

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

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

**January 12, 2021 at 1:30 p.m.**

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| <b>1.</b> | <b><u>20-22066-E-13</u></b><br><b><u>RAS-1</u></b> | <b>GREGORY/CHERIE</b><br><b>BORGERSON</b><br><b>Randall Ensminger</b><br><b>HSBC BANK USA, N.A. VS.</b> | <b>MOTION FOR RELIEF FROM</b><br><b>AUTOMATIC STAY AND/OR MOTION</b><br><b>FOR RELIEF FROM CO-DEBTOR STAY</b><br><b>12-10-20 [75]</b> |
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**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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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| <b>The Motion for Relief from the Automatic Stay is denied without prejudice.</b> |
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HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates ("Movant") seeks relief from the automatic stay with respect to Gregory Roger Borgerson and Cherie Marquez Borgerson's ("Debtor") real property commonly known as 2105 Pimlico Court, Lincoln, California ("Property"). Movant has provided the Declaration of Miguel Baque to introduce evidence to authenticate the documents upon which it bases

the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$4,192.96 in post-petition payments past due. Declaration, Dckt. 77.

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

David P. Cusick ("the Chapter 13 Trustee") filed a Response on December 16, 2020. Dckt. 81. Trustee points out that Debtor have no confirmed plan and informs the court that Debtor are delinquent in plan payment under their last proposed plan. *Id.*, at 1. Trustee further states having disbursed a total of \$9,515.14 towards Debtor's mortgage where Movant has filed Proof of Claim 7-1 for the secured amount of \$353,696.28 and \$27,534.93 in arrearage. *Id.*, at 2.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 29, 2020. Dckt. 94. Debtor asserts that the motion should be denied on the basis that Debtor has filed a third amended plan which provides for on-going mortgage payments and post-petition arrearage payments to Movant and that a loan modification application is currently being considered by Movant. *Id.*, at 1-2. Adding that a loan modification has also been submitted with the creditor that has a second deed of trust on the Property. *Id.*, at 2.

According to Debtor, final decisions on both loan modifications are still pending and Debtor should be allowed to continue making adequate protection payments. *Id.* Moreover, Debtor argue that a small equity cushion exists if the court disallows Movant's collection of the \$10,126.49 of cost arrearage claimed in Movant's motion. *Id.*

Debtor filed their Declaration in support of the Opposition. Dckt. 95. Debtors testify that their income position has improved dramatically and have filed new Schedules I and J which show that they are capable of making the mortgage payments on the two loans if they are provided loan modification relief on the arrearage. *Id.*, ¶ 7.

## **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 \$331,270.11 (Declaration, Dckt. 77). Debtor values the Property at \$575,179.00, as stated in Schedules A/B and D filed by Debtor, whereas Movant's Broker's Price Opinion values the Property at \$558,900.00 (Dckt. 78).

### **11 U.S.C. § 362(d)(1)**

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 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).

Here, there are adequate protection payments in the plan proposed by Debtor and filed on December 23, 2020. Dckt. 89. A motion to confirm has been set for hearing on February 9, 2021. Dckt. 85. The plan provides for adequate protection payments to Movant in the amount of \$1,958.30.<sup>FN.1.</sup>

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FN.1. In the plan, both creditors with liens on the Property are provided Janus treatment, where both creditors are listed under Class 1 and under Section 7.02 of the Additional Provisions Debtor stating that the actual treatment are adequate protection payments pending determination of the loan modification.

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Moreover, Debtor testifies that they are pursuing loan modifications with both creditors submitted August 2020 which are still pending. The court notes that Movant does not address this in their motion for relief. At the hearing, counsel for Movant **xxxxxxx**

### **11 U.S.C. § 362(d)(2)**

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, it appears that there may be some equity and Debtor are addressing it through adequate protection payments. In light of the prosecution of the plan, the court denies relief under 11 U.S.C. § 362(d)(2).

It seems the court can present Movant with two options. The court may deny the relief requested without prejudice or, with the concurrence of Movant's counsel, continue the hearing on this motion to the same date as the motion to confirm the proposed plan and rule on Movant's request then.

At the hearing, xxxxxxxx

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

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion alleges contractual grounds for such fees, in that under the loan documents Movant is entitled to its costs and expenses in enforcing its interest to the extent not prohibited by applicable law. Specifically, Page 2 Section 7(E) of the Note states:

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attorneys' fees.

Exhibit 1, Dckt. 78, at p. 5.

Movant is seeking \$1,231 in attorney's fees as a result of the fees incurred in the filing of this motion. Part of those fees include a \$181 filing fee while the remaining balance can be attributed to the amount incurred by Movant's attorneys in drafting this Motion.

Though the court is not granting the relief sought in the motion at this time, it appears Movant is the prevailing party, as Debtor having to address the arrearage and prosecute a plan occurred only after Movant filed the instant motion to enforce the rights under the note.

Usually, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

Seeing as Movant presents all the information needed to determine reasonableness of fees, and the court being experienced with the type of work needed for this type of motion, the court finds the fees of \$1,231.00 are reasonable.

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 HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates ("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 for Relief from the Stay is denied without prejudice.

2. [17-23287](#)-E-13      **ROBERT AMADOR**  
[RAS-1](#)                      **Mikalah Liviakis**  
**NEWREZ LLC VS.**  
**2 thru 3**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
10-29-20 [\[125\]](#)**

**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, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2020. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

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| <p><b>The Motion for Relief from the Automatic Stay is <span style="color: red;">xxxxxxx</span>.</b></p> |
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NewRez LLC dba Shellpoint Mortgage Servicing (“Movant”) seeks relief from the automatic stay with respect to Robert Marciano Amador’s (“Debtor”) real property commonly known as 12121 Gold Pointe, Gold River, California (“Property”). Movant has provided the Declaration of Laquanda Beaty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made ten (10) post-petition payments, with a total of \$15,023.40 in post-petition payments past due. Declaration, Dckt. 127.

#### **CHAPTER 13 TRUSTEE’S NON-OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on November 23, 2020. Dckt. 131. Trustee asserts that Debtor is delinquent \$3,250.00 in plan payments and notes that according to Movant Debtor has defaulted on the mortgage payments since September 1, 2019, as stated by the Movant. *Id.*

## DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on November 25, 2020. Dckt. 134. Debtor's counsel argues that no cause exists to grant the motion on the basis that there is an equity cushion sufficient to provide adequate protection of over \$150,000, where the Property is valued at \$390,000 and the debt secured by is approximately \$226,000. *Id.*, at 1:23-27. Debtor also asserts that Debtor has approximately \$25,000 in equity in the Property, and that even if there was no equity, the Property is necessary for an effective reorganization. *Id.*, at 2: 4-8.

Lastly, Debtor asserts that Movant fails to provide information regarding ongoing loan modification discussions and that the court require this information be presented prior to authorizing the relief. *Id.*, at 2: 11-17.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$214,673.36 (Declaration, Dckt. 127), while the value of the Property is determined to be \$390,000.00, as stated in Schedules A/B and D filed by Debtor.

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

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

Debtor's counsel's argument that the Property is required for an effective organization is not sufficient to survive the relief requested. Section 362(g) provides that a party opposing relief from stay has the burden of proof. Here, Debtor simply states that the Property is necessary for an effective reorganization because it is Debtor's personal residence. Opposition, at 2: 8-9. Debtor offers no testimony or evidence how it is necessary for an effective reorganization. Here, Debtor has been operating under a confirmed Chapter 13 Plan, and is more than twelve months in default. Having defaulted in the confirmed plan, Debtor offers no plan. Thus, Debtor has not met this burden.

### Request for Attorneys' Fees

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion asserts

contractual grounds for the fees, specifically Movant points to the Loan Documents (Section 6(E) of the Note) which provide that Movant is entitled to its costs and expenses in enforcing its interest to the extent not prohibited by applicable law. *See* Exhibit A, Dckt. 128. Movant requests \$1,031.00 in attorney's fees, including the \$181.00 filing fee.

Commonly a request for attorney's fees and related nontaxable expenses is made by a post-judgment (which includes an order) motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

However, in some contested matters, including the request with a motion for a contested matter can be a cost effective, expense reducing (for both the creditor and debtor) practice.

Here, the Motion clearly states the grounds upon which the request for attorney's fees is based, identifying the contractual provision. The amounts of the fees, \$850.00, and the costs, \$181.00 filing fee, are reasonable.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

### **Continuance of Hearing**

At the December 8, 2020 hearing, Movant agreed to continue the hearing to allow Debtor to address the defaults and be afforded the opportunity to address the issues through a possible modified plan.

Counsel for SchoolsFirst Federal Creditor Union, which holds the junior deed of trust on the Property and has its own motion for relief set for hearing on December 15, 2020, was at the hearing and agreed on the record to continue the hearing on that motion to January 12, 2021 as well, to afford Debtor the opportunity to focus on the cure proposal.

### **January 12, 2020 Hearing**

As of the January 6, 2020 review of the docket in preparing this pre-hearing disposition, no further documents or pleadings have been filed by the parties.

At the hearing, xxxxxxx

**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)(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, Co-Obligor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2020. By the court’s calculation, 15 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.

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| <p><b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXX</span>.</b></p> |
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SchoolsFirst Federal Credit Union (“Movant”) seeks relief from the automatic stay with respect to Robert Marciano Amador’s (“Debtor”) real property commonly known as 12121 Gold Pointe Lane, Gold River, California (“Property”). Movant has provided the Declaration of Dioselin Hernandez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

A Motion for Relief from the Automatic Stay filed by NewRez LLC, creditor with the first deed of trust over the Property, was set to be heard on December 8, 2020. Dckt. 125. Movant argues that their security interest is not adequately protected and may be lost if the motion is granted.

Movant also provides evidence that there are 85 pre-petition payments in default, with a pre-petition arrearage of \$74,789.74. Declaration, Dckt. 1396.

#### **CHAPTER 13 TRUSTEE’S NON-OPPOSITION**

David P. Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 7, 2020. Dckt. 145. Trustee asserts that Debtor is delinquent \$3,250 in plan payments and that Movant is included in the confirmed plan. *Id.* Trustee notes that Trustee to date has been paid a total of \$90,243.88 to



Movant. *Id.* Trustee further notes that Movant requests relief from the co-debtor stay as to Olga Amador, where co-debtor is listed as a borrower on the Note and trustor on the Deed of Trust, but Debtor's Amended Schedule D does not list co-debtor as also owing the debt. *Id.*

## **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 \$132,356.63 (Declaration, Dckt. 139), while the value of the Property is determined to be \$390,000.00, as stated in Schedules A/B and D filed by Debtor. The property is encumbered by a senior lien securing an obligation of \$226,000.

### **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).

### **Co-Debtor Stay**

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 the superior deed of trust is in default and Movant is seeking relief to protect its interest in the entire property.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, 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 generally does not grant additional relief merely stated in the prayer.

### **Continuance of Hearing**

At the December 8, 2020 hearing on the Motion for Relief From the Automatic Stay filed by New Rez, LLC (DCN: RAS-1) Counsel for SchoolsFirst Federal Creditor Union, which holds the junior deed of trust on the Property, appeared and agreed on the record to continue the hearing on this Motion to 1:30 p.m. on January 12, 2021 as well, to afford Debtor the opportunity to focus on the cure proposal.

## **January 12, 2020 Hearing**

As of the January 6, 2020 review of the docket in preparing this pre-hearing disposition, no further documents or pleadings have been filed by the parties.

At the hearing, **xxxxxxx**