

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

January 30, 2024 at 1:30 p.m.

1. [23-23131](#)-E-13
[RAS-1](#)

DIANE GARCIA
Harry Roth

1 thru 2

WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
10-12-23 [\[17\]](#)

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 October 11, 2023. 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 XXXX.

January 30, 2024 Hearing

Supplemental Pleadings in support of attorney's fees, if any, were to be filed and served on or before January 3, 2024, and Reply Pleadings filed and served on or before January 19, 2024. Order, Docket 29. No new or supplemental pleadings or other documents have been filed with the court as of January 23, 2024.

Any request for prevailing party attorney's will be by post-Order (which is a judgment, Fed. R. Bank. P. 901(7) motion. Fed. R. Civ. P. 54, Fed. R. Bankr. P. 7054 , 9014(c).

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust ("Movant"), seeks relief from the automatic stay and co-debtor stay with respect to Diane Garcia's ("Debtor") real property commonly known as 571 Daniels Street, Woodland, California 95695 ("Property"). Movant has provided the Declaration of Genevieve A. Jacobs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Movant improperly filed this Declaration as an exhibit. Exhibit B, Dckt. 20.

In its supporting Declaration, Movant argues that the terms of the Note and Mortgage have been in default and remain in default since September 9, 2023. Exhibit B, Declaration, Dckt. 20.

CHAPTER 13 TRUSTEE'S OPPOSITION

David P. Cusick ("the Chapter 13 Trustee") filed an Opposition on November 6, 2023. Dckt. 23. The Chapter 13 Trustee asserts that the case was filed on September 29, 2023 and a plan has not been confirmed yet. Opposition, Dckt. 23. The Debtor has paid \$2,433.20 to the Trustee to date where the Plan payments are \$2,433.20 per month for 60 months with 0% unsecured creditors. Declaration, Dckt. 24. The Debtor is current under the Plan through October 2023. *Id.*

The Debtor identified the Property on Schedules A/B and identified Selene Finance on Schedule D and in Class 1 of the proposed Plan where the monthly payment is \$1,709.00 and mortgage arrears are listed as \$27,000.00. *Id.* Schedule D states the amount of the claim is \$236,537.04 and the value of the subject property is \$360,000.00. *Id.* Trustee has distributed one mortgage payment to date, on October 31, 2022, in the amount of \$1,709.00, meaning the mortgage is current under the proposed Plan. *Id.*

Additionally, the Trustee notes Movant also filed an Objection to Confirmation based on the Debtor's Plan proposing \$27,000 in mortgage arrears, and Movant plans to file its proof of claim asserting \$41,961.98 in arrears. Movant filed its Proof of Claim on November 7, 2023, asserting \$40,914.02 in arrears. POC 2-1. Trustee further argues that because the Declaration has not been filed as a separate document but rather as Exhibit B, it is difficult to find the Declaration within the court's docket. Opposition, Dckt. 23.

Finally, Trustee argues that the Certificate of Service shows service was accomplished on November 11, 2023, but it fails to list the Declaration as a document that was served on the parties. *Id.* Where the Electronic Record is the Official Record for eligible documents filed, LBR 5005-1(a), and the

supporting Declaration does not appear in the electronic record as a separate document, the Trustee would oppose the Movant's Motion as not sufficiently supported by evidence. *Id.*

DISCUSSION

By failing to file the Declaration as a separate document, Movant has violated Local Bankruptcy Rule 9004-2(c)(1). This lack of compliance is grounds to deny the motion. Under Local Bankruptcy Rule 9004-1, all pleadings and documents shall be formatted consistent with Local Bankruptcy Rule 9004-2, and any attorney or trustee who files a document in violation of this Rule may be subject to monetary or non-monetary sanctions.

Furthermore, Movant is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number for multiple separate motions. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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 \$259,007.78. Proof of Claim 2-1.

The value of the Property is determined to be \$360,000.00 as stated in Schedules A/B filed by Debtor. Schedule A/B, Dckt. 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).

Movant asserts that cause exists to lift the stay because Debtor has not given "assurances. . . indicating that [Debtor] intend[s] to cure prior missed payments." Dckt. 17 p. 7. This argument is without merit. Movant cites to no case law or offers any justification why a failure of assurances to cure arrears somehow gives rise to a lack of adequate protection. On the contrary and by Movant's own admission, Debtor has \$100,110.59 of equity in the Property and is current in its proposed Plan, including on mortgage payments to Movant.

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, the Debtor does have a history of repeat filings.

- A. Case No. 13-24818
 - 1. Filed: April 8, 2013
 - 2. Chapter 13
 - 3. Dismissal Date: March 5, 2015
 - 4. Reason for Dismissal: Failure to make plan payments.
- B. Case No. 17-24058
 - 1. Filed: June 19, 2017
 - 2. Chapter 13
 - 3. Dismissal Date: September 21, 2018
 - 4. Reason for Dismissal: Failure to make plan payments.
- C. Case No. 18-27077
 - 1. Filed: November 9, 2018
 - 2. Chapter 13
 - 3. Dismissal Date: March 17, 2020
 - 4. Reason for Dismissal: Debtor failed to become current on Plan payments.
- D. Case No. 20-23209
 - 1. Filed: June 27, 2020
 - 2. Chapter 13
 - 3. Dismissal Date: June 3, 2022
 - 4. Reason for Dismissal: Failure to make plan payments.
- E. Case No. 22-22103
 - 1. Filed: August 23, 2022
 - 2. Chapter 13
 - 3. Dismissal Date: May 12, 2023
 - 4. Reason for Dismissal: Converted to Chapter 7 on March 10, 2023, then dismissed for failure to appear at §341(a) Meeting of Creditors.
- F. Case No. 23-21927
 - 1. Filed: June 13, 2023
 - 2. Chapter 7
 - 3. Dismissal Date: July 5, 2023
 - 4. Reason for Dismissal: Failure to file information.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case may have been for a *bona fide*, good faith reason in light of the fact the Debtor has made payments to the Trustee, is current with the Plan, and has appropriately listed the Movant as a Class 1 creditor.

Continuance of Hearing
With the Concurrence of Movant

The proposed Chapter 13 Plan is to be funded with \$2,433.20 a month by Debtor. Plan; Dckt. 3. From that the following amounts are to be paid:

- A. \$1,850 to Debtor's Counsel.....(\$31) a month amortized
- B. Chapter 13 Trustee Fees(\$195) a month, estimated
- C. Movant, Post-Petition Payments.....(\$1,709) a month
- D. Movant, Pre-Petition Arrearage Cure.....(\$450) at estimated \$27,000 arrearage
- E. Unsecured Claim Dividend.....(\$0.00)

The above amounts total (\$2,385) a month, leaving a \$48.20 a month surplus.

In Proof of Claim 2-1 Movant asserts a pre-petition arrearage of (\$40,914.02), which is (\$13,914.02) higher than the (\$27,000) listed for its Class 1 Claim in the Plan. If there is such higher pre-petition arrearage, that would require an additional (\$231.90) a month Arrearage Cure payment to Movant. That leaves the Plan under funded by \$183.70 a month.

On Schedule I, Debtor lists having monthly take-home income of \$4,098. Dckt. 1 at 36-37. On Amended Schedule J Debtor lists having a family unit of four persons, consisting of the Debtor, two grandchildren over 18 years of age, and her Sister for which she provides care services. Dckt. 15 at 5-6.

On Amended Schedule J, Debtor lists having monthly expenses of only (\$1,238.46) for the expenses of this four person family unit (excluding mortgage payment, property taxes, and insurance). Monthly expenses of only (\$1,238) a month for expenses is questionable. Some questionable expenses for a family unit of four adults are:

- A. Electricity/Natural Gas.....(\$100)
- B. Food and Housekeeping Supplies.....(\$300); After (\$35) for housekeeping supplies, (\$66.25) per adult, which is (\$0.73) per adult per meal in a 30 day month

- C. Clothing.....(\$100)
- D. Medical and Dental.....(\$ 50)
- E. Transportation.....(\$20); Debtor lists no vehicles on Schedule A/B

It may be that Debtor, and her family unit of four adults can reasonably state monthly expenses of only (\$1,238.46) a month, or that Debtor and counsel constructed Amended Schedule I to the MAI (made as instructed) expenses to make the projected monthly disposable income to be the \$2,859 to make it appear that Debtor can fund the Plan.

While questionable, this appears to be the Debtor's last opportunity in this string of bankruptcy filings, to use Chapter 13 to cure the arrearages and prevent a foreclosure on her residence.

By continuing this hearing, Debtor can have that "last chance" and Movant can keep the issue before the court of whether Debtor's financial information is inaccurate and the Plan cannot be performed.

Attorneys' Fees Requested
Request for Attorneys' Fees

Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

With the court continuing the hearing, Movant will have the opportunity to request the court to order and the consideration of fees for this Contested Matter heard as part of this Motion, and the required evidence be filed for consideration at a continued hearing.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court. With the hearing being continued, the court will also address this request for relief at a continued hearing.

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 Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust ("Movant"), having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. [23-23131-E-13](#)
[RAS-1](#)

DIANE GARCIA
Harry Roth

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
WILMINGTON SAVINGS FUND
SOCIETY, FSB
10-10-23 [13]**

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 10, 2023. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 offers opposition to the Objection, 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 Objection.

The Objection to Confirmation of Plan is XXXX.
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January 30, 2024 Hearing

Supplemental Opposition Pleadings were to be filed and served on or before January 3, 2024, and Reply Pleadings filed and served on or before January 19, 2024. Order, Docket 30. No new supplemental pleadings or other documents have been filed with the court as of January 23, 2024.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan does not provide for paying all of Creditor’s arrears. The Plan provides for repayment of \$27,000 in arrears, but Creditor asserts arrears in the amount of \$40,914.02.

Dckt. 13.

Creditor has not provided a Declaration in support of its Objection. Creditor provided the Declaration of Genevieve A. Jacobs to support its Motion for Relief, which was improperly filed as an exhibit, but failed to offer evidence in support of this Objection. Exhibit B, Dckt. 20.

In its supporting Declaration, Creditor argues that the terms of the Note and Mortgage have been in default and remain in default since September 9, 2023. Exhibit B, Declaration, Dckt. 20.

DISCUSSION

Creditor is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the objecting party reused a Docket Control Number for multiple separate motions. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Creditor’s counsel filed an Objection making several factual assertions. However, no Declaration or other evidence was filed to support those assertions.

Creditor has filed Proof of Claim 2-1, which asserts a secured claim in the amount of (\$259,007.78), which includes an arrearage of (\$40,914.02). In the Objection, Creditor states that the Proof of Claim was being drafted when the Objection was filed.

The Objection continues, apparently waiving Creditor’s rights under the Plan that the Proof of Claim controls a creditor’s claim in the Bankruptcy Case, Plan ¶ 3.02, which provides:

3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court’s disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Plan; Dckt. 3. It appears that Creditor may be stipulating to the amounts stated in the Plan controlling the amount of Creditor’s claim, rendering Proof of Claim 2-1 a mere informational document. The court does not deem the stated objection to be a waive of the express stated terms of the Plan in ¶ 3.02.

Creditor's Objection includes an economic analysis of the proposed Plan and the arrearage now stated in Proof of Claim 2-1. The Plan is funded with a \$2,433.20 a month payment. Creditor's Class 1 post-petition monthly payment is \$1,709.00. With a (\$40,914.02) arrearage, the monthly cure payment would be \$681.90 a month. These two total \$2,391 a month, leaving only \$42 a month to fund the balance of the Plan.

The Plan does not provide for payment of any other claims; however, Debtor's counsel is to be paid an additional \$1,850 through the Plan, which averages \$30 a month, and the Chapter 13 Trustee's fees are projected to be (estimated at 8%) to be \$194.64 a month. This leave the Plan underfunded by approximately (\$183) a month.

Review of Amended Schedules I and J

On October 10, 2023, Debtor filed Amended (which relate back to the filing of this Case) Schedule J. Dckt. 16. On Amended Schedule J, Debtor lists a family unit of four persons: Debtor, two adult children, and Debtor's sister. Dckt. 16 at 5. For these four adults, Debtor states that the monthly expenses for these four adults is (\$1,238.46) a month. Some questionable expenses include:

- A. Electricity and Natural Gas.....(\$100)
- B. Food and Housekeeping Supplies.....(\$300)
- C. Transportation.....(\$ 20)

Dckt. 16.

On Schedule I, Debtor lists having \$4,098.33 in income, including contributions from Debtor's sister. Dckt. 1 at 36-37.

November 21, 2023 Hearing

At the hearing, the court addressed with the Parties the apparent economic inability to Debtor to fund the Plan. Debtor's counsel made reference to Debtor obtaining food and other support from charitable organizations and other vague references to these four adults being able to survive on the budget and financial information provided by Debtor.

The court continues the hearing to allow Debtor one (apparently) final opportunity to prosecute a Chapter 13 Plan (Debtor having six prior cases filed and dismissed in the past decade). Creditor has pending a Motion for Relief From the Stay which includes relief requested pursuant to 11 U.S.C. § 362(d)(4).

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 Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust (“Creditor”) holding a secured claim, 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 Objection to Confirmation of Plan is **XXXXXXX**

3. 23-22845-E-13	GEORGENE HICKS AND	STATUS CONFERENCE RE:
RHS-1	RICARDO ESPARZA	ORDER ON MOTION TO IMPOSE
		AUTOMATIC STAY ORDER PLAN
		RE:
		1-11-24 [101]

Debtors’ Atty: Peter G. Macaluso

Notes:

Set by order of the court filed 1/17/24 [Dckt 103] to allow the Parties to address with the court the *ex parte* motions concerning administrative issues relating to the Plan payment monies and adequate protection matters and other issues as appropriate.

The Status Conference is XXXXXXX
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On January 12, 2024, the court entered its order granting the Motion to Confirm the Amended Chapter 13 Plan in this Bankruptcy Case. Order; Dckt. 102. On that same day, the court conducted a hearing on the Debtors’ Motion to Impose the Automatic Stay in this Case. As discussed in the Civil Minutes from the hearing on the Motion to Impose the Automatic Stay, some very “interesting” questions arising under California Civil Code § 2924m exist in this case which bears on the effect of a pre-petition nonjudicial foreclosure sale and the sale being “deemed final” fifteen days after the filing, which fifteenth day ran after the court imposed the automatic stay on an interim basis. Civ. Min.; Dckt. 99.

When the court was addressing the confirmation of the Amended Plan and terms thereof, the court did not link the Amended Plan to the Order Imposing the Stay and the California Civil Code § 2924m issues. The Amended Plan provides for payments to be made to the Class 1 Creditor for whom the foreclosure sale was conducted (which was not the highest bidder at the pre-petition foreclosure sale). However, that Creditor has not filed a proof of claim in this case. As the court addressed in the Civil Minutes, there appeared to be ways that the Debtors could provide adequate protection for the highest bidder at the nonjudicial foreclosure sale (for whom the 15-day period specified in California Civil Code § 2924m did not expire until after the § 362 stay was imposed in this case).

The court schedules this Status Conference so the Debtors and Chapter 13 Trustee can address with the court supplemental orders or joint *ex parte* motions (possibly orally placed on the record at the

Status Conference) for plan modifications which may be necessary for the Trustee to hold the substantial monies to be paid on the Class 1 Claim (for which there is no proof of claim) and the Class 2 Claim of U.S. Bank, N.A. (the junior lien holder and highest bidder at the prepetition nonjudicial foreclosure sale). The Parties appearing in this Case to date have clearly demonstrated their good faith and efforts to “take on” these California Civil Code § 2924m issues (the statute having been recently amended and presenting the court and parties with an untilled field to interpret).

The court intends this Status Conference (and as it may be continued) to provide a simplified process for proper *ex parte* or limited notice stipulations to address some more administrative issues for the Chapter 13 Trustee holding monies in this case and adequate protection issues as the parties “fire up their tractors” to begin plowing the new § 2924m fields.

January 30, 2024 Status Conference

The Court’s January 29, 2024 review of the Docket disclosed that no Status Conference statements have been filed stating how the Debtor and the Chapter 13 Trustee intend to address the issues relating to the changes in the California nonjudicial foreclosure sale law and how to adequately protect the interests of the purchaser at the nonjudicial foreclosure sale and the creditor having the nonjudicial sale conducted.

At the Status Conference, **XXXXXXX**

FINAL RULINGS

4. [23-22461-E-13](#)
[SKI-1](#)

PHOEBE CLARK
Michael Hays

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-27-23 [\[30\]](#)

ACAR LEASING LTD VS.

Final Ruling: No appearance at the January 30, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 27, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

ACAR Leasing LTD D/B/A GM Financial Leasing ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Chevrolet Equinox, VIN ending in 5385 ("Vehicle"). The moving party has provided the Declarations of John Eng (Docket 32) and Aaron Rangel (Docket 33) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Phoebe Montilla Clark ("Debtor").

Movant argues Debtor, as of December 18, 2023, has not made at least three post-petition payments, with a total of \$1,681.37 in post-petition payments past due. Declaration, Dckt. 33 ¶ 8. Another payment will be due on January 25, 2024. *Id.* Movant also states that Debtor's attorney has indicated that Debtor intends to surrender the property. *Id.* at ¶ 9.

Debtor has not filed an Opposition.

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 \$29,180.84 (*Id.* at ¶ 7), while the value of the Vehicle is determined to be \$19,212 as stated in Schedules A/B and D filed by Debtor (Petition, Dckt. 13).

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

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

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, because Debtor intends to surrender 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 ACAR Leasing LTD D/B/A GM Financial Leasing (“Movant”) having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Chevrolet Equinox, VIN ending in 5385 (“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 fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.