

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 1, 2024 at 10:00 a.m.

1. <u>23-21438-E-12</u> <u>RLC-1</u>	WESLEY/RUTH WOOLERY Stephen Reynolds	CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO GRANT REPLACEMENT LIENS , MOTION TO APPROVE DIP BUDGET 5-12-23 <u>[21]</u>
---	--	--

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee and fewer than all creditors on May 12, 2023. By the court's calculation, 4 days' notice was provided. The court required 4 days' notice. Dckt. 30.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 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.

The Motion for Authority to Use Cash Collateral is xxxxxxx.

February 1, 2024 Hearing

Wesley and Ruth Woolery (“Debtor in Possession”) was to file and serve the Supplemental Pleadings for the further use of Cash Collateral on or before January 24, 2024. On January 24, 2024, Debtor in Possession filed the Declaration of Ruth Woolery, stating:

1. Debtor in Possession has been operating under the terms of a series of interim cash collateral orders. Decl., Docket 129 ¶ 2.
2. The projected income May through December was \$275,505, the actual income was \$174,415. *Id.*
3. The projected expenses for May through December were \$231,456, the actual was \$132,030. *Id.*
4. Debtor in Possession expects that their expenses will remain less than budgeted though June. *Id.*
5. Debtor in Possession has paid 20% of non-wage income to Rabo Bank. *Id.*
6. Due to market conditions, Debtor in Possession may defer the anticipated February Spring Calf Sale to July. *Id.*

Attached to the Declaration is a budget for the months of May 2023 through April 2024. Dckt. 129 at p. 3.

At the hearing, **XXXXXX**

REVIEW OF MOTION

Debtor in Possession moves for an interim order authorizing the use of cash collateral and requests the court schedule a final hearing to consider entry of a final order authorizing use of cash collateral, granting replacement liens, and approving the proposed Debtor in Possession budget.

Debtor in Possession requests the use of cash collateral to (1) pay post-petition operating expenses incurred in the ordinary course of business; (2) pay costs and expenses of administration of the case; and (3) pay all other amounts as specified in the Debtor in Possession budget. Debtor’s Declaration in support of the Motion states the use of cash collateral is necessary to continue farming operations. Dckt. 23. Upon review of the proposed budget, Exhibit 1, Debtor’s budget is funded by the sale of the following:

Spring 2023 Calves.....\$355,000 generated February 2024

AB Fats.....\$20,000 generated December 2023

Cull Cows.....\$20,000 generated May 2023
.....\$18,750 generated February 2024

MC Fats.....\$7,215 generated monthly, beginning in June 2023

FSA Livestock Forage.....\$90,000 generated July 2023

.....\$75,000 generated September 2023

Equipment Sales.....\$20,000 generated June 2023.

CREDITOR'S OPPOSITION

Creditor Rabo Agrifinance LLC ("Creditor RAF") filed a preliminary opposition on March 15, 2023. Dckt. 27.

Debtor's Motion states Creditor holds first-priority lien on substantially all assets, due to a perfected UCC-1 filing, as well as real property located at 42563 Wilcox Road, Hat Creek, California, in the amount of approximately \$1,700,000. Debtor's Motion, Dckt. 21. Debtor's Schedules, however, state under penalty of perjury that Creditor RAF has a secured claim in the amount of \$0.00, supported by collateral in an amount of \$0.00 and unsecured in the amount of \$0.00. Schedule D, Dckt. 1 at 11. Creditor RAF has not yet filed a proof of claim, however, their opposition states Debtor owes approximately \$2,269,868.81 on an Operating Line of Credit and \$496,569.11 on a Real Estate Line of Credit. Opposition, Dckt. 27 at 3:21-22.

Schedule Creditor RAF objects on the following grounds:

1. No Emergency Articulated:
 - a. The Emergency Motion fails to explain why Debtor in Possession must use Creditor RAF's cash collateral on an emergency basis.
 - b. The Motion fails to provide any details regarding the status of Creditor RAF's collateral, or what, precisely, Debtor in Possession would like to sell. The Motion only states Debtor in Possession plans to sale \$20,000 in "Cull Cows."
2. Shortcomings of Budget:
 - a. The budget does not indicate what is truly necessary for Debtor's continued operations.
 - b. The proposed accounting expense is inappropriate because Debtor has not sought approval to employ an accountant.
 - c. It is not clear whether May budgeted items relate to pre-petition obligations.
 - d. Creditor RAF does not know what cash collateral Debtor currently has on hand.

Creditor RAF requests the Emergency Motion be denied or set on full notice so Debtors may file their schedules and provide information necessary for Creditor RAF and the court to evaluate the proposed use of collateral.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

In prior Civil Minutes for this Motion the court has addressed various issues that arose and how they were resolved. The court does not repeat those here in light of the number of further hearings and interim orders that have been issued. The court incorporates them by reference and any party in interest can readily find them on the Docket.

MAY 16, 2023 HEARING AND INTERIM AUTHORIZED USE

OF CASH COLLATERAL

Counsel for the Debtor in Possession reported that on May 16, 2023, a cattle report to Creditor. There are 658 head of cattle. The Debtor in Possession is providing documentation to Creditor's counsel.

The court authorizes the use of cash collateral for May and June 2023 as outlined above for the proposed budget (Dckt. 31).

Counsel for Creditor and counsel for Debtor in Possession shall joint prepare and lodge with the court a proposed order authorizing such use.

June 8, 2023 Hearing

The court's review of the Docket as of June 5, 2023, showed that no further pleadings were filed.

At the hearing, counsel for the Debtor in Possession reported that a stipulation has been reached with Rabo Agrifinance for the interim use of cash collateral. The parties have prepared a Stipulation to be filed with the court and a proposed order to be lodged with the court. The Stipulation provides for the use of cash collateral through August 11, 2023.

AUGUST 10, 2023 CONTINUED HEARING

The court has authorize the prior use of cash collateral as agreed by the Parties. The most recent order was entered on June 9, 2023. Dckt. 58. No supplemental pleadings for the further use of cash collateral have been filed.

The court grants the Motion on an interim basis, authorizing the use of cash collateral as state din the budget. Counsel for the Debtor in Possession shall lodge with the court a proposed order authorizing the use of cash collateral through September 30, 2023.

The court continues the hearing on this Motion to 10:30 a.m. on September 28, 2023, for consideration of the further authorization to use cash collateral.

SEPTEMBER 28, 2023 HEARING

On August 30, 2023, the Debtor in Possession filed a dismissal of the Motion to Confirm the Chapter 12 Plan filed in this Case. Dckt. 19. Further, that an amended Plan would be filed the week of September 5, 2023. The Docket does not reflect such an amended Plan having been filed.

At the hearing, counsel for the Debtor in Possession reported that 20 head of cattle have been sold and the 20% of the proceeds will be transmitted to the creditor shortly.

The Parties agreed to extend the use of cash collateral, with a continued hearing date on December 14, 2023 at 10:30 a.m. The Parties may by Joint Status Report further extend the time for the use of Cash Collateral and the hearing date.

DECEMBER 14, 2023 HEARING

The court entered prior Orders authorizing the use of cash collateral. The latest order was entered on August 14, 2023. Dckt 84. The Civil Minutes for the last hearing on this Motion, conducted on September 28, 2023, state that the Parties agreed to extend the use of cash collateral and a proposed order was to be prepared by the Parties and lodged with the court. A review of the Docket indicates that no order has been issued from the September 28, 2023 hearing.

The court discussed the fiduciary duties of the Debtor in Possession in this case, the failure of the fiduciary Debtor in Possession to comply with the prior cash collateral order, and the need for the Debtor in Possession to diligently prosecute confirmation of a Chapter 12 Plan in this case that was filed May 2, 2023.

Counsel for Creditor Mills Ranch expressed frustration over the Debtor in Possession's failure to remove the pending state court litigation or object to the Proof of Claim filed by Mills Ranch, noting that it was not until November 2023 that the Debtor in Possession requested the appointment of special counsel to prosecute such litigation, notwithstanding this Case having been filed in May 2023.

Though Rabo AgriFinance, LLC did not agree to further use of the cash collateral, in light of the terms of prior agreements, the holidays, and the focus on the obligations of the fiduciary Debtor in Possession, the court extends the use of cash collateral, on the same terms and amounts as in the prior order for which the consent of Rabo AgriFinance, LLC had been given, for the period through January 20, 2024.

The hearing on this Motion is continued to 2:00 p.m. on January 17, 2024, to be conducted in conjunction with the Status Conference in this Case.

Counsel for the Debtor in Possession was to prepare a proposed order consistent with the court's ruling and terms of the prior orders authorizing the use of cash collateral, have it approved as to form by counsel for Rabo AgriFinance, LLC (notwithstanding Rabo AgriFinance, LLC not consenting to the use of cash collateral), and lodge the proposed order with the court.

January 17, 2024 Hearing

A review of the Docket reflects that no supplemental pleadings have been filed or served on other parties in interest.

On January 4, 2024, Wesley and Ruth Woolery ("Debtor in Possession") filed a Status Report, updating the court on its state of affairs since the December 14, 2023 Hearing. Docket 119. In its Status Report, Debtor in Possession states:

1. Debtor in Possession has continued operations under the terms of the Interim Cash Collateral Orders dated June 9, 2023, and December 14, 2023. Orders for the September 14, 2023 and December 14, 2023 hearings have been prepared and are being reviewed by counsel for Rabo Agrifinance, LLC.
2. Special counsel has been retained.
3. It appears that the estate is administratively solvent.
4. Motions to value collateral and any claims objections are not anticipated.

5. Special counsel has been retained to deal with the large Mills Ranch claim. The estate has claims against Mills Ranch that would result in the elimination of the Mills Ranch claim and an affirmative award in favor of the Debtor in Possession.
6. No motions under 11 U.S.C. § 365(d)(3) or (4) have been received or are anticipated.
7. No new credit has been requested.
8. There are no pending motions to dismiss or convert.
9. Debtors intend to file a Chapter 12 Plan in the week of January 8, 2024.

At the hearing, the court addressed with counsel for the Debtor in Possession, the Chapter 12 Trustee, and the respective counsel for the other parties in interest appearing at the Status Conference the prosecution of a Plan that includes provisions for the Mills Ranch litigation and having that litigation removed from state court in the near future.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on February 1, 2024. Pursuant to the Stipulation of the Parties, the court extends the authorization to use cash collateral through and including February 2, 2024, pursuant to the stipulation of the Debtor in Possession and Rabo Agrifinance on the record, with that extension to be stated in the *Nunc Pro Tunc* Order being issued by the court for the use of cash collateral at the prior December 14, 2024 hearing on this Motion.

The Debtor in Possession shall file and serve the Supplemental Pleadings for the further use of Cash Collateral on or before January 24, 2024. Opposition may be presented orally at the February 1, 2024 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 Use of Cash Collateral filed by Wesley and Ruth Woolery, the two Debtors in Possession 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 Authority to Use Cash Collateral is
XXXXXXX.

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

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Motion to Impose the Automatic Stay was filed on January 26, 2024. Docket 8. No Certificate of Service was filed with the court. This case being prosecuted *pro se*, the court set the hearing for February 1, 2024, to give Debtor an opportunity to rebut the presumption of bad faith filing. Order, Dckt. 3.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
-----.

The Motion to Impose the Automatic Stay is XXXXXXX.

Keanna Gayle Almeda ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's fourth bankruptcy petition pending in the past year with the prior three cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 23-90624, 23-90553, and 23-90437) were dismissed on January 16, 2024, December 19, 2023, and November 3, 2023, respectively. *See* Order, Bankr. E.D. Cal. No. 23-90624, Dckt. 11, January 16, 2024; Order, Bankr. E.D. Cal. No. 23-90553, Dckt. 20, December 19, 2023; Order, Bankr. E.D. Cal. No. 23-90437, Dckt. 38, November 3, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor filed a handwritten Motion, not supported by evidence, informing the court of her current situation. Docket 8. She explains that her car has been repossessed, and she and her children are currently homeless. She explains she is on state disability due to her chronic colitis and she is going through a homeless program searching for low income housing. Without a vehicle, Debtor states she will be unable to find housing. She requests the court grant the automatic stay of 11 U.S.C. § 362(a).

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

Debtor's prior cases were dismissed for incomplete filings. This case is also lacking necessary documents, including:

1. A Chapter 13 Plan
2. Form 122C-1 Statement of Monthly Income
3. Schedule A/B - Real and Personal Property
4. Schedule C - Exempt Property
5. Schedule D - Secured Creditors
6. Schedule E/F - Unsecured Claims
7. Schedule G - Executory Contracts
8. Schedule H - Codebtors
9. Schedule I - Current Income
10. Schedule J - Current Expenditures
11. Statement of Financial Affairs
12. Summary of Assets and Liabilities

Notice of Incomplete Filing, Docket 9.

Debtor, explaining how this filing is different and sufficiently overcomes the presumption of bad faith, at the hearing, **XXXXXXX**.

The Motion is **XXXXXXX**, and the automatic stay is imposed for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Impose the Automatic Stay filed by Keanna Gayle Almeda (“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 **XXXXXXX**, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

FINAL RULINGS

3. [23-24303-E-7](#)
[SKI-1](#)

CHARISSE ARMSTRONG
Julius Cherry

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-19-23 [\[10\]](#)

MERCEDES-BENZ VEHICLE TRUST
VS.

Final Ruling: No appearance at the February 1, 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 7 Trustee, and Office of the United States Trustee on December 19, 2023. By the court's calculation, 44 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.

Mercedes-Benz Vehicle Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2023 MERCEDES-BENZ CLA250, VIN ending in 5519 ("Vehicle"). The moving party has provided the Declaration of Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Charisse Armstrong ("Debtor").

Movant argues Debtor, as of December 13, 2023, owes \$53,047.01 under the terms of the Lease. Decl., Dckt. 12 ¶ 6. Movant has not argued any postpetition payments are late, but asserts that Debtor has missed four prepetition payments, in the amount of \$979.71 each, in the four months leading up to this filing. *Id.* at ¶ 7. Debtor has listed in her Statement of Intention to not assume this lease. Docket 1, p. 48. Debtor states in her Statement of Financial Affairs (Dckt. 1 p. 39) that the Vehicle has already been repossessed, while the Motion (Dckt. 10) and supporting Declaration (Dckt. 12) do not mention the Vehicle having already been repossessed.

Debtor has not filed an opposition in this case.

The Chapter 7 Trustee, Nikki Farris, submitted a statement of non-opposition on January 2, 2024.

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 \$53,047.01 (Decl., Dckt. 12 ¶ 6), while the value of the Vehicle is \$40,000 as stated in Movant's Exhibit A, the copy of the California Motor Vehicle Lease Agreement. Dckt. 15 p. 3.

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 not making four prepetition payments, and Debtor stating her intent not to assume this Lease.

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's Statement of Intention does not assume the Lease, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mtn., Dckt. 10 ¶ 9.

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 Vehicle 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 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 CLA250, VIN ending in 5519 (“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.

**MERCEDES-BENZ FINANCIAL
SERVICES USA LLC VS.**

Final Ruling: No appearance at the February 1, 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on December 26, 2023. By the court’s calculation, 35 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.

Mercedes-Benz Financial Services USA LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2022 MERCEDES-BENZ GLE350W4, VIN ending in 8330 (“Vehicle”). The moving party has provided the Declaration of Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Palmer Obregon and Theresa Ann Obregon (“Debtor”).

Movant argues Debtor, as of December 18, 2023, owes \$98,773.06 under the terms of the Lease. Decl., Dckt. 28 ¶ 6. Movant has asserted one prepetition and two postpetition payments are in default, each in the amount of \$1,913.71. *Id.* at ¶ 7. Debtor has listed in her Statement of Intention to not assume this lease. Docket 1, p. 48.

Debtor has not filed an opposition in this case.

The Chapter 7 Trustee, Nikki Farris, submitted a statement of non-opposition on January 2, 2024.

J.D. Power Used Car Guide Valuation Report Provided

Movant has also provided a copy of the J.D. Power Used Car Guide Valuation Report for the Vehicle. Exhibit D, Dckt. 29. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$98,773.06 (Decl., Dckt. 28 ¶ 6), while the value of the Vehicle is determined to be \$57,225, as stated on the J.D. Power Used Car Guide Valuation Report for clean retail value.

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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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 is not making payments and there is no equity in the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mtn., Dckt. 24 ¶ 10.

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 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 2022 MERCEDES-BENZ GLE350W4, VIN ending in 8330 (“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.

No other or additional relief is granted.

CITIBANK, N.A. VS.

Final Ruling: No appearance at the February 1, 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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2023. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Citibank N.A. as Trustee for American Home Mortgage Assets trust 2006-3, Mortgage-Backed Pass-Through Certificates Series 2006-3 (“Movant”) seeks relief from the automatic stay with respect to Allen Frank West d/b/a Shasta Vacations’ (“Debtor”) real property commonly known as 20450 Lakeview Drive, Lakehead, California 96051 (“Property”). Movant has provided the Declaration of Diego Rojas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made payments since June 2022. Docket 53 p. 3:14-17. Movant argues that Debtor has missed eighteen monthly payments of approximately \$1,215.83. Exhibit 2, Docket 56 p. 5:4-6. Debtor asserts that the total of the missed payments is valued at \$21,885.40 in post-petition payments. Declaration, Dckt. 56 p. 2:19-20.

CHAPTER 7 TRUSTEE’S STATEMENT OF NONOPPOSITION

Nikki B. Farris, the Chapter 7 Trustee, filed a Non-opposition on January 1, 2024.

REUSED DOCKET CONTROL NUMBER

The moving party 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. 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).

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 \$441,625.71, Declaration, Dckt. 56 p. 2:15-21, while the value of the Property is determined to be \$346,000, as stated in Movant's Broker's Price Opinion. Exhibit D, Docket 57 p. 44. Movant has asserted that the total arrearage/delinquency is \$28,598.43. Declaration, Dckt. 56 p. 2:18-19.

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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Request for Attorneys' Fees

Movant has pled contractual grounds to be awarded attorney's fees in the amount of \$1,149. The Adjustable Rate Note states that "[i]f the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all its costs and expenses in enforcing this Note. . . Those expenses include, for example, reasonable attorneys' fees." Exhibit A, Docket 57, Adjustable Rate Note, p. 4. Movant has provided their flat fee with some particularity, noting that services under the flat fee include certain services, but does not identify which services were used in this particular instance.

**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 stay be lifted because once the stay is terminated, "Debtor will have minimal motivation to insure, preserve, or protect the collateral." Docket 53 p. 7:14-15.

This is sufficient to grant relief from stay.

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 Citibank N.A. as Trustee for American Home Mortgage Assets trust 2006-3, Mortgage-Backed Pass-Through Certificates Series 2006-3 ("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 Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 20450 Lakeview Drive, Lakehead, California 96051 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

IT IS FURTHER ORDERED the moving party is awarded attorneys' fees as part of Movant's secured claim in the total amount of \$1,149 for all matters relating to this Motion.

No other or additional relief is granted.