

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Christopher M. Klein**  
Bankruptcy Judge  
Sacramento, California

**February 12, 2019 at 1:30 p.m.**

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1.	<a href="#"><u>18-26806</u></a> -C-13 <a href="#"><u>KMR-1</u></a>	<b>LINDA VANPELT</b> <b>Peter Macaluso</b>	<b>MOTION FOR RELIEF FROM AUTOMATIC STAY</b> <b>1-14-19 <a href="#"><u>[27]</u></a></b>
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**WELLS FARGO BANK, N.A. VS.**

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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2019. 28 days' notice is required. That requirement was met.

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

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10 ("Movant") seeks relief from the automatic stay with respect to Linda VanPelt's ("Debtor") real property commonly known as 7824 English Hills Road, Vacaville, California ("Property"). Movant has provided the Declaration of Carrie Moss to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Carrie Moss Declaration states that there are no post-petition defaults in the payments on the obligation secured by the Property, however, Movant states Debtor's Chapter 13 Plan states that the

property will be surrendered. The Declaration also provides evidence that there are 87 pre-petition payments in default, with a pre-petition arrearage of \$311,380.74.

## **CHAPTER 13 TRUSTEE'S RESPONSE:**

The Chapter 13 Trustee filed a Response on January 25, 2019. Dckt. 38. The Trustee notes that Debtor's Plan has not been confirmed and the Trustee's Objection to the proposed Plan was continued to February 12, 2019. In the proposed Plan the Movant is included in Class 3 and the Property is to be surrendered.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$1,231,300.00 (including \$56,191.68 secured by Movant's second deed of trust), as stated in the Carrie Moss Declaration and Schedule D. The value of the Property is determined to be \$550,000.00, as stated in Schedules A and D.

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.

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 rehabilitation. 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10 (“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 HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10, 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 7824 English Hills Road, Vacaville, California, (“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 not waived for cause.

No other or additional relief is granted.

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**CAPITAL ONE AUTO FINANCE VS.**

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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2019. 28 days' notice is required. That requirement was met.

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

**The Motion for Relief from the Automatic Stay is granted.**

Capital One Auto Finance, a division of Capital One, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Nissan Sentra SV Sedan, VIN ending in 2421 ("Vehicle"). The moving party has provided the Declaration of LeTasha Lawson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Terry Earl Parker and Tonya Lorene Tyus-Parker ("Debtors").

The LeTasha Lawson Declaration provides testimony that Debtor has not made seven post-petition payments, with a total of \$1,394.33 in post-petition payments past due.

The LeTasha Lawson Declaration also seeks to introduce evidence establishing the Vehicle's value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated. Dckts. 112; 114.

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of LeTasha Lawson to be that she obtained the Kelley Blue Book Valuation Report and is providing that to the court

under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 \$14,149.89, as stated in the LeTasha Lawson Declaration, while the value of the Vehicle is determined to be \$10,000.00, as stated in Schedules B and D filed by Debtor, which within the range stated in the Kelly Blue Book Valuation Report provided by Movant.

### **TRUSTEE'S RESPONSE:**

The Chapter 13 Trustee filed a response on January 25, 2019. Dckt. 120. The Trustee notes that Debtors are delinquent \$3,000.00 in Plan payments. Debtors proposed plan, which was denied on October 23, 2018, provided for Movant as a Class 4 creditor to paid outside the plan. No plan is currently pending. The Trustee has a Motion to Dismiss set for February 20, 2019.

### **DISCUSSION**

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.

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 rehabilitation. 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Capital One Auto Finance (“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 2015 Nissan Sentra SV Sedan (“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.

No other or additional relief is granted.

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WELLS FARGO BANK, N.A. VS.

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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 11, 2019. 28 days' notice is required. That requirement was met.

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

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Shannon Miller's ("Debtor") real property commonly known as 1631 La Playa Way, Sacramento, California ("Property"). Movant has provided the Declaration of Talnecca Kia Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Talnecca Kia Wilson Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,655.85 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default.

#### CHAPTER 13 TRUSTEE'S RESPONSE:

David Cusick ("the Chapter 13 Trustee") filed a Response on January 25, 2019. Dckt. 79. The Trustee asserts that the Debtor is current under the confirmed plan. The Debtor has paid a total of \$106,981.00 to date. The Trustee has a current balance on hand of \$9,071.89. The Trustee has disbursed \$66,008.78 in monthly contract installments to the creditor. According to the Trustee's records the creditor is due 3 monthly contract installments as of December 31, 2018 totaling \$5,339.25. The Trustee has disbursed \$18,247.26 on the creditor's claim for pre-petition arrears. The Trustee will disburse on January 31, 2019 \$7,119.00 toward the monthly contract installment, which will bring the debtor current through January 2019 and \$1,952.89 to the arrears claim.

The court also notes that at the January 9, 2019 hearing on the Trustee's Motion to Dismiss the

court denied the motion without prejudice based on the Trustee's representations that the Debtor made payments to cure the delinquencies in Plan payments that formed the original basis for the Motion. Dckt. 77.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$267,112.89 (wholly secured by Movant's deed of trust), as stated in the Talnecca Kia Wilson Declaration and Schedule D. The value of the Property is determined to be \$450,000.00, as stated in Schedules A and D. Movant states that Debtor's equity in the property totals \$182,887.11.

The Motion seeks relief based upon there being a default in payments required under the Plan. The Chapter 13 Trustee has responded, showing not only that the Debtor has made substantial payments to Creditor, but Debtor has cured the defaults and with the January 2019 Trustee distribution to Movant, the defaults will have been cured.

The defaults under the Plan having been cured, the Motion is denied without prejudice.

The court shall issue an order denying Movant's Motion for 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 Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Wells Fargo Bank, N.A. Motion for Relief from Stay is denied without prejudice.

No other or additional relief is granted.

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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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. 14 days’ notice is required. That requirement was met.

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

**The Motion for Relief from the Automatic Stay is granted.**

The Golden 1 Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Honda Odyssey, VIN ending in 6619 (“Vehicle”). The moving party has provided the Declaration of Jesus Vasquez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mohammad Mahmoud and Nejma Mahmoud (“Debtors”).

The Jesus Vasquez Declaration provides testimony that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,756.32. Movant states that it took possession of the Vehicle three days after the Debtors filed bankruptcy. Movant states that at the time Movant took possession of the Vehicle, Movant had not received notice of the bankruptcy proceeding. Movant states that no payments have been made by Debtors since July 10, 2018.

Movant requests that the court make a determination to retroactively annul the automatic stay to validate Movant’s repossession of Debtors’ Vehicle because Movant was unaware of the stay when it took that action. Movant also notes that Debtors’ statement of intent indicates that Debtors would surrender the

Vehicle.

The Jesus Vasquez Declaration also seeks to introduce evidence establishing the Vehicle's value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated.

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Jesus Vasquez to be that he obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 \$35,244.47, as stated in the Jesus Vasquez Declaration, while the value of the Vehicle is determined to be between \$23,000.00, as stated in Schedules B and D filed by Debtor, which is within the range provided by Movant in the Kelly Blue Book Valuation Report.

### **Debtor's Chapter 13 Plan**

As noted by Movant, the Chapter 13 Plan in this case provides for the surrender of the Vehicle, listing Movant's claim in Class 3 of the Plan. Plan, Dckt. 5; Order Confirming, Dckt. 32. Debtor's plan itself manifests the intention for Movant to be allowed to liquidate its collateral and apply the proceeds to the secured debt as soon as possible.

## **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). 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 rehabilitation. 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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.

The court grants retroactive relief, effective as of the time and date of the filing of this bankruptcy case. To the extent that possession was obtained in violation of the automatic stay, such was done without knowledge of this case. Further, the Chapter 13 Plan filed in this case provides for the surrender of the Vehicle to Movant, so Movant’s continued possession of the vehicle was consistent with the Chapter 13 Plan. This allowed Movant to provide security for the Vehicle, protecting

**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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has 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 a minute order substantially in the following form holding that:

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

The Motion for Relief from the Automatic Stay filed by The Golden Credit 1 Union (“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, with such relief granted retroactively to the date and time of the commencement of this bankruptcy case, 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 2016 Honda Odyssey (“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.

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