

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 9, 2021 at 1:30 p.m.

1. <u>16-20300-E-13</u> IRENE SINGH <u>DVW-1</u> Mark Shmorgon U.S. BANK NATIONAL ASSOCIATION VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-23-21 [49]
--	---

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and parties requesting special notice on February 23, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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.
--

U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a real property

located at 9613 Glacier Creek Way, Elk Grove, California (“Property”). The moving party has provided the Declaration of Diana L. Shaner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Irene Singh (“Debtor”).

Movant argues Debtor has not made seven (7) post-petition payments, with a total of \$12,103.11 in post-petition payments past due. Declaration, Dckt. 49. Movant also provides evidence that there are eighteen (18) pre-petition payments in default, with a pre-petition arrearage of \$30,322.00. *Id.*

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 \$265,746.82 (Declaration, Dckt. 53), while the value of the Property is determined to be \$339,247.00, 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.

Prior Discharge

Debtor was granted a hardship discharge in this case on February 25, 2021. Granting of a discharge to an individual in a Chapter 13 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 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 Attorney's Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 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 U.S. Bank, National Association as Legal Title for Trustee 2016 SC6 Title 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 Property, under its security agreement, loan documents granting it a lien in the asset identified as a real property located at 9613 Glacier Creek Way, Elk Grove, CA 95624 ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Irene Singh ("Debtor"), the discharge having been

granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

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.

2. [21-20042-E-13](#) **LUCIA SOLORIO**
[RDW-1](#) **Pro Se**
VIRINDER GREWEL VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
2-18-21 [\[32\]](#)**

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, and parties requesting special notice on February 18, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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 XXXXX.

Virinder Grewel as to an undivided 20% interest and Scott R. Williams and Anastasie C. Martin Trustees of the Williams Trust Dated August 19, 2014 as to an undivided 19.20% interest and PENSICO Trust Company LLC Custodian FBO James B. Martin IRA as to an undivided 12.667% interest and PENSICO Trust Company LLC Custodian FBO Claire M. Martin IRA as to an undivided 8.667% interest and PENSICO Trust Company LLC Custodian FBO ANASTASIE MARTIN IRA as to

an undivided 8.533% interest and Gurdev S. Grewal as to an undivided 7.333% interest and Michael J. Maderos and Catherine Maderos, Trustees of The Maderos Family Trust Dated 7/29/1999 as to an undivided 7% interest and Brian J. Tillinghast as to an undivided 7% interest and Equity Trust Company Custodian FBO Balwant K. Grewal IRA as to an undivided 6% interest and PENSICO Trust Company LLC Custodian FBO SCOTT R. WILLIAMS IRA, as to an undivided 3.60% interest, its successors and/or assignees (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2136 Twin Sisters Rd, Fairfield, California (“Property”). The moving party has provided the Declaration of Rich Mendoza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Lucia Solorio (“Debtor”).

Movant argues Debtor has not made one (1) post-petition payments, with a total of \$14,528.48 in post-petition payments past due. Declaration, Dckt. 35. Movant also provides evidence that there are eleven (11) pre-petition payments in default, with a pre-petition arrearage of \$159,813.28. *Id.*

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on March 1, 2021. Dckt. 50. The Chapter 13 Trustee first notes that Movant has not filed a Proof of Claim and requests the court take into consideration that Debtor has not made the required monthly payment of \$2,602.00 and that Trustee has filed an Objection to Confirmation where Debtor failed to utilize the proper forms and inaccurately filled out various documents.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 1, 2021. Dckt. 52. The Opposition filed by Debtor is actually a Response form approved for the United States Bankruptcy Court for the Central District of California.

Debtor filed an Amended “Response,” again using a Central District of California form. Dckt. 60. Debtor checked the box stating that Debtor opposes the motion and asserts there is a pending loan modification which is stated to be Exhibit A to the Amended Response.

Exhibit A is a Central District of California Bankruptcy Court form. Dckt. 60:6-21. It is not documentation of a pending loan modification being prosecuted by Debtor. The Plan form does not appear to be accurately completed.

First, it states that there will be 36 monthly plan payments of \$2,602.00, for a total of \$93,672 in plan payments. Bankr. C.D. Cal. Form Plan Part 2, Section 1, ¶ A; Dckt. 60 at 8.

It then states in the Central District Plan Form that Debtor will make preconfirmation adequate protection payments for Creditor’s allowed secured claim for which the collateral is personal property payments of \$93,672.00. *Id.*, p. 9.

The Central District Form Plan then provides for paying Chapter 13 Trustee fees of 11%. *Id.*, Part 2, Section II, ¶ B; p. 10. This would be \$286.22 of each monthly plan payment.

In Central District of California Plan Form Part 2, Section II, ¶ B, it further provides that

there is no monthly arrearage owed on Creditor's claim, that the interest rate to be paid through the plan is 750% (seven hundred fifty percent), there are no monthly payments on the arrearage, and that the total payments to Creditor will be \$93,672.00 - which amount equals the total gross monthly payments under the plan without taking into account the 11% Chapter 13 Trustee's fees that must first be paid. *Id.* at 11.

As part of Exhibit B is a Central District of California Order form for Granting Motion for Order Imposing a Stay or Continuing the Automatic Stay. The order form has been filed out, stating that it was opposed, that the presumption of bad faith was overcome, that the 11 U.S.C. § 362(a) stay is imposed, and there are additional provisions attached. Dckt. 60 at 23-26. The Attachment states that "Movant" has tendered payments of \$2,602.00, will do so for 36 months, and the number of notices of default and opportunities to cure that will be allowed.

The above "Order" has not been issued by this court.

At the end of this Exhibit is an email from "TFS Admin" which states that there will be a TFS deduction of \$2,602.00 beginning March 14, 2021. *Id.* at 32.

The Plan filed by Debtor in this Eastern District of California is the Central District of California Form filed as Exhibit A with the Amended Response. Plan, Dckt. 53.

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 \$1,690,709.59 (Declaration, Dckt. 35), while the value of the Property is determined to be \$1,500,000, as stated in Schedules 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 because Debtor and the Estate have not made post-petition payments. 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 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 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 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.

11 U.S.C. § 362(d)(4): Prospective Relief from Future Stays

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

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor’s inability to reorganize, and unnecessary delays by serial filings. *Id.* In this case, Debtor has filed two consecutive cases, that according to Movant, have been filed for purposes of stalling the scheduled foreclosures, with the prior unsuccessfully prosecuted case being:

- A. Case No. 20-25199
 - 1. Filed: November 13, 2020
 - 2. Chapter 13
 - 3. Dismissal Date: December 1, 2020
 - 4. Reason for Dismissal: Failure to timely file documents

The Central District Plan Form filed in this case make no provision for paying any other secured or unsecured claim. Dckt. 53. However, on Amended Schedule E/F Debtor states under penalty of perjury having creditors with the following unsecured claims:

- A. Internal Revenue Service, Priority Unsecured.....(\$45,246.71)
- B. Ford Motor Creditor Court, Priority Unsecured.....(\$53,211.00)
For an “Auto Loan”
- C. Ally Financial, Priority Unsecured.....(\$86,515.00)
For an “Auto Loan”
- D. Patelco Credit Union, Priority Unsecured.....(\$47,331.00)

It appears that the “auto loans” are likely secured claims.

E.	Murrick Bank Corp, General Unsecured.....	(\$2,410.00)
F.	Travis Credit Union, General Unsecured.....	(\$7,925.00)
G.	Cap 1/ WMT, General Unsecured.....	(\$2,500.00)
H.	CBNA, General Unsecured.....	(\$627.00)
I.	First Premier Bank, General Unsecured.....	(\$1,347.00)
J.	Capital One Bank, N.A., General Unsecured.....	(\$1,673.00)

No provision is made for either the priority or general unsecured claims, or any secured vehicle debt. Ford Motor Credit has filed its secured claim for \$56,058.87 (POC 1-1) and Ally bank has filed its secured claim for \$85,050.73 (POC 2-1).

On Schedule I, Debtor states having \$4,250 of monthly income. Dckt 1 at 38. On Schedule J Debtor states having monthly expenses of (\$21,010), of which (\$14,500) is for rental or home ownership. *Id.* at 39-40.

The financial information is either woefully inaccurate or demonstrates that Debtor is incapable of prosecuting a Chapter 13 Plan.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the previous state court action, negotiations to pay off the loan via a Settlement Agreement, an extension after the deadline had come up, and the subsequent bankruptcy filings. In effect, this is a series of bankruptcy attempts by Debtor.

In this case, the filings may be considered a series with the goal of hindering or delaying Movant on the basis that there was a previous history of litigation showing that Debtor knew the debt was owed, failed to make payments, then settled the litigation through a Settlement Agreement did not meet the due date that was negotiated, requested an extension that was given, and when that later due date came, Debtor chose to file bankruptcy two consecutive times. Then having been here, Debtor did not file the required documents and when that case was dismissed, Debtor then filed the instant bankruptcy. In the instant bankruptcy, Debtor has not shown good faith. Debtor failed to attend the Meeting of Creditors, has not made the required monthly payment of \$2,602.00 and Trustee has filed an Objection to Confirmation where Debtor failed to utilize the proper forms and/or inaccurately filled out various

documents. One would think that seeing as the previous case was dismissed for failure to timely file documents, Debtor this time would ensure that the proper documents were filed so that she may successfully prosecute this case.

Additionally, as discussed above, the Plan is incapable of being performed, with the plan payments not sufficiently funding the Trustee's fees and just the payment to Creditor. Then, the Plan fails to provide for priority claims, other secured claims, and general unsecured claims as stated under penalty of perjury to exist by the Debtor and corroborated by the Proofs of Claim filed.

Debtor also has chosen not to oppose the Chapter 13 Trustee's Motion to Dismiss, which hearing was continued from March 3, 2021, to March 9, 2021, to be heard with this Motion. With the dismissal of this case, the automatic one-year preclusion of a stay automatically going into effect as provided in 11 U.S.C. § 362(c)(4) will be in effect.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

If Creditor desires to pursue such a Motion, then it may do so, with this court having jurisdiction to render an order thereon notwithstanding the dismissal of this case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief

from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 Virinder Grewel as to an undivided 20% interest and Scott R. Williams and Anastasie C. Martin Trustees of the Williams Trust Dated August 19, 2014 as to an undivided 19.20% interest and PENSICO Trust Company LLC Custodian FBO James B. Martin IRA as to an undivided 12.667% interest and PENSICO Trust Company LLC Custodian FBO Claire M. Martin IRA as to an undivided 8.667% interest and PENSICO Trust Company LLC Custodian FBO ANASTASIE MARTIN IRA as to an undivided 8.533% interest and Gurdev S. Grewal as to an undivided 7.333% interest and Michael J. Maderos and Catherine Maderos, Trustees of The Maderos Family Trust Dated 7/29/1999 as to an undivided 7% interest and Brian J. Tillinghast as to an undivided 7% interest and Equity Trust Company Custodian FBO Balwant K. Grewal IRA as to an undivided 6% interest and PENSICO Trust Company LLC Custodian FBO SCOTT R. WILLIAMS IRA, as to an undivided 3.60% interest, its successors and/or assignees ("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 2136 Twin Sisters Rd, Fairfield, California, 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 above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of

such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

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. Any request for attorney’s fees and costs shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, 9014.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on February 1, 2021. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

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

Santander Consumer USA INC. DBA Chrysler Capital (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2014 Dodge Dart, VIN ending in 9915 (“Vehicle”). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Shavina Thomas and Donald Thomas (“Debtor”).

Movant argues Debtor has not made four (4) post-petition payments, with a total of \$1,200 in post-petition payments past due. Declaration, Dckt. 98.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on February 22, 2021. Dckt. 108. The Chapter 13 Trustee asserts that the Debtor is current under the confirmed plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 23, 2021. Dckt. 111. Debtor asserts that their unemployment benefits were delayed which caused the payment delinquency. Debtor is current as of today and the confirmed plan provides for adequate protection payments.

CREDITOR'S REPLY

Santander Consumer USA INC. DBA Chrysler Capital ("Movant") filed a Reply on March 2, 2021. Dckt. 120. Movant asserts having spoken to Debtor's Counsel about stipulating to adequate protection payments. However, Movant has yet to receive a response. Movant thus requests that the court consider the proposed stipulation for adequate protection as an appropriate remedy.

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 \$15,257.24 (Declaration, Dckt. 98), while the value of the Vehicle is determined to be \$2,800.00, as stated in Schedules A/B 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 because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Request for adequate protection payment

Creditor requests adequate protection payments after having spoken with Debtor but receiving no response in order to confirm the stipulation. A review of Debtor's confirmed plan shows that Movant was listed as a Class 2 claim, and the Property was valued at \$2,800. Debtor claims that pursuant to the confirmed plan, Movant is already receiving adequate protection payments. According to Trustee, Debtor became current through January on February 17, 2021. Trustee notes that the next scheduled payment of \$300.00 is due February 25, 2021.

At the hearing **xxxxxxx**

~~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 Santander Consumer USA INC. DBA Chrysler Capital (“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 2014 Dodge Dart, VIN ending in 9915 (“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.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Relief From the Stay is XXXXX.</p>
--

Continuance of December 15, 2020 Hearing

At the hearing, the Parties requested that the court continue the hearing to March 2021 to allow Debtor the opportunity to prosecute a plan that would resolve the underlying dispute.

DISCUSSION OF MOTION

Kendra Coupe, Debtor’s former spouse, (“Movant”) seeks relief from the automatic stay with respect to Arturo Bruce Coupe’s (“Debtor”) real property commonly known as 58 Chicory Rd., Chico, California (“Property”). Movant has provided the Declaration of Kendra Coupe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that Debtor signed a binding agreement as part of their dissolution proceeding in the Superior Court of California County of Butte (“State Court”) after the court ordered the parties to sell the house. Declaration, Dckt. 26. Escrow was set to close on September 11, 2020 but the Debtor refused to sign the papers closing escrow. *Id.* The State Court judge issued an “Elisor” to allow the title company to complete the sale. *Id.*^{Ftn.1.} Movant then testifies that Debtor then filed this bankruptcy case to interfere with the sale. *Id.* Movant further testifies that Movant and the buyers are ready to move forward with the sale, which has a purchase price of \$620,000 and after payment of the first deed of trust

and other expenses and fees will net approximately \$340,000 to split between Debtor and Movant. *Id.*

FN. 1. While Movant may be familiar with what an “Elisor” is, the federal judge is not. Fortunately, a copy of the “Elisor” is provided as Exhibit C. Dckt. 27. This appears to be a court order, similar as provided in Federal Rule of Civil Procedure 70 and Federal Rule of Bankruptcy Procedure 7070, to authorize the clerk of the court to execute documents in the place of a person failing to do so when ordered by the court.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on December 1, 2020. Dckt. 34. Debtor asserts that Movant’s statement about filing the bankruptcy to stop the sale is conclusory and explains that Debtor wishes to obtain new financing so that he can pay the existing loan, pay Movant’s share of the equity, and keep the house. *Id.* Debtor asserts that Movant is not entitled to an automatic 50% share of the equity because Debtor has separate property contribution from inherited funds of approximately \$65,000 in the property. *Id.*

Through his Chapter 13 Plan, Debtor is requesting six (6) months to obtain new financing. *Id.* Debtor argues that he wanted to obtain new financing during the dissolution but that his divorce attorney represented that this was not an option. *Id.* Debtor also asserts he is making adequate protection payments to the mortgage lender and has steady employment which will allow him to qualify for a new loan and continue making payments. *Id.* Debtor further contends sending loan modification applications to three different lenders. *Id.*

Debtor filed his proposed plan as Exhibit 1 and Schedules I and J as Exhibit 2. Dckt. 36.

MOVANT’S RESPONSE

Movant filed a Response on December 8, 2020. Dckt. 38. Movant again asserts that Debtor has not filed the case in good faith but to stop the sale having failed to make mortgage payments while still living in the residence for free and that the sale was ordered by the court with Debtor agreeing to sale by signing the purchased agreement. *Id.* Movant adds that the issues of ownership interest in the house or whether Debtor is capable of making the house are state court issues that should be solved in the state court once the stay is lifted. *Id.*

CHAPTER 13 TRUSTEE’S OPPOSITION

David P. Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 8, 2020. Dckt. 40. Trustee asserts that creditor Mechanics Bank (“Creditor”) is included in Debtor’s proposed plan and Trustee has disbursed a total of \$4,223.68 towards Debtor’s mortgage and \$0.00 in arrears payments to creditor. Trustee notes that although it appears Debtor has not adhered to a court order, the proposed plan requests the loan modification period and the mortgage payments are current. Trustee also asserts having filed an objection to Debtor’s plan for failure to provide proof of social security and unfiled tax return. *Id.* Trustee adds that the meeting of creditors has been continued to January 21, 2021 @ 1 p.m. for the returns to be filed. *Id.*

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, there have been extensive state court family law proceedings relating to the dissolution of Movant’s and Debtor’s marriage. Stipulations have been filed, orders by the state court to administer the marital property, the Debtor agreeing to sell the Property, and now the bankruptcy case has been filed to “overrule” the state court orders and agreements entered into by Debtor.

Movant has provided as Exhibit B a copy of the Purchase Agreement by which he has contracted with Movant to sell the Property. Dckt. 29. It appears that Debtor now seeks to use the Bankruptcy Code to terminate the Buyers’ rights to purchase the Property, and Debtor’s obligation to sell the Property.

The court finds that the nature of the State Court Dissolution Action warrants relief from stay for cause. The issues appear to have been litigated already, and the judge has issued an order for Debtor to move forward with the sale. Indeed, Debtor signed a binding agreement to sell the property. Therefore, judicial economy dictates that the state court order be allowed enforcement after the considerable time and resources put into the matter already.

It is projected that there will be approximately \$340,000.00 of net sales proceeds to be divided between the Debtor and Movant.

However, with respect to the sales proceeds, Debtor has made, through the Chapter 13 Trustee, some additional payments on the obligation secured by the Property.

However, if the stay is modified to allow the sale to be completed and the net sales proceeds determined, the court does not modify the stay to determine what portion of the proceeds constitute property of the bankruptcy estate. The court continues to exercise the exclusive federal jurisdiction granted pursuant to 28 U.S.C. § 1334(e) to determine the property of the bankruptcy estate based on the agreements and orders of the state court. If further state court proceedings are required, the parties may seek discretionary abstention from this court.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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).

March 9, 2021 Hearing

As of the court's March 5, 2021 drafting of this pre-hearing disposition, no other pleadings or documents have been filed.

At the hearing **xxxxxxx**