

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 28, 2025 at 1:30 p.m.

1. [22-22202](#)-E-13
[JCW-1](#)

EDGARDO HERNANDEZ
Gabriel Liberman

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-20-24 [\[29\]](#)

AMERICAN HONDA FINANCE
CORPORATION VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 20, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Honda Accord Sedan 4D Sport, VIN ending in 1970 ("Vehicle"). The moving party has provided the Declaration of Ken Towns to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Edgardo Alea Hernandez ("Debtor"). Decl., Docket 32.

Movant states Co-Debtor, Marilyn Jaravata Ordoná executed a Retail Installment Sale Contract-Simple Finance Charge (with arbitration provision) secured by the Vehicle. However, Debtor has failed to make twenty-eight payments August 27, 2022 through November 27, 2024. The Contract is due and payable in full in amount of \$8,593.03 because it matured on September 27, 2023. Decl. ¶ 9, Docket 32.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee (“Trustee”), filed a Response on January 14, 2025. Docket 35. Trustee states there is no proof of claim on file for this Vehicle, although there is a proof of claim on file for another Honda Accord with vin ending in 3010. Trustee states he has not disbursed any money to the creditor on account of this Vehicle.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 14, 2025. Docket 38. Debtor states they were unaware of the default accruing. To address the delinquency issue, Debtor will a) file a modified plan to provide for Movant’s claim over the balance of the Chapter 13 Case or 32 months left, resulting in an increase to Debtor’s plan payment by \$320.00 and b) file a motion or stipulation with Movant to allow a late filing claim to allow the chapter 13 trustee to administer payments to Movant under the modified plan. *Id.* at ¶ 6.

DISCUSSION

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).

In this situation, the Debtor provided for this Claim in the Plan (Class 2(A), ¶ 2; Dckt. 3), but no proof of claim (either by Creditor or Debtor) was filed for this secured claim. It appears that the realities of being human impacted both Creditor and Debtor in this Case.

No unsecured claims have been filed in this Case.

The Chapter 13 Trustee reports that the Chapter 13 Plan in this case (Dckt. 3) provides for the following payments to be made by Debtor:

\$5,000.00 x 12 Months

\$5,302.75 x 12 Months

\$5,551.30 x 12 Months

Reply, ¶ 2; Dckt. 35.

However, the court's review of the Plan shows that it provides for a monthly payment of \$5,000.00 for sixty months. Plan, ¶¶ 2.01, 2.03; Dckt. 3. The Plan does not contain any other Nonstandard Provisions or other provisions providing for a step up in Plan payments.

The court's order confirming the Plan does not include any amendments that provides for stepped up payments. Order; Dckt. 23. An Amended Order Confirmation Plan was entered on November 34, 2022, which provides for no less than a 100% dividend for unsecured claims. Amd. Ord.; Dckt. 26. It does not provide for step ups in Plan payments by Debtor.

Assuming a month Plan payment of \$5,000.00 and the payment of the monthly secured claims and Chapter 13 Trustee fees, the cash flow would appear to be:

Plan Payment.....	\$5,000.00	
Chapter 13 Trustee Fees (Est.)....	(\$ 300.00)	
Class 1 Secured Current.....	(\$2,920.38)	
Class 1 Secured Arrearage.....	(\$1,133.33)	(Actual Arrearage on POC lower then stated in Plan)
Class 2(A) Secured Honda.....	(\$ 208.45)	
Class 2(A) Secured Honda.....	(\$ 167.64)	
=====		
Net Monthly After Payment of Creditor Claims and Chapter 13 Trustee Fees.....	\$270.20	

Balance of Debtor's Attorney's Fees
To be Paid Through the Plan.....(\$4,200.00) (Plan, ¶ 3.05)

It appears that without a proof of claim having been filed, the pay down on Debtor's counsel's fees may have been accelerated. The Chapter 13 Trustee reports that he is holding \$0.00 in funds for this Plan.

At the hearing, **XXXXXXX**

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

IT IS ORDERED the Motion is **XXXXXXX**

2. [21-20814-E-13](#) **ARLEANER COLLINS** **CONTINUED MOTION FOR RELIEF**
[RAS-1](#) **Peter Macaluso** **FROM AUTOMATIC STAY**
9-18-24 [\[45\]](#)

**MORTGAGE ASSETS MANAGEMENT,
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.

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, parties requesting special notice, and Office of the United States Trustee on September 18, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXX.

January 28, 2025 Hearing

The court continued the hearing on this Motion at the Parties’ request, there being a successor in interest appointed in the case. Order, Docket 71. A review of the Docket on January 24, 2025 reveals nothing new has been filed with the court.

Curiously, in the past forty-three (43) days since the December 15, 2024 hearing, no motion to employ a real estate broker has been filed by the Debtor. On Schedule A/B Debtor valued the Property at \$375,000. As of September 2024, Creditor computed its secure claim to be(\$330,501.41). It may be that

the Successor Representative for the Debtor has concluded that the debt secured by the Property exceeds any recoverable value from the sale of the Property.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Mortgage Assets Management, LLC (“Movant”) seeks relief from the automatic stay with respect to Arleaner Collins’ (“Debtor”) real property commonly known as 1828 Jamestown Dr, Sacramento, California 95815 (“Property”). Movant has provided the Declaration of Carlene Reid to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 48.

Movant states that on June 16, 2024, Debtor passed away. Mot. 3:12-13, Docket 45. Movant is still owed \$330,501.41 on the reverse mortgage Note that is secured by the deed of trust in the Property. *Id.* at 4:1; Decl. ¶ 9, Docket 48. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) as Movant’s death has caused the loan to go into default, and the terms of the reverse mortgage permit the balance of the loan to be due and payable upon death of Debtor. Decl. ¶ 7.

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on October 8, 2024. Docket 52. Debtor’s counsel states he has been unable to determine for himself whether Debtor has passed away and asks the court for a continuance until he can find if Debtor has truly passed away.

TRUSTEE’S OPPOSITION

On October 11, 2024, David Cusick, the Chapter 13 Trustee (“Trustee”) filed an Opposition. Trustee opposes on the ground that Movant has not elaborated how Movant learned of Debtor’s death, and Trustee has not been presented with evidence of Debtor’s death.

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 \$330,501.41, while the value of the Property is determined to be \$375,000 as stated in Schedules A/B filed by Debtor. Am. Schedule A/B 4, Docket 29.

Absence of Evidence

In the Motion, the grounds for the requested relief is that the Debtor has died. Motion, p. 5:1-7; Dckt. 45. The Declaration of Carlene Reid, a “Contract Management Coordinator of PHH Mortgage,” includes the following testimony:

8. Arleaner Collins (“Debtor”) is the only borrower on this Note. Debtor passes away on June 15, 2024; thus, calling the Note all due and payable upon such date. The total amount due remains due and owing.”

Dec., ¶ 8; Dckt. 48. This testimony is provided under penalty of perjury. It is also provided by Movant and Movant's counsel subject to the Federal Rules of Evidence. As counsel knows, witness testimony must be based on that witnesses personal knowledge and not mere speculation or hearsay (with specific exceptions not applicable here).

Ms. Reid, in her testimony under penalty of perjury does not explain how she has personal knowledge of the death for which she provides her testimony. Possibly, she was present with the Debtor in her final minutes and personally witnessed the death.

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).

Here, the terms of the reverse mortgage are such that the balance of the Note become due and payable once the Debtor passes away. The confirmation from Debtor's daughter that the Debtor has passed away, the condition cited by Movant has occurred.

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 it is unclear whether the Property is being properly maintained, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:9-15, Docket 45.

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).

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

OCTOBER 22, 2024 HEARING

At the hearing, counsel for Movant, stated that he has not been able to reach his client. Debtor's daughter appeared at the hearing, and confirmed that the Debtor, her mother, has passed away.

In light of there not having been a successor representative for the late Debtor, and Debtor's counsel apparently not having been contacted by the family, the Parties agreed to a continuance to allow Debtor's heirs to determine if they want to pursue a sale of the Property.

The hearing is continued to 1:30 p.m. on December 10, 2024.

December 10, 2024 Hearing

The court continued the hearing on this Motion after confirming at the prior hearing that Debtor had indeed passed away. The court continued the hearing to provide the parties with an opportunity to decide if they wanted to pursue a sale of the Property. Nothing new has been filed with the court as of December 4, 2024, under this Docket Control Number. However, Debtor has filed a Motion to Substitute at Docket 61, which will be heard on the 2:00 p.m. calendar on December 10, 2024.

The court having granted the Motion to Substitute a Successor Representative for the late Debtor, the Parties agree to continue the hearing on the Motion.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on January 28, 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 Mortgage Assets Management, 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.

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.

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.

The Motion for Relief from the Automatic Stay is xxxxxxx.

January 28, 2025 Hearing

The court continued the hearing on this Motion for Debtor to supplement the record and show how they would be able to afford making the additional adequate protection payments called for in the Stipulation at Docket 59. Order, Docket 63. On January 21, 2025, Trustee filed a Response. Docket 64. Trustee states:

1. The stipulation calls for extra payments of \$2,512.37 to be made by the Debtor to cure the \$15,074.22 default over 6 months. This is over and above the regular mortgage payment which with impounds increased to \$3,163.83 on July 10, 2024. *Id.* at 1:23-27.
2. Trustee does not oppose the payment increase, so long as Debtor discloses the funds. *Id.* at 2:15-25.

Debtor filed two Supplemental Declarations on January 22, 2025. Dockets 65, 66. Angelo Gil, the brother of Debtor Celeste Maria Gil Jocson, testifies:

1. I know they have a very tight household budget-especially with her husband recently having a heart attack and my sister, Celeste, getting very sick as well-and that they need financial help from the family to meet this \$2,512.37 obligation. Decl. ¶ 3, Docket 65.
2. I have been working at Amazon for the past 5 years as a warehouseman and I grossed approximately \$42,000 last year. I expect to earn the same this year and anticipate bonus payments as well. Because I have very little household expenses, I can easily contribute \$1,267.19 per month for the 6-month period in question. *Id.* at ¶ 4.

Erlinda Gil, the mother of Debtor Celeste Maria Gil Jocson, testifies:

1. I know they have a very tight household budget-especially with her husband recently having a heart attack and my daughter, Celeste, getting very sick as well-and that they need financial help from the family to meet this \$2,512.37 obligation. Decl. ¶ 3, Docket 66.
2. Fortunately, since I live with my daughter and pay no rent, I can contribute \$1,267.19 per month for the 6-month period in question. *Id.* at ¶ 4.
3. I have a fixed income from social security and have very little expenses to keep me from contributing this amount. *Id.* at ¶ 5.

It appears to the court there is evidence on the record sufficient to show that Debtor will be able to make these adequate protection payments with the help of Debtor's family contributions.

In reviewing the Docket no proposed modified Plan and motion to confirm have been filed.

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.

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, counsel for Movant reported that a Stipulation has been reached, by which the Debtor will make monthly additional adequate protection payments of \$2,512.37, commencing in February 2025 and continuing through July 2025 to cure the \$15,074.22 post-petition default.

No explanation has been provided to the court as to how this Debtor is able to fund the additional adequate protection payments. Debtor's counsel was not in attendance at the January 14, 2025 hearing. Movant's counsel commented that she thought that family members were providing the funds for the cure.

The court continues the hearing to 1:30 p.m. on January 28, 2025, to afford the Debtor to file supplemental pleadings, on or before January 21, 2025, to document the source of such monies and the ability to make the cure payments.

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 Stay is **XXXXXXX**.

4. <u>23-21007-E-13</u> <u>DPC-2</u>	MANJIT SINGH Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 11-22-24 [86]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 22, 2024. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXX.

January 28, 2025 Hearing

The court continued the hearing on this Motion to this specially set day and time to allow Debtor's TFS payment to process.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Manjit Singh ("Debtor"), is delinquent \$1,482.20 in plan payments. Debtor will need to have paid \$2,278.64 to become current by the hearing date. Mot. 1:25-28, Docket 86.
2. According to Trustee, Debtor owns \$5,400.00 in non-exempt equity. Mot. 2:3-4, Docket 86. Trustee states due to various factors, including the nature of the assets, the fact that Debtor is in month 20 of a 60-month plan, and the fact that it does not appear the Debtor is acting in bad faith, the Trustee believes that conversion to Chapter 7 is not in the best interest of creditors or the estate. Mot. 2:3-9, Docket 86.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 88.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on January 8 and 14, 2025. Dockets 90, 91. Debtor states the delinquency will be cured prior to or on the hearing date. Response 1:24-25, Docket 90.

DISCUSSION **Delinquent**

Debtor is \$1,482.20 delinquent in plan payments, which represents multiple months of the \$398.22 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor claims that they will have cured the delinquency before or on the hearing date for this matter.

At the hearing, counsel for the Trustee reported that the delinquency is \$2,278.60, with the last payment of \$2,600.00 having been received on January 4, 2024.

Debtor's counsel reports that Debtor has a TFS Payment in process, however the Trustee's counsel noted that given the timing the payment the Trustee would not receive it before January 21, 2025.

The Parties agreed to a short continuance to allow the payment to be processed.

The hearing is continued to 1:30 p.m. on January 28.

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

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

FINAL RULINGS

5. [24-25076-E-13](#) STEPHEN/TERESA FERRERO MOTION FOR RELIEF FROM
[SKI-1](#) Mikalah Liviakis AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-16-24 [16]

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC VS.

Final Ruling: No appearance at the January 28, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 16, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Mercedes-Benz Financial Services USA LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2023 Mercedes-Benz Comm Sprinter, VIN ending in 2735 (“Vehicle”). The moving party has provided the Declarations of John Eng and Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Stephen Vincent Ferrero and Teresa Marie Ferrero (“Debtor”). Decl., Dockets 19, 20.

Movant argues on November 21, 2024, Debtor voluntarily surrendered the Vehicle to Movant. The account was charged off on November 21, 2024, thus triggering default, so the entire balance of \$63,523.44 is due in full. Decl. ¶¶ 7, 8, Docket 19.

Debtor’s Chapter 13 Plan provides for this secured claim in Class 3, with the Vehicle being surrendered to Movant. Plan; ¶ 3.09; Dckt. 3.

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 \$63,523.44 (Declaration ¶ 8, Docket 19), while the value of the Vehicle is determined to be \$50,000, as stated in Amended Schedules A/B filed by Debtor. Am. Schedule A/B, Docket 27.

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.

Co-Debtor Stay

Movant states there is a Co-Debtor on the Vehicle, Placer Home Pros, Inc. Mot. 1:24-25.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(c)(3), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant, as lienholder, is not being compensated by Debtor or Co-Debtor. Mot. 3:9-11.

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

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 surrendered the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), 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 Mercedes-Benz Financial Services USA 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 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 all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2023 Mercedes-Benz Comm Sprinter, VIN ending in 2735 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Placer Home Pros, Inc., of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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

No other or additional relief is granted.

Final Ruling: No appearance at the January 28, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 8, 2025. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on January 2, 2025.

The hearing on the Order to Show Cause is continued to February 25, 2025 at 2:00 p.m. to be heard in conjunction with the Motion to Confirm Plan.

January 28, 2025 Hearing

The court continued the hearing on this Order to allow Debtor time to cure the default. A review of the Docket on January 27, 2025 reveals that the default has not yet been cured.

The court has issued an Order continuing the hearing on this Order to Show Cause to February 25, 2025 at 2:00 p.m.

REVIEW OF ORDER

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.

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 Order to Show Cause 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 hearing on the Order to Show Cause is continued to February 25, 2025 at 2:00 p.m. to be heard in conjunction with the Motion to Confirm Plan.