

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

January 15, 2019 at 1:30 p.m.

1.	18-21308 -C-13 EAT -1	SASHA LYON Peter Macaluso	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 11-12-18 [67]
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WELLS FARGO BANK, N.A.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2018. 28 days' notice is required. That requirement was met.

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 default. *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>The Motion for Relief from the Automatic Stay is denied without prejudice.</p>
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Sasha Lyon's ("Debtor") real property commonly known as 5659 Los Pueblos Way, Sacramento, California ("Property"). Movant has provided the Declaration of Charice Gladden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Charice Gladden Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$9,825.27 in post-petition payments past due. The Declaration also provides evidence that there are sixty-six pre-petition payments in default, with a pre-petition arrearage of \$142,498.98.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a Response on November 26, 2018. Dckt. 74. The Trustee states that the

Movant is included in the confirmed Plan as a Class 1 creditor with respect to the Property. The confirmed Plan provides for monthly adequate protection payments of \$2,140.00 to the Creditor. The Order Confirming the Plan contains signatures for both the Chapter 13 Trustee and counsel for Wells Fargo Bank, the Movant. Dckt. 73.

DEBTOR'S OPPOSITION:

Debtor Opposes the Motion for Relief because the Debtor is providing adequate protection payments through the confirmed Plan while engaged in a law suit with the Movant in a State Court action filed in July 2017. Debtors states that the alleged arrears owed to Movant are deferred until resolution of the State Court action.

Debtor's counsel claims that Debtor is current on all required Plan payments and that Movant has received all adequate protection payments through the Plan.

DISCUSSION

11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

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).

At the December 11, 2018 hearing the parties requested a continuance.

At the hearing -----.

RULING:

The court determined on August 21, 2018 that, in light of an ongoing litigation between the Debtor and the Movant, Debtor's plan did not need to pay the full value of the Creditor's stated secured claim; however, the court determined that Debtor needs to provide adequate protection payments. Dckt. 65. Debtor's confirmed plan provides for the adequate protection payments, as determined by the court. Dckt. 73. Additionally, both the Debtor and the Trustee indicate that Debtor is not delinquent in making the payments as required under the Plan. Dckts. 74; 76. Absent evidence that Debtor has not made all required payments or that there has been a resolution of the on going litigation warranting full payment of Movant's claim, there is no basis to grant Movant relief from the automatic stay at this time.

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 Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

IT IS ORDERED that Movant's Motion for Relief From Automatic Stay is denied without prejudice.

SILVER EAGLE MHC, LP VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2018. 28 days' notice is required. That requirement was met.

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>The Motion for Relief from the Automatic Stay is XXXXX.</p>
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Silver Eagle MHC, LP ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3540 Pike Avenue, Sacramento, California ("Property"). The moving party has provided the Declaration of Joseph W. Carroll to introduce evidence as a basis for Movant's contention that Martin Cortes and Gabriela Armas ("Debtors") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtors would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and received a judgment for possession, with a Writ of Possession having been issued by that court on December 4, 2018. Exhibits A - C, Dckt. 14.

Movant has provided a certified copy of the Judgment and Writ of Possession. 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).

TRUSTEE RESPONSE:

On December 27, 2018, the Chapter 13 Trustee responded that he does not oppose the relief requested by Movant. Dckt. 20. The Trustee states that Movant is the owner and lessor of the property, a mobile home park, that the Debtors' were lessees of the space on a written month-to-month rental

agreement. The Trustee agrees that Movant filed an Unlawful Detainer Complaint on November 13, 2018 and obtained a Judgment for Possession on December 4, 2018. Dckt. 14, Exhibits A and B.

The Trustee also notes that Debtors filed a petition for Bankruptcy on December 8, 2018. The Debtors have not confirmed a Plan and as of the date of the response Debtors had not filed a Plan. The court notes that a Plan was filed on January 9, 2018. Dckt. 35. However, it does not appear that the Plan has been served on all required parties and no motion to confirm the plan is pending.

DEBTORS' [LATE] REPLY:

Debtors filed an Opposition on January 9, 2019. Dckt. 30. The Opposition was filed late, the court also notes that a Motion for Leave to File the Late Reply was also filed on January 9, 2019, stating that Debtor Martin Cortes states that health issues and a language barrier caused the late response. Dckt. 27.

Debtors state that they have lived in the mobile home park owned by Movant for ten years. Debtors also state that they purchased a double wide mobile home from Movant for \$35,000.00. Dckt. 31; Exhibit A, Dckt. 32. Debtors claim that due to upgrades made to the mobile home, the fair market value is now \$45,000.00.

Debtors also state that they paid Movant rent for the space in the mobile home park of \$590.00 per month, plus utilities. Debtors concede, that due to Debtor Martin Cortes' loss of employment, they were unable to pay the rent for the space. Debtors claim that upon being served the 3-day notice, Debtor Martin Cortes attempted to make the rent and trailer payments but the office personnel refused to accept the payment.

Debtors claim that they because they attempted to tender full payment of the rent upon being served with the 3-day notice that they are entitled to remedies under C.C.P. 789-799. Debtors claim that they will loose the equity in their mobile home if they are evicted. Debtors also claim that through their Plan they will be able to bring their rent current.

RULING:

At the hearing -----.

~~The court shall issue an order terminating and vacating the automatic stay to allow Silver Eagle MHC, LP, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3540 Pike Avenue, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.~~

~~----- 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 Silver Eagle MHC, LP ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~IT IS ORDERED~~ that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Silver Eagle MHC, LP and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3540 Pike Avenue, Sacramento, California.

No other or additional relief is granted.

MOHSEN MASHHADIALIREZA,
LEGACY MORTGAGE AND REAL
ESTATE, INC. VS.

Thru #4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2018. 14 days' notice is required. That requirement was met.

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

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

Legacy Mortgage and Real Estate, Mohsen Mashhadialireza, ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2206 Stockman Circle, Folsom, California ("Property"). The moving party has provided the Declaration of George M. Eckert to introduce evidence as a basis for Movant's contention that Daniel Hobbs ("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. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on August 23, 2018. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an action in California Superior Court, County of Sacramento to recover possession of the Property in which trial was set for November 19, 2018; however, the trial has not gone forward due to the bankruptcy proceeding. Movant has provided a copy of the complaint filed in the state court. Dckt. 14, Exhibit A.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dckt. 14, Exhibit A, Exhibit 1 to Complaint. Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8-9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

TRUSTEE'S RESPONSE:

The Trustee does not oppose the relief sought by Movant.

DECEMBER 11, 2018 HEARING:

At the December 11, 2018 hearing, Debtor and Debtor's spouse (who has been a debtor in her own prior case) appeared and stated opposition to the Motion. The opposition centered on why the foreclosure was improper, how the purported transfer of the note and deed of trust was not effective, that payments made in a prior case had not been applied, and how Debtor and his non-debtor spouse intend to pursue state court litigation.

Reference was made to the state court litigation having been removed to federal court. A review of the files for the U.S. District Court discloses the following cases:

<i>Hobbs v. Wells Fargo Bank, N.A. et al</i> 18-cv-02946-KJM-AC	Removed: November 9, 2018	Motion to Dismiss Set for January 16, 2019.
	This Complaint was removed from the Sacramento Superior Court. The Complaint is attached as an exhibit to the Notice of Removal. The State Court Complaint is 41 pages in length stating fourteen causes of action.	
<i>Legacy Mortgage and Real Estate et al v. Hobbs</i> 18-cv-2935-MCE-KJN	Removed: November 11, 2018	
	Daniel Hobbs and Lisa Hobbs removed the unlawful detainer action relating to the property that is the subject of the above removed State Court Complaint.	
<i>Hobbs v. Wells Fargo Bank, N.A. et al</i> 17-cv-01920-KJM-CKD	Removed: September 15, 2017	

	<p>This was a prior State Court Complaint filed by Daniel Hobbs and Lisa Hobbs.</p> <p>The court dismissed the Complaint.</p>
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At the hearing the court addressed the general guidelines of a Chapter 13 case, the need for a plan, and the adequate protection requirements when using the automatic stay in lieu of a state court or district court injunction as part of a consumer/lender/foreclosure litigation. See *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011), for this court's discussion of these issues.

Debtor, who is stated to suffer from early onset Parkinson's Disease, and his non-debtor spouse (who was speaking for him at the hearing) have tried, and failed in several prior bankruptcy cases. The court addressed the apparent need for counsel and how, if a Chapter 13 plan is feasible, then the attorney can be paid through the plan.

To afford Debtor the opportunity to present his opposition in writing and to seek counsel, the court sets this matter for a final hearing as provided in Local Bankruptcy Rule 9014-1(f)(2).

DEBTOR'S RESPONSE:

Debtor did not file a response after the December 11, 2018 hearing. However, on December 28, 2018, Debtor filed a Motion to Extend Automatic Stay that contains statements that may have been intended to be a response to Movant's Motion for Relief. Dckt. 30.

Debtor states that Debtor and his spouse, Lisa Miller-Hobbs, jointly initiated a prior Chapter 13 bankruptcy proceeding on August 10, 2016. Case No. 16-25253 ("First Bankruptcy Proceeding"). Debtor also claims that they were represented by Action Law Group, who Debtor claims did not properly represent them in the proceeding. Debtor claims that, despite his requests, amended schedules were not filed, an adversary proceeding was not initiated, and improper allocation of Plan payments were not addressed. Debtor alleges that Wells Fargo Home Mortgage and BSI Financial Services, Secured Creditors, were not applying Plan payments to the Debtors accounts. As a result, Debtors chose to stop making Plan payments and their case was dismissed on June 5, 2017. Case No. 16-25253, Dckt. 47.

Debtor claims that the Property was improperly foreclosed upon by Wells Fargo Mortgage. Debtor claims that the mortgage itself was fraudulent. Debtor also claims that the foreclosure proceeding was not proper due to improper notice and actions taken by the mortgage company during the First Bankruptcy Proceeding. Debtor claims that a Notice of Deficiency was issued on February 16, 2016 was not updated after the First Bankruptcy Proceeding was dismissed, which Debtor asserts is a violation of non-judicial foreclosure law and the California Homeowners Bill of Rights. Accordingly, Debtor challenges the legitimacy of Movant's interest in the Property, claiming it acquired title through an improper Trustee Sale held on August 23, 2018.

MOVANT'S REPLY:

On January 7, 2019, Movant filed a Reply to Debtor's Opposition. Dckt. 37. Movant claims that a trustee's sale was conducted on August 23, 2018 and the trustee's deed was recorded. Dckt. 11,

Declaration of Ali Hashemi. Movant asserts that they were a bona fide third-party purchaser of the Property.

Movant argues that Debtor's allegations against the original mortgage holders are not relevant. Movant claims that Debtor is not likely to prevail in their litigation against the original mortgage holders because their complaint was dismissed by the District Court on June 22, 2018 (Case No. 2:17-cv-01920). Movant states that the complaint pending before the District Court now is identical and will similarly be dismissed. Case No. 18-cv-02946.

RULING:

As discussed above, the Debtor was unable to communicate with the court at the prior hearing. The court continued the hearing to allow the Debtor, whose illness precluded him from representing himself in court, to obtain counsel. No counsel has been obtained.

In reviewing the file, though this bankruptcy case purports to have been filed by Daniel Hobbs in pro se, the file tells a different story:

Motion to Extend Stay, Dckt. 30

The Motion is a five page document, which is not signed by Daniel Hobbs. Rather, it is signed by Lisa Miller-Hobbs, non-filing spouse of Daniel L. Hobbs." *Id.* at 5.

No Declaration is provided by Debtor Daniel L. Hobbs. Rather, there is a Declaration of Lisa Miller-Hobbs, in which she testifies:

- A. Miller-Hobbs cause the Daniel Hobbs bankruptcy case to be filed, which she did by delivering incomplete documents created by Daniel Hobbs while on medial leave and against doctor's orders. Declaration ¶ 1, Dckt. 31.
- B. Miller-Hobbs filed the 2016 bankruptcy case at the request of Daniel Hobbs who was undergoing "Psychiatric treatment for Hallucinations, Delusions, Paranoia, Anxiety and other related mental health issues as a direct result of his Advanced Early Onset Parkinson's Disease and stress caused by Wells Fargo Bank and BSI Financial since discovering the forged loan modification resulting in a Notice of Default being filed on or about February 16, 2016." *Id.* ¶ 2.
- C. Miller-Hobbs filed the bankruptcy case after consulting with an attorney with the Consumer Action Law group. *Id.* ¶ 3. The attorney did not performed as promised to Miller-Hobbs.
- D. Miller-Hobbs feels betrayed by Consumer Action Law Center and the Chapter 13 Trustee in the 2016 bankruptcy case that "allowed the major creditors, Wells Fargo and BSI Financial to violate the terms of the original Chapter 13 Plan [and break various federal and state laws]. *Id.* ¶ 4.
- E. Miller-Hobbs testifies that the purpose of filing the 2016 and current Chapter 13 cases are to "reverse the illegal foreclosure and cure my [Miller-Hobbs] mortgage arrears [computed based on the original loan and not the alleged forged loan modification]. *Id.* ¶ 5.

F. Miller-Hobbs has spoken with multiple attorneys and believes that she, Miller-Hobbs can hire one to pursue the litigation. *Id.* ¶ 6.

As is obvious from the Declaration, it is Miller-Hobbs pursuing these federal court proceedings in the name of Daniel Hobbs.

Motion to Value Collateral, Dckt. 47

On January 10, 2019, a 130 page document was filed, titled “Motion to Request Valuation of Collateral.” In the upper left-hand corner of the pleading is the name “Daniel L. Hobbs.” Dckt. 47 at 1. The pleading is signed by Lisa Miller-Hobbs, as the “non-filing spouse of Daniel Hobbs.

The Motion states that the collateral for the “Priority Secured Claim” of “BSI Financial/Wells Fargo” as the first mortgagee and PNC Bank as the second mortgagee has to be based on the “extensive Defective Construction issues,” not a broker’s price opinion or desk appraisal.

It is stated in the Motion that “Debtor(s)” seek this valuation and the movant is referenced as “Debtor(s)” throughout the Motion. It appears that it is not Debtor Daniel L. Hobbs, in pro se, bringing this motion, but non-debtor Lisa Miller-Hobbs litigating in the name of Debtor Daniel L. Hobbs.

The Motion discusses the loan transaction and desire of “Debtor(s)” to engage in construction defect litigation, but could not afford the cost of an attorney who billed for his/her time and could not find a contingent fee attorney who would take “Debtor(s)” case. Motion ¶ 3, Dckt. 47. Ultimately, it appears an attorney was obtained.

The Motion continues, with Lisa Miller-Hobbs stating the asserted misdealings of the various creditors. Lisa Miller-Hobbs challenges the creditor’s loan documents and asserts that they are forged. The Motion continues, recounting the series of communications and challenges faced by “Debtor[s]” relating to conduct which is alleged to be the sealing of homes. The Motion appears to state an indictment on the commercial lending system as it relates to home loans.

Unlicensed Practice of Law

It has been demonstrated to the court that Debtor Daniel Hobbs cannot personally prosecute this bankruptcy case and litigate his rights in pro se. He is unable to communicate in the court and does not demonstrate the ability to prepare and file the required pleadings. The pleadings are being written and signed by Lisa Miller-Hobbs seeking to litigate in the shoes of her disabled husband, Daniel Hobbs. As set forth in her Declaration, Mr. Hobbs’ illness includes “Hallucinations, Delusions, Paranoia, Anxiety and other related mental health issues.” Declaration ¶ 2, Dckt. 31.

For a federal judge to exercise federal judicial power (even in or related to a bankruptcy proceeding) the real parties in interest whose rights are at issue, being effected, or from whom some relief is sought must be the parties before the court. Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9th Cir. 2006). One of the first things that a law student learns about American Jurisprudence is that the law does not condone the “officious intermeddler.” One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of “standing.”

Article III of the Constitution confines federal courts to decisions of “Cases” or “Controversies.” Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess ‘a direct state in the outcome.’ (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

To fulfill this basic Constitutional requirement for the exercise of federal judicial power, the Supreme Court has adopted Federal Rule of Civil Procedure 17, which is incorporated into federal bankruptcy proceeds by Federal Rules of Bankruptcy Procedure 7017 (for adversary proceedings) and 9014(c) (for motions and other non-adversary proceeding contested matters). Federal Rule of Civil Procedure 17 [emphasis added] provides, as is relevant to a representative appearing for the principal real party in interest:

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) Designation in General. An action **must be prosecuted in the name of the real party in interest**. The following may sue in their own names without joining the person for whose benefit the action is brought:

- (A) an executor;
 - (B) an administrator;
 - (C) a guardian;
 - (D) a bailee;
 - (E) a trustee of an express trust;
 - (F) a party with whom or in whose name a contract has been made for another's benefit;
- and
- (G) a party authorized by statute.

[Fed. R. Civ. P. 17 does not provide for an agent exercising rights and duties under a power of attorney to sue (prosecute) in its own name, being the proxy litigation placeholder for the undisclosed principal.]

...

(b) Capacity to Sue or Be Sued. **Capacity to sue or be sued** is determined as follows:

- (1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;
- (2) for a corporation, by the law under which it was organized; and
- (3) **for all other parties, by the law of the state** where the court is located, . . .

~~An example of a district court applying this basic federal requirement is shown where inmate allegedly fell from top bunk while incarcerated and his wife brought an action in her own name for his injuries. Dismissal of wife's claims was warranted because wife lacked standing to sue in her own name since (1) there were no allegations relating to any injury allegedly suffered by wife as result of inmate's fall from top bunk, and (2) although wife could bring suit on inmate's behalf through wife's power of attorney for inmate, wife could not maintain suit in wife's own name or seek relief for herself on this ground. *Nickens v District of Columbia*, 694 F Supp 2d 10, 13, (DC Dist. 2009).~~

~~As explained by that District Court:~~

~~FN.3. Mrs. Nickens also states that she has power of attorney for her husband. Rule 17(a) of the Federal Rules of Civil Procedure requires that an action must be prosecuted in the name of the real party in interest. See FED. R. CIV. P. 17(a). As explained by Professor Moore: "An attorney in fact is not a real party in interest. **The attorney is merely an agent of the real party in interest and does not possess interests sufficient to qualify for real party in interest status.** Thus, the **attorney in fact cannot bring suit in its own name.**" 4 MOORE'S FEDERAL PRACTICE § 17.10 (3d ed. 2002). Although Mrs. Nickens may bring suit on her husband's behalf through her power of attorney for him, she may not maintain suit in her own name or seek relief for herself on this ground.~~

~~Id., FN.3.~~

~~See also *Hispanic Society of New York City Police Department, Inc. v. New York City Police Department, et. al*, 806 F.2d 1147 (2nd Cir. 1986), affirm. 484 U.S. 301 (1988); *Pyramid Transportation, Inc. v. Greatwide Dallas Mavis, LLC*, 2013 U.S. Dist. 104105, *4-*5 (N.D. Tex. 2013) ("A party can bring suit on behalf of another party pursuant to a power of attorney, but the "action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a).);~~

As directed by Rule 17, the court considers California law as to how an agent properly exercises a power of attorney to commence or participate in judicial proceedings. The requirement that an agent exercising a power of attorney must sue and assert rights in judicial proceedings in the name of the principal, and not in its own name is address in the CALIFORNIA PRACTICE GUIDE – FEDERAL PROCEDURE BEFORE TRIAL, RUTTER GROUP 2012:

¶ 7:11.1: Power of attorney does not authorize attorney in fact to commence and prosecute litigation in his/her own name. The power or attorney is not the equivalent of an assignment of the rights.

This ties to MOORE’S FEDERAL PRACTICE, THIRD EDITION, 2012: which provides the following simple discussion:

§ 17.10[4]: Attorney in fact is not a real party in interest, cannot bring suit in his/her own name.

The California Code of Civil Procedure also requires that in state court “Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” Cal. C.C.P. § 367. The “except as provided by statute” exception is specified in California Code of Civil Procedure § 369, which does not include an exception for a person acting as a representative pursuant to a power of attorney. Cal. C.C.P. § 369.

When exercising such powers concerning the rights of another in a judicial proceeding, the person whose rights are being exercised/impaired must be represented by an attorney, and the agent/third-party cannot litigate in the name of such person. As discussed by the California Court of Appeal in *People ex rel. Department of Public Works v. Malone*, 232 Cal. App. 2d 531, 536-537 (1965), an agent may bind the principal, have litigation commenced in the name of the principal, and engage in settlements and transactions for the principal to the extent of the agent’s authority. However, the agent cannot engage in judicial proceedings in the agent’s own name as to the rights and interests of the principal and cannot serve as the attorney for the principal in judicial proceedings. As more recently stated by the California Court of Appeal:

In a court of law, “an unlicensed person cannot appear ... for another person, and ... the resulting judgment is a nullity.” (Russell v. Dopp (1995) 36 Cal.App.4th 765, 775.)

Lisa Miller-Hobbs having filed and dismissed two of her own Chapter 13 bankruptcy cases in 2018, cannot now come in to file and be the “attorney” for her husband in this case.

The Motion to Value demonstrates that the valuation is not at issue, but Lisa Miller-Hobb’s contention that the loan modification is invalid and that improper amounts have been demanded from her for payment.

The court notes that since the December 11, 2018 hearing Schedules (Dckt. 29) have been filed. The clear handwriting on the Schedules is consistent with that of Lisa Miller-Hobbs, not the Debtor Daniel Hobbs. The Schedules are signed by both Daniel Hobbs and for the “Signature of Debtor 2” block by “Lisa A. Miller-Hobbs non-filing spouse.” Dckt. 29 at 55.

The court also notes that Debtor Daniel Hobbs has not filed a motion to confirm the Plan or served the Plan on all required parties. Additionally, the court notes that on January 8, 2019, the Chapter 13 Trustee filed a Motion to Dismiss based upon, among other things, the Debtor not attending the First Meeting of Creditors held on January 3, 2019 and not being current on proposed Plan payments. Dckt. 42.

The court shall issue an order terminating and vacating the automatic stay to allow Legacy Mortgage and Real Estate, Mohsen Mashhadialireza, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2206 Stockman Circle, Folsom, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Legacy Mortgage and Real Estate, Mohsen Mashhadialireza (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Legacy Mortgage and Real Estate, Mohsen Mashhadialireza and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2206 Stockman Circle, Folsom, California.

No other or additional relief is granted.

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were only served on George Eckert, counsel for Legacy Real Estate and Mortgage on January 1, 2019. 14 days' notice is required.

<p>The Motion to Extend the Automatic Stay is denied.</p>
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Daniel Hobbs ("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. 18-23267) was dismissed on June 11, 2018, after Debtor did not file all required documents. *See* Order, Bankr. E.D. Cal. No. 18-23267, Dckt. 11, June 11, 2018. 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, who suffers from Early Advanced Parkinson's Disease, required the assistance of his wife to file all required documents. Debtor claims that his non-filing spouse Lisa Miller-Hobbs was on medical leave from her jobs at the time of prior bankruptcy. Debtor's non-filing spouse, Lisa Miller-Hobbs, submitted a declaration in support of this argument. Dckt. 31. The court notes that Debtor, himself, did not file a declaration. The court further notes that the non-filing spouse's medical problems occurred in March of 2018 and the prior bankruptcy petition was filed in May of 2018. It is not clear if Debtor is arguing that his non-filing spouse's health issues prevented the requirement documents from being filed or if there is another explanation.

Debtor purports to have found an attorney to represent them in this proceeding, however, Debtor does not provide a name for the attorney. The court notes that no attorney has filed a notice of appearance for the Debtor.

OPPOSITION OF SECURED CREDITOR LEGACY MORTGAGE AND REAL ESTATE:

Secured Creditor Legacy Mortgage and Real Estate, who also has a pending Motion for Relief from Stay, filed an Opposition. Dckt. 37. Secured Creditor claims that the deadline to file such relief expired on December 19, 2018 and questions whether Debtor's non-filing spouse, who appears to be filing and signing all of Debtor's documents, has legal authority to do so.

OPPOSITION OF EDWIN HOBBS:

Edwin Hobbs, creditor and father of the Debtor, opposes the requested relief because it was not timely sought.

Edwin Hobbs also states that he has a civil action against the Debtor and his spouse pending in Sacramento County Superior Court (Case No. 34 2017 00218137) for which he has sought to compel their depositions. Additionally, Edwin Hobbs flags for the court that in addition to Debtors bankruptcy filings, Lisa Mill-Hobbs filed bankruptcy on April 18, 2018 (Case No. 18-22319) that was dismissed on May 7, 2018 for failure to file documents.

DISCUSSION:

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 not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has not demonstrated to the court what circumstances have changed to indicate that the present plan is likely to succeed. Debtor does not state that he has or plans to retain counsel, nor does Debtor claim that the health condition of himself or his wife have improved.

The Motion is denied, and the automatic stay is not extended.

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

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

The Motion to Extend the Automatic Stay filed by Daniel Hobbs (“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 denied.

WELLS FARGO BANK, N.A., VS.

Thru #6

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and United States Trustee on November 7, 2018. 28 days' notice is required. That requirement was met.

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

The Motion for Relief from the Automatic Stay is XXXX.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Betty Walker's ("Debtor") real property commonly known as 2660 Marshfield Road, Vallejo, California ("Property"). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Joselle Bracy Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,208.25 in post-petition payments past due. The Declaration also provides evidence that there are ten pre-petition payments in default, with a pre-petition arrearage of \$5,145.27.

CHAPTER 13 RESPONSE:

The Chapter 13 Trustee responds that does not yet have a confirmed Plan. The Debtor is paid ahead \$3,514.92 under the terms of the proposed plan filed on November 10, 2018. Dckt. 67. The Debtor has paid a total of \$25,414.92 into the plan. The Trustee has not made distribution to the Movant because under the terms of the original plan Movant's debt was omitted. The Debtor has a pending amended plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 27, 2018. Dckt. 73. Debtor asserts that the pending amended Plan set for confirmation hearing on January 15, 2018 provides for Movant's second note and deed of trust on the Property as a Class 1 claim, with ongoing monthly mortgage payments, in the amount of \$441.65, to be paid through the Trustee commencing in January 2019. The amended plan provides for the \$5,145.27 pre-petition mortgage arrears and the post-petition mortgage arrears in the amount of \$3,092.00 to be paid with the proceeds of the sale of debtor's property located at 747 Tuolumne Street, Vallejo, California. Debtor has already obtained court approval to employ realtor Gerri Kalk and the property is listed and being actively marketed. Debtor anticipates that a sale will occur within a year and will facilitate a 100% payment for all allowed claims.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$514,926.84 (including \$425,056.00 secured by Movant's first deed of trust and \$89,870.84 secured by Movant's second deed of trust), as stated in the Joselle Bracy Declaration and Schedule D. The value of the Property is determined to be \$600,000.00, as stated in Schedules A and D.

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).

RULING:

Here, the Debtor has proposes a Plan to fully pay Movant and anticipates doing with through the sale of another real property asset that is actively being marketed. The proposed Plan is set for hearing on January 15, 2018, as such the court determines it is prudent to defer ruling on the Movant's requested relief until the court has considered whether the proposed Plan should be confirmed.

At the hearing ----.

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 Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Wells Fargo Bank, N.A. Motion for Relief From Automatic Stay is **xxxx**.

No other or additional relief is granted.

UMPQUA BANK VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2018. 14 days' notice is required. That requirement was met.

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

The Motion for Relief from the Automatic Stay is denied.

Umpqua Bank ("Movant") seeks relief from the automatic stay with respect to Betty Walker's ("Debtor") real property commonly known as 747 Tuolumne Street, California ("Property"). Movant has provided the Declaration of Debbie Fish to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Debbie Fish Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$5,423.05 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$2,738.63. Movant also asserts that the loan matured on October 1, 2018.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$141,766.84 (including \$131,766.84 secured by Movant's

first deed of trust and \$10,000.00 secured by the Solano County Tax Collector), as stated in the Debbie Fish Declaration and Schedule D. The value of the Property is determined to be \$380,000.00, as stated in Schedules A and D. Accordingly, there is equity in excess of \$230,000.00.

11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

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).

Co-Debtor Stay

Additionally, Movant requests relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant identifies Brenda Calhoun as the original borrower on the loan. The Movant does not expressly state why they have a basis to pursue collection against Brenda Calhoun. In reviewing the Exhibits filed in support of the motion, a document titled "Assumption Agreement" is included that appears indicate that Brenda Calhoun transferred the property to Betty Walker, with the consent of Circle Bank on May 25, 2010. Dckt. 85, page 5. In the Assumption Agreement, one of the terms releases the transferor from any liability.

Request for Attorneys' Fees

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

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

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

The court notes that in the Declaration of Debbie Fish, in describing the total amount due on the loan lists \$1,220.00 in attorneys fees. It is not clear to the court whether these are the fees Movant is seeking approval of, despite including the amount due, or if the notation represents something else. Dckt. 83, ¶ 12.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED that Movant’s request for relief from the automatic stay provisions of 11 U.S.C. § 362(a) are denied.

No other or additional relief is granted.

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

Insufficient Notice Provided. Upon receipt of a letter from Nathan Collins, filed on November 26, 2018 (Dckt. 24), the court Ordered a preliminary hearing to be held on January 15, 2019. Dckt. 27. The court's Order notified Nathan Collins that a request for relief from automatic stay requires notice and a hearing. The docket does not reflect that Nathan Collins has filed a Proof of Service with the court. Accordingly, the court is unable to determine which parties were served the motion for relief.

The Motion for Relief from the Automatic Stay is ~~xxxx~~.

Nathan Collins ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 435 Grant Street, Vallejo, California ("Property"). The moving party has not provided a Declaration. Movant states that he filed an unlawful detainer action in California Superior Court, County of Solano and submitted with his letter, that the court construes a motion for relief, the judgment for possession, with a Writ of Possession having been issued by that court on November 6, 2018. Dckt. 24.

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

DISCUSSION:

On November 8, 2018, Debtor filed Form 101A ("Initial Statement About an Eviction Judgement Against You") claiming that she has the right to stay in the residence and that rent due during the (30) days after the petition is filed will be deposited with the court clerk. Dckt. 8. This form reflects that Debtor identifies the Movant as the lessor. The docket reflects that on November 14, 2018, Debtor deposited with the clerk \$700.00 claiming it constituted the rent that would become due during the 30-day period after the filing of the petition. On November 14, 2018, Debtor filed an Amended Form 101B ("Statement About Payment of an Eviction Judgment Against You"), stating that the rent due within (30) of filing the petition has been paid. On November 15, 2018, the court Ordered the fund to be disbursed to the lessor. Dckt. 19.

At the hearing ----.

~~The court shall issue an order terminating and vacating the automatic stay to allow Nathan Collins, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 435 Grant Street, Vallejo, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.~~

~~————— 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 Nathan Collins (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Nathan Collins and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 435 Grant Street, Vallejo, California.~~

~~————— No other or additional relief is granted.~~
