

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 14, 2023 at 1:30 p.m.

1. 22-22669-E-13 GAL-1	RAVINDER SINGH David Johnston	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-11-23 [34]
TRANSPORTATION ALLIANCE BANK VS.		

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

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 January 11, 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.
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Transportation Alliance Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Wabash RFALHSA Trailer, VIN ending in 9832 (“Trailer”). The moving party

has provided the Declaration of Jordan Trujillo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ravinder Singh (“Debtor”).

Movant argues Debtor is due for months October 7, 2019 to November 7, 2022. Pre-petition and post-petition arrearages total \$57,815.90. Declaration, Dckt. 47. Additionally, the account has charged off on October 16, 2020, and the entire balance is now due and owing with a total payoff of \$95,254.80. *Id.*

Not Properly Authenticated / Hearsay Exception Not Established

The Jordan Trujillo Declaration also seeks to introduce evidence establishing the Vehicle’s value. Though the Price Digests Valuation Report is attached as an Exhibit, it is not properly authenticated.

The Declaration states Jordan Trujillo “obtained the Price Digests Valuation.” Jordan Trujillo does not testify whether he ran the report, or how the report was “obtained.” It is not clear to the court who ran the report and whether, based on personal knowledge, it accurately reflects the value of the vehicle.

Additionally, even if the Report were authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common hearsay exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

Though the authentication is “skimpy,” in light of no opposition having been filed and the Trustee’s response, the court will grant this Motion.

The court is confident that Movant, and Movant’s counsel, will have future exhibits sufficiently authenticated in the future.

Additionally, as noted below, Debtor provides for the treatment of Movant’s secured claim to be by the surrender of the Vehicle (Class 3 surrender of collateral) in the proposed Chapter 13 Plan. Dckt. 27.

TRUSTEE’S RESPONSE

Trustee filed a Response on January 25, 2023. Dckt. 46. Trustee is not in opposition of this motion and requests that it be granted because:

1. The case was filed on October 19, 2022 and does not have a confirmed plan, nor is a motion to confirm filed.
2. Debtor has not commenced plan payments to the Trustee. Proposed Plan payments are \$1,830.00 for 60 months. Debtor is currently delinquent \$3,660.00 with another \$1,830.00 payment due January 25, 2023.
3. Debtor provides for the Property on Schedules A and D and their proposed Plan provides for Movant in Class 3.
4. The Trustee has filed a Motion to Dismiss which is set for 2-22-23.

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 \$95,254.80 (Declaration, Dckt. 39), while the value of the Trailer is determined to be \$70,000, as stated in Schedules A/B and D filed by Debtor.

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 Trailer 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 Trailer 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 Trailer, 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED 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 Trailer, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Wabash RFALHSA Trailer, VIN ending in 9832 (“Trailer”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Trailer 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 not waived for cause.

**WILMINGTON TRUST, NATIONAL
ASSOCIATION VS.**

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

Local Rule 9014-1(f)(1) Motion—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, parties requesting special notice, other parties in interest, and Office of the United States Trustee on January 12, 2023. By the court's calculation, 33 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.

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

Wilmington Trust, National Association, not in its individual capacity but solely as a trustee for MFRA Trust 2014-1 ("Movant") seeks relief from the automatic stay with respect to Joseph Humberto Espana and Martha Eugenia Espana's ("Debtor") real property commonly known as 3079 E Weldon Ave., Fresno, California ("Property"). Movant has provided the Declaration of Kimberley N. Wright 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 five post-petition payments, with a total of \$8,858.70 in post-petition payments past due. Declaration, Dckt. 147. Movant's Proof of Claim also provides evidence that as of the date of filing the petition, Debtor had a pre-petition default of \$21,161.22 (Proof of Claim 5-1).

TRUSTEE'S RESPONSE

David Cusick ("Trustee") filed a Response on January 25, 2023. Dckt. 155. Trustee requests the Motion be granted and states:

1. Debtor is currently \$34,855.27 delinquent in Plan payments. Debtor has not made a Plan payment since August of 2022.
2. Debtor provides for the Property in Class 1 of the confirmed Plan and on Schedules A and D.
3. The Trustee's records reflect Trustee has disbursed a total of \$29,531.42 in ongoing mortgage payments to Movant and \$7,644.23 in pre-petition arrears. Additionally, Trustee's records reflect there is a post-petition principal due to Movant in the amount of \$7,086.96.
4. Debtor filed a Motion to Sell the Property on August 22, 2022, Dckt. 102, which was granted on September 14, 2022, Dckt. 126.
5. The Trustee received information from Doma Title on January 23, 2023 that the sale of the Property was a "dead deal," but is now revived. Debtor's attorney's office advised the Trustee's office that a new Motion to Sell will need to be filed. However, because of Debtor's delinquency and no motion to sell pending, Trustee does not oppose the Motion for Relief.

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 \$253,248.90 (Declaration, Dckt. 147), while the value of the Property is determined to be \$433,187.72, as stated in Schedules A/B and D filed by Debtor.

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 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Wilmington Trust, National Association, not in its individual capacity but solely as a trustee for MFRA Trust 2014-1 (“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 3079 E Weldon Ave., Fresno, 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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 1/10/23. On or before 1/24/23, Debtor to deposit \$9,000.00 into the blocked account at the Bank of Marin.

Trustee Report at 341 Meeting lodged 2/2/23

The Status Conference is XXXXXXX
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FEBRUARY 14, 2023 STATUS CONFERENCE

Debtor Nadia Zhiry filed an updated Status Report on February 7, 2023. Dckt. 143. Debtor provides the following information:

- A. The additional \$25,000.00 has been deposited into the Trust Account.
- B. Debtor has disbursed the \$4,988.28 for professional fees authorized by the court.
- C. Debtor is current on the Plan payments, with the monthly payment in the amount of \$500.
- D. For the 1049 Claire Ave property, the demolition and addition to the bicycle storage have been approved. Debtor is proceeding with setting the inspections of the main house.
- E. For the 1039 Claire Ave property, the application has been resubmitted (at the request of the City).
- F. The Fire Suppression System Fees are being "negotiated."
- G. The Water and Sewer Fee can be paid from the monies in the Trust Account.
- H. The Receiver has filed his claim in the Bankruptcy Case.
- I. Debtor asserts that this is no longer a "police power," "public safety" matter that would be subject to 11 U.S.C. § 362(b).
- J. Debtor intends to defend the two adversary proceedings filed by the Receiver.

K. The Debtor asserts that with these advances, the proposed Chapter 13 Plan can be confirmed.

The Chapter 13 Trustee filed his updated Status Report on February 9, 2023. Dckt. 146. The Trustee reports that the Debtor is delinquent \$500 in the required Plan payments. Because this case was filed on May 25, 2022, the Trustee computes that the first Plan payment was due by June 25, 2022, but the first payment made by Debtor was July 18, 2022.

The proposed Chapter 13 Plan was filed in this case on June 8, 2022. Dckt. 29. The Trustee's Objection to Confirmation was filed on July 15, 2022. Dckt. 56.

The Trustee reports that the First Meeting of Creditors has been continued to April 6, 2023, at the request of the Receiver.

Adversary Proceeding

Receiver Gerard F. Keena, II, filed Adversary Proceeding 22-21314, asserting that the obligations of Debtor relating to the Receivership action, fees and expenses, and other amounts authorized by the State Court are nondischargeable pursuant to 11 U.S.C. § 523(a)(7)(A), which is an obligation for "a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty. . . ." Additionally, it asserts a first priority lien on the property at issue.

The Pre-Trial Conference is set for July 26, 2023, in the Adversary Proceeding.

At the February 14, 2023 Status Conference, **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.

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 Trustee, and Office of the United States Trustee on November 2, 2022. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case 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 to Dismiss Case is XXXXXX.

On November 2, 2022, Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Premium Mortgage Acquisition Trust, ("Creditor") filed a Motion to Dismiss for Failure to Make Plan Payments. Dckt. 23. In the caption of the Motion, it states that the Confirmation Hearing is set for December 13, 2022. However, there is no Motion to Confirm set in this case.

Creditor states that Debtor's Plan was confirmed on February 24, 2020. Then, on March 5, 2020, Creditor filed its proof of secured claim.

Creditor states that Debtor is delinquent on the post-petition monthly payments due Creditor, with the last being made on June 30, 2022, in the amount of \$1,466. Motion, ¶ 6; Dckt. 23. Creditor states that the Trustee advises Creditor that Debtor has defaulted in Plan payments, and therefore that is why Creditor is not being paid on its claim. *Id.*, ¶ 7.

In violation of the Local Bankruptcy Rules requiring exhibits to be filed as a separate pleading, a payment history has been tacked on to the back of the Motion. Dckt. 23, p. 3-7.

No declaration is filed with the Motion and the Exhibit is not authenticated.

As presented, the Motion does not provide evidence and grounds for dismissing the Case. Additionally, Creditor has specially set a motion to dismiss a Chapter 13 case on a day that is not one for the court hearing motions to dismiss.

From the Proofs of Claim filed, Creditor is the only creditor in this case (there being one other proof of claim filed for \$766).

If the court has a properly authenticated exhibit, the payment report, it appears to show that payments have been made to Creditor through the month of June 2022, for a total of \$41,650.05 disbursed to Creditor.

With monthly Plan payments of \$2,071.00 required to be made by Debtor, and if June 2022 was the last month Debtor made a Plan payment, then it would appear that the Debtor is delinquent for five (5) months, for a total of \$10,355.00.

Though there would appear to be a five figure default over a period of five months, the Chapter 13 Trustee has not addressed the default.

At the hearing, counsel for the Trustee reported that Debtor has paid in \$19,000.00, and a significant portion is being paid to the Creditor. The parties agreed to a continuance of the hearing.

January 24, 2023 Hearing

At the hearing, counsel for the Trustee reported that the Debtor is current in Plan payments and has disbursed payments to Creditor. Counsel for Creditor requested on final continuance to allow Movant to confirm all payments have been received, and then Creditor will dismiss this Motion.

February 14, 2023 Hearing

At the hearing, **XXXXXXXXXX**

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

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

The Motion to dismiss this Chapter 13 Case filed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Premium Mortgage Acquisition Trust, ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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