).
  2. Rabo AgriFinance, LLC filed its Motion for Relief From the Automatic Stay on August 12, 2022, and the hearing on the Motion has been repeatedly continued.

Dckt. 445.

On October 31, 2023, the court entered its Order Confirming the Modified Chapter 12 Plan in this Case. Dckt. 442. The confirmed Modified Plan includes the following information and terms:

- A. As of the filing of the Modified Plan on July 26, 2023, payments of \$1,047,694.31 have been made through the Plan. Mod. Plan, p. 2:3-4.
- B. Due to a decline in the walnut market, the Plan is modified to provide for the immediately listing and sale of the Debtor's agricultural property, as well as the marketing of the Bodega Bay Property as a backup source to fund the Plan. *Id.*, p. 2:5-11.
- C. The Modified Plan delays the July 30, 2023 payment until October 31, 2023 or the sale of the Bodega Bay Property. *Id.*, p. 2:16-17.

On October 20, 2023, the court entered its Order authorizing the sale of the Bodega Bay Property. Dckt. 440. No subsequent pleadings have been filed indicating that the sale did not close or that creditor secured claims were not paid as provided in the court's Order authorizing the sale of the Bodega Bay Property.

It appearing that the post-confirmation Debtor is working to perform the Modified Plan and that the active Parties in Interest have requested that the court continue the hearing on the Motion for Relief, the court continues the Status Conference.

#### **AUGUST 24, 2023 POST-CONFIRMATION STATUS CONFERENCE**

No updated Status Report has been filed by the post-confirmation Debtor. On the 10:30 a.m. Calendar on August 24, 2023, the court conducted the hearing on the post-confirmation Debtor in Possession's Motion to Modify the Confirmed Chapter 12 Plan.

At that Modification Hearing, the court granted the Motion and confirmed the Modified Plan to allow for the payment of the 2023 disbursements to be made from the proceeds from the sale of the Bodega Bay Property.

#### **FEBRUARY 9, 2023 STATUS CONFERENCE**

This Chapter 12 Case in which there is a confirmed Plan was transferred from Department A to Department E as part of a realignment of cases coinciding with the change of the Chief Bankruptcy Judge in this District.

On February 2, 2023, the Chapter 12 Debtor filed an updated Status Report. Dckt. 385. This updated Status Report includes the following information (identified by paragraph number used in the updated Status Report):

1. The Order confirming the Modified Chapter 12 Plan was entered on November 4, 2021.

5. Rabo Agrifiance, LLC has filed a Motion for Relief from the Stay, which has been continued. There is no current default under the Plan, with the Chapter 12 Debtor viewing the continuance of that Motion as a “place holder” in the event that a default occurs. The hearing on the Motion for Relief has been continued to March 23, 2023.

10. The Chapter 12 Debtor continues to perform the Chapter 12 Modified Plan and there remain two annual payments to be made in funding the Plan. If the Chapter 12 Debtor cannot make the payments, the Plan provides for the marketing and sale of specified real property to complete the Plan funding.

At the Status Conference, the Chapter 12 Debtor reported that the Plan is being performed. The Chapter 12 Trustee, Chapter 12 Debtor, and other parties in interest agreed to continue the Status Conference to August 24, 2023

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 Chapter 12 Post-Confirmation Status Conference having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

# FINAL RULINGS

5. [23-23848-E-7](#)  
[KMM-1](#)

MICHAEL NINO  
Kathleen Crist

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-30-23 [\[11\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION VS.

**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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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 7 Trustee, and Office of the United States Trustee on November 30, 2023. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2022 Toyota Corolla, VIN ending in 1434 ("Vehicle"). The moving party has provided the Declaration of Debra Knight to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Ruben Nino ("Debtor").

Movant argues Debtor has not made at least three prepetition payments, with a total of \$1,621.86 in pre-petition payments past due. Declaration, Dckt. 15 p. 2. Movant also provides evidence that there is likely at least one postpetition payment in default in the amount of \$540.62. *Id.* Debtor further intends to surrender possession of the Vehicle to Movant. Exhibit D, Docket 14.

**J.D. Power Valuation Report Provided**

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Exhibit D, Docket 14. 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).

### **Trustee Statement of Non-Opposition**

On December 12, 2023, the Chapter 7 Trustee made a Docket Entry Statement of non-opposition to this Motion for Relief.

### **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$31,441.01 (Declaration, Dckt. 15 p. 4:2), while the value of the Vehicle is determined to be \$22,700.00, as stated on the J.D. Power Valuation Report, which is slightly more than the retail value as stated in Schedules A/B and D filed by Debtor. Schedule A/B, Docket 1 p. 11.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

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

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



**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2022 Toyota Corolla, VIN ending in 1434 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.