

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

January 14, 2025 at 1:30 p.m.

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1. [24-25537](#)-E-13      EVELYN DOMONDON      MOTION FOR RELIEF FROM  
[RAM-1](#)      Pro Se      AUTOMATIC STAY  
12-18-24 [11]

JEFFREY VIEYRA 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).**

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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 (*pro se*), Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on December 18, 2024. By the court’s calculation, 27 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, -----

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| <b>The Motion for Relief from the Automatic Stay is granted.</b> |
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Jeffrey Vieyra dba Funding Solutions (“Movant”) seeks relief from the automatic stay with respect to Evelyn Domondon’s (“Debtor”) real property commonly known as 2768 Georgia St., Vallejo, CA 94591 (“Property”). Movant has provided the Declaration of Jeffrey Vieyra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 13. Movant seeks relief to proceed with Solano County Superior Court Case No. CL24-07881, titled

January 14, 2025 at 1:30 p.m.

*Jeffrey Vieyra dba Funding Solutions v. Evelyn Fidel Domondon* (“Unlawful Detainer Action”) and for the Solano County Sheriff to enforce a Writ of Possession of the Subject Property. Mot. 1:21-23, Docket 11. Movant seeks further relief pursuant to 11 U.S.C. § 362(d)(4).

The Chapter 13 Trustee filed a Nonopposition on December 23, 2024. Docket 19.

Movant presents evidence that it is the owner of the Property. Decl. ¶ 3, Docket 13. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on September 18, 2024. *Id.* Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano on December 10, 2024. *Id.* at ¶ 9. That proceeding did not reach a judgment, Debtor filing the present case to halt the proceeding.

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership. Ex. D, Docket 14. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-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).

The court would note that, as discussed below, this is Debtor’s third petition in the same year with the previous two cases being dismissed. Therefore, pursuant to 11 U.S.C. § 362(c)(4), no automatic stay is in effect in this case. Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii), the court is authorized to issue an order confirming that no automatic stay is in effect in this case.

Therefore, court shall issue an order confirming that the automatic stay is not in effect 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

### **11 U.S.C. § 362(d)(4)**

#### **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 secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor’s inability to reorganize, and unnecessary delays by serial filings. *Id.* Including the present case, Debtor has filed four bankruptcy cases within the past year that all affect the Property.

A. Case No. 24-20136

1. Filed: January 13, 2024
  2. Chapter 7
  3. Dismissal Date: N/A
  4. Discharge date: Debtor received a Discharge on May 6, 2024
- B. Case No. 24-22775
1. Filed: June 26, 2024
  2. Chapter 13
  3. Dismissal Date: September 16, 2024
  4. Reason for Dismissal: Delinquency in plan payments
- C. Case No. 24-23479
1. Filed: August 7, 2024
  2. Chapter 13
  3. Dismissal Date: October 10, 2024
  4. Reason for Dismissal: Debtor failed to pay filing fees

Movant filed and obtained relief from stay against the Property in all of those cases, now bringing this Motion in the fourth case.

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

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the failure to prosecute the Chapter 13 cases leading to dismissal.

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

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

**Federal Rule of Bankruptcy Procedure 4001(a)(3)**  
**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, as Debtor has no interest in the Property and has been using bankruptcy as a means to delay recovery of the Property, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:25-28, Docket 11.

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 Jeffrey Vieyra dba Funding Solutions (“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 granted, and the court confirms that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2768 Georgia St., Vallejo, CA 94591 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

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

**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.

2. [22-21474-E-13](#)      **PATRICK/CELESTE JOCSON**      **CONTINUED MOTION FOR RELIEF**  
[NLG-1](#)      **Arasto Farsad**      **FROM AUTOMATIC STAY**  
           **10-9-24 [44]**

**NEW AMERICAN FUNDING, LLC**  
**VS.**

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

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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, other parties in interest, and Office of the United States Trustee on October 9, 2024. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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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### **January 14, 2025 Hearing**

The court continued the hearing on the Motion for Relief as Creditor reported that an adequate protection agreement has been drafted and is out for signature. The Parties requested a short continuance so the stipulation can be filed, along with the Debtor filing Supplemental Schedules I and J. A review of the Docket on January 10, 2024 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

### **REVIEW OF MOTION**

New American Funding, LLC (“Movant”) seeks relief from the automatic stay with respect to Patrick Blue Wong Jocson and Celeste Maria Gil Jocson’s (“Debtor”) real property commonly known as

6704 Rawley Way, Elk Grove, CA 95757-4035 (“Property”). Movant has provided the Declaration of Robert Moreno to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 51.

Movant argues Debtor has not made three post-petition payments, with a total of \$7,153.73 in post-petition payments past due. Declaration ¶ 9, Docket 48. Debtor had been making payments under the terms of the confirmed Plan until falling behind on June 1, 2024.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on October 17, 2024. Docket 50. Debtor explains that the reason for the delinquency in payments arose due to a severe and unexpected medical issue preventing Debtor from working. Debtor has offered a compromise to Movant to cure the arrearage over a four month period.

## **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 \$447,858.36 (Declaration ¶ 10, Docket 48), while the value of the Property is determined to be \$555,398.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 12, Docket 1.

### **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).

## **NOVEMBER 19, 2024 HEARING**

At the November 19, 2024 hearing the Parties reported that they are working on an adequate protection stipulation. Movant and Debtor requested that the hearing be continued approximately 30 days.

The hearing is continued to 1:30 p.m. on December 17, 2024.

## **December 17, 2024 Hearing**

The court continued this hearing, having been informed at the prior hearing that the Parties were working on a Stipulation for adequate protection payment of Movant’s collateral. A review of the Docket on December 12, 2024 reveals nothing new has been filed in the case.

At the hearing, counsel for Creditor reports that an adequate protection agreement has been drafted and is out for signature. The Parties requested a short continuance so the stipulation can be filed, along with the Debtor filing Supplemental Schedules I and J.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on January 14, 2025.

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 New American Funding, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the Automatic Stay is  
**XXXXXXX.**

# FINAL RULINGS

3. [24-22426-E-13](#)  
[DS-10141](#)

JAMALL ROBINSON  
Richard Kwun

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
10-2-24 [\[49\]](#)

**DCELK IRREVOCABLE TRUST VS.  
DEBTOR DISMISSED: 11/18/24**

## Item 3 thru 4

**Final Ruling:** No appearance at the January 14, 2025 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 13 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2024. 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.

**The Motion for Relief from the Automatic Stay is granted, the automatic stay having been terminated by dismissal of this bankruptcy case.**

DCELK Irrevocable Trust ("Movant") seeks relief from the automatic stay with respect to Jamall Joseph Robinson's ("Debtor") real property commonly known as 467 Baywood Drive, Vallejo, California 94591 ("Property"). Movant has provided the Declaration of Heather Hawker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 53.

The instant case was dismissed on November 18, 2024, for due to Debtor being delinquent in plan payments as well as failing to file a Chapter 13 Plan after the previous plan was denied. Dckt. 86.

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



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

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

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

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

(A) the time the case is closed;

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

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

11 U.S.C. § 362(c) (emphasis added).

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

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

(1) reinstates—

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

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

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

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

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

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 18, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on November 18, 2024.

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 DCELC Irrevocable 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 Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on November 18, 2024 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Jamall Joseph Robinson (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 467 Baywood Drive, Vallejo, California 94591, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 18, 2024 dismissal of this bankruptcy case.

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| 4. <a href="#">24-22426-E-13</a><br><a href="#">TAA-1</a> | <b>JAMALL ROBINSON</b><br>Richard Kwun | <b>CONTINUED MOTION TO VALUE<br/>COLLATERAL OF DCELC<br/>IRREVOCABLE TRUST AND/OR<br/>MOTION TO AVOID LIEN OF DCELC<br/>IRREVOCABLE TRUST<br/>10-3-24 <a href="#">[55]</a></b> |
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**DEBTOR DISMISSED: 11/18/24**

**Final Ruling:** No appearance at the January 14, 2025 hearing is required.

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The case having previously been dismissed, the Motion to Confirm Plan is denied as moot without prejudice. Order, Docket 87.

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| <p><b>The Motion to Value is denied as moot without prejudice, the case having been dismissed on November 18, 2024. Docket 87.</b></p> |
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On November 18, 2024, the court entered an order dismissing this bankruptcy case. This rendered the Motion to Value Moot.

The Motion is denied without prejudice.

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 Value the secured claim of DCELK Irrevocable Trust c/o FCI Lender Service Inc. ("Creditor") having been presented to the court, the Bankruptcy Case of Debtor Jamall Robinson, the Debtor, having been dismissed, the Motion to Value having been rendered moot by the dismissal of the Bankruptcy Case, and good cause appearing,

**IT IS ORDERED** that the Motion to value is denied without prejudice.

**Final Ruling: No appearance at the January 14, 2025 Hearing is required.**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2024. By the court's calculation, 6days' notice was provided. The court set the hearing for December 10, 2024. Dckt. 33.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

No opposition was stated at the initial hearing and no written opposition was made for the continued final hearing.

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| <p><b>The Motion to Extend the Automatic Stay is granted.</b></p> |
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#### REVIEW OF MOTION

Claudine Marine Bingham ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 24-23753) was dismissed on August 30, 2024, for failing to timely file documents in the case. *See* Order, Bankr. E.D. Cal. No. 24-23753, Dckt. 26, August 30, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor filed on an emergency basis in *pro se* to stop a foreclosure on her home, being unable to prosecute the case on her own. Mot. 4:1-7, Docket 24. However, Debtor's income is stable and consistent as the sources are: social security, pension, and IHSS payments for taking care of her sister. *Id.* at 5:10-13. The Motion states Debtor is sincere in her desire to pay off her debts and is only in bankruptcy due to falling prey to a scam that led to her falling behind on her mortgage. *Id.* at 6:4-8.

Debtor affirms these facts in her Declaration filed in support, stating she “filed this case in good faith and will conduct this case responsibly as [she] did and intended to in the previous case. [She is] not trying to abuse the system, avoid any creditors or delay payment(s) to them. First and foremost, [she] is filing this case to propose a fair and equitable repayment solution to all bona fide secured, priority and unsecured debt [she has] incurred. Additionally, [she] intends to pursue this case with the same integrity and responsibility that [she] displayed in the previous case. Decl. ¶ 8.A., Docket 25.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor’s cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, through January 31, 2025.

The final hearing on this Motion shall be conducting at 1:30 p.m. on January 14, 2024.

### **January 14, 2025 Hearing**

The court continued this hearing, having granted the Motion on an interim basis. Oppositions to granting the Motion on a final basis were to be filed no later than January 7, 2025. A review of the

Docket on January 7, 2025 reveals nothing new has been filed with this Docket Control Number. The Motion is granted.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, until it is terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Claudine Marine Bingham (“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 is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless extended or terminated by operation of law or further order of this court.

NEWREZ LLC VS.

**Final Ruling:** No appearance at the January 14, 2025 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 13 Trustee, and Office of the United States Trustee on December 13, 2024. By the court’s calculation, 32 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.**

NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee CSMC 2021-RPL1 TRUST (“Movant”) seeks relief from the automatic stay with respect to Charles Vernon Romero and Teresa Ann Romero’s (“Debtor”) real property commonly known as 1916 Spruce Circle, Anderson, California 96007 (“Property”). Movant has provided the Declaration of Justin Alexander to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 32.

Movant argues Debtor has not made five post-petition payments, with a total of \$5,435.50 in post-petition payments past due. Declaration ¶ 4, Docket 32.

## 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 \$136,052.90 (*Id.* at ¶ 4), while the value of the Property is determined to be \$218,900 as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 12, Docket 1.

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

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

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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

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 NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee CSMC 2021-RPL1 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 Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1916 Spruce Circle, Anderson, California 96007 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.