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

**Honorable Ronald H. Sargis**
Bankruptcy Judge
Sacramento, California

**March 12, 2024 at 1:30 p.m.**

---

| | | | |
|---|---|---|---|
| **1.** | **23-22217-E-13**<br>**PGM-1** | **WLODZIMIERZ LITWIN**<br>**Peter Macaluso** | **CONTINUED OBJECTION TO CLAIM OF MEB LOAN TRUST IV, U.S. BANK TRUST NATIONAL ASSOCIATION, CLAIM NUMBER 25**<br>**12-7-23 [68]** |

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, parties in interest, parties requesting special notice, attorneys of record who have appeared in the case, and Office of the United States Trustee on December 7, 2023. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 25-1 of MEB Loan Trust IV, U.S. Bank Trust National Association is xxxxxxx.**

**March 12, 2024 Hearing**

A review of the Docket on March 5, 2024 reveals that nothing new has been filed in the case. MEB Loan Trust IV, U.S. Bank Trust National Association ("Creditor") has not filed any evidence of its own to rebut Debtor's evidence, despite telling the court multiple times that it will do so.

At the hearing, **xxxxxxx**

**REVIEW OF THE OBJECTION**

Wlodzimierz J . Litwin, the Chapter 13 Debtor, ("Objector," "Debtor") requests that the court disallow the claim of Creditor, Proof of Claim No. 25-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $200,726.02. Objector asserts that Bank of America, who originally serviced the loan and subsequently transferred its rights in the loan to Creditor, released Debtor from the loan obligation after receiving the "benefit of the government HAMP and Bailout programs." Obj., Docket 68 p. 3:9-10. Objector argues that after releasing Debtor from the obligation, Bank of America filed a tax form 1099-C, Cancellation of Debt form, which further shows that Debtor is no longer liable for the Claim. *Id.* at p. 2:17-21. Objector has also submitted authenticated evidence to the court showing that on September 16, 2019, Bank of America sent Debtor a letter stating:

> "We want to inform you that on September 27, 2019 we will release obligation from your home equity line of Credit."

Exhibit 3, Docket 71.

**Creditor's Response**

On January 9, 2024 Creditor filed its Response with the court, stating:

1. Pursuant to 11 U.S.C. § 3001(f), there exists a rebuttable presumption of *prima facie* validity of Creditor's Claim 25-1. Debtor has failed to present any evidence to rebut the presumption of validity created by Creditor's timely filed Proof of Claim.

2. The lien has not been released by Bank of America or Creditor. Creditor has been in contact with Bank of America and is in the process of obtaining a signed declaration from a Bank of America employee regarding the "Release of Obligation" document provided by Debtor, who is familiar with the situation and investigation into these purported release documents.

3. Creditor asks for a continuation of this matter so it can obtain and file declarations from Bank of America employees.

Docket 73.

**Debtor's Reply to Creditor's Response**

On January 15, 2024, Debtor filed a Reply to Creditor's Response. Docket 75. In his Reply, Debtor states:

1. Pursuant to Rule 3001(c), a creditor asserting a claim based upon a writing has the procedural burden of producing and attaching to the proof of claim the documentary proof to support the claim, while pursuant to 11 U.S.C. §502(b)(l) disallows claims against the debtor that would be unenforceable against the debtor under an agreement or applicable law at the time of the bankruptcy petition.

2. Here, the Defendant's Secured Claim has been satisfied by agreement between Debtor and bank of America, and no obligation secured by the Second Deed of Trust remains. Therefore, Creditor has a duty to release the lien as they are in violation of Cal. Code Civ. P. § 2941(b)(1).

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

In Bank of America's 1099-C Form (Exhibit 3, Docket 71), it elected option "F" as the identifiable event code that prompted Bank of America filing the 1099-C. The Internal Revenue Services ("IRS") has stated as option "F:"

> A discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration.

26 C.F.R. § 1.6050P-1(b)(2)(F).

In this case, Objector has presented the court with sufficient evidence to overcome the rebuttable presumption of the validity of Claim 25-1. Debtor's authenticated Exhibits show that the Claim has been forgiven by a discharge of indebtedness agreement between Bank of America and Debtor pursuant to 26 C.F.R. § 1.6050P-1(b)(2)(F). Exhibit 3, Docket 71; Decl., Docket 70. Debtor has not only submitted an authenticated copy of Bank of America's 1099-C form, but Debtor has also shown Bank of America explicitly releasing Debtor from the Claim by agreement, effective September 27, 2019. Exhibit 3, Docket 71.

In the Opposition, Creditor asserts that the lien has not been released, and as such appears to asserting that until the lien securing the debt is released the debt still exists and cannot be discharged. However, this runs afoul of basic California Law that provides when there is no longer an obligation secured by the lien, then the lien becomes void. Thus, it is what happens with the debt that can result in a lien becoming void, even if the creditor refuses to release it. *See HBC Bank USA, N.A. v. Blendheim (In re*

*Blendheim)*, 803 F.3d 477 (9th Cir. 2015); *Freeman v. Nationstar Mortg. LLC (In re Freeman*, 2019 LEXIS 338 (B.A.P. 9th Cir. 2019); *Luchini v. JPMorgan Chase Bank, N.A.*, 511 B.R. 664 (Bankr. E.D. Cal. 2014); *Martin v. CitiFinancial Servs. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013), and Miller and Starr 5 California Real Estate § 13.11(4th Edition), which provides the following discussion:

> § 13:11. Requirement of some debt or obligation
>
> **No lien without an underlying obligation.** Because the security instrument is merely incident to and measured by the performance of the obligation,[1] there can be no lien of a mortgage or trust deed without an underlying and enforceable debt or obligation.[2] The lien does not attach prior to the creation of the underlying debt or obligation,[3] although the actual advance of funds by the creditor is not necessarily required.[4]
>
> 2 *Alliance Mortgage Co. v. Rothwell*, 10 Cal. 4th 1226, 1235, 44 Cal. Rptr. 2d 352, 900 P.2d 601 (1995); *Goodfellow v. Goodfellow*, 219 Cal. 548, 554, 27 P.2d 898 (1933); *Western Loan & Building Co. v. Scheib*, 218 Cal. 386, 389–390, 23 P.2d 745 (1933); *Fleming v. Kagan*, 189 Cal. App. 2d 791, 796, 11 Cal. Rptr. 737 (2d Dist. 1961); *Turner v. Gosden*, 121 Cal. App. 20, 22, 8 P.2d 505 (1st Dist. 1932). *See Henley v. Hotaling*, 41 Cal. 22, 28, 1871 WL 1307 (1871) ("If there is no debt there is no mortgage.").

Creditor has not submitted any evidence of its own to rebut Debtor's, instead asking this court for another continuance. As both Creditor counsel and Debtor counsel know, contested matter proceeding include the right to conduct discovery. See, Fed. R. Bankr. P. 9014(c). Creditor states that it has been in contact with Bank of America to procure a declaration since at least September 22, 2023, when Creditor first reported it was seeking evidence to support its contention. Docket 40 p. 2:3-8.

At the hearing, the counsel agreed to continue the hearing so that they may exercise the discovery rights for contested matter practice. The hearing on the Objection to Proof of Claim Number 25-1 of MEB Loan Trust IV, U.S. Bank Trust National Association continued to 1:30 p.m on March 12, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of MEB Loan Trust IV, U.S. Bank Trust National Association ("Creditor"), filed in this case by Wlodzimierz J . Litwin, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Proof of Claim Number 25-1 of MEB Loan Trust IV, U.S. Bank Trust National Association is **XXXXXXX**

**2.** 23-24529-E-7 KKY-1 | **ROCHELL MINOR** **Arete Kostopoulos** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **2-26-24 [18]**

**COMMUNITY FIRST CREDIT UNION**
**VS.**

**CASE CONVERTED: 02/27/24**

**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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and creditors on February 28, 2024. By the court's calculation, 13 days' notice was provided. 14 days' notice is required. Movant was one day late of the required service. At the hearing, **xxxxxxx**

**NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

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 7 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.**

Community First Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Subaru Crosstrek, VIN ending in 4471 ("Vehicle"). The moving party has provided the Declaration of Jennifer Conroy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rochell Minor ("Debtor"). Decl., Docket 34.

Movant argues Debtor defaulted on payments and the Vehicle was repossessed on December 15, 2023. *Id.* at ¶ 5. Movant presents evidence that Debtor missed 10 monthly payments at $629.85 each. *Id.* at ¶ 9. On January 12, 2024, debtor's counsel informed the Credit Union that debtor is no longer interested in keeping the Vehicle. *Id.* at ¶ 6.

Debtor has not filed an opposition in this matter.

**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 s $37,433.29 (Declaration, Dckt. 34 ¶ 11), while the value of the Vehicle is determined to be $25,000 as stated in Schedules A/B and D filed by Debtor. Docket 1, p. 10.

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

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

**11 U.S.C. § 362(d)(2)**

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

**Federal Rule of Bankruptcy Procedure 4001(a)(3)**
**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. However, because Movant has submitted evidence that Movant is already in possession of the car and Debtor does not intend to keep the vehicle, the court will waive the Rule 4001(a)(3) fourteen-day stay.

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.

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 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 Community First Credit 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 to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Subaru Crosstrek, VIN ending in 4471 ("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.

**3. 21-23539-E-13 PGM-3** | **DEREK WOLF** / **Peter Macaluso** | **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 7-21-23 [183]**

**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 Chapter 13 Trustee, attorneys of record, and Office of the United States Trustee on July 21, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 Objection to Notice of Mortgage Payment Change is xxxxxxx.**

**March 12, 2024 Hearing**

On February 22, 2024, Derek Wolf ("Debtor") filed a Status Conference Statement with the court. Docket 270. In his Status Conference Statement, Debtor states:

1. Debtor "questions the difference in the accounting between the two" loan servicers, Rushmore and U.S. Bank. Debtor asserts the interest bearing balance on the note is $27,250.76 at 4.25%, and the non-interest balance is $36,400. Docket 270, p. 1:22-27.

2. Debtor offers a list of non-disputed material facts. *Id.* at p. 2:1-3:4. Of importance, items 7 - 9 state:

   7. The June 14, 2023 Status Report by U.S. Bank, Trustee that on August 17, 2022 it received $56,623.75 in Haff Funds for "Reinstatement", reducing the Interest bearing Note from $100,743.66 to $44,119.92.

8. $42,887.43 arrearage was paid in August 2022, and, "of the monies received, $8,893.66 was returned to the Relief Program as an overpayment." Docket 196, p. 5, lines 7-8, pursuant to the Email dated February 13, 2024, "the $8,893.66 referenced in the November 2023 letter, the CAHAF funds were reissued in late 2023." *See* Exhibit #3

9. Additionally, pursuant to the Trustee's Payment History, the Debtor has paid $16,869.16 via the Trustee's Plan payment, again reducing the balance from $44,119.92 to $27,250.76. *See* Exhibit #4.

**Creditor's Response**

Creditor filed a Response to Debtor's Status Conference Statement on February 22, 2024. Docket 268. Creditor states:

1. Creditor only disputes items 7 - 9 of Debtor's proposed list of non-disputed material facts. *Id.* at p. 1:26-27.

2. The remaining interest bearing balance and non-interest-bearing balance are not $27,250.76 and $36,400, respectively, as Debtor asserts. *Id.* at p. 2:1-3.

3. Creditor has properly applied the grant monies received. Creditor explains that the $56,623.75 California Housing Relief Fund grant was received and applied to reinstate the loan. *Id.* at 2:6-9.

4. The $8,893.66 grant reissued in October 2023 was applied to six monthly payments (which consist of principal, interest, and escrow amounts) and to escrow and corporate advances. *Id.* at 2:11-13. This application of funds is in accordance with the terms of the deed of trust.

5. Debtor provides no evidence that the Trustee's payments of $16,869.16 to Creditor were applied incorrectly. Debtor's reliance on the Trustee's Payment History for the application of the $16,869.16 to principal is flawed. As noted in Creditor's Proof of Claim, the pre-petition arrearage of $40,899.99 consisted of not just principal, but also interest, fees, and escrow deficiencies; likewise, these payments made by the Trustee to cure the pre-petition arrearage were not solely applied to principal. *Id.* at 2:21-27.

6. Finally, Creditor has offered on multiple occasions to meet with Debtor's CPA to explain any perceived discrepancies between Debtor's accounting and Creditor's payment history so that the CPA could, in turn, explain them to Debtor and resolve the dispute. Debtor has ignored these overtures. *Id.* at 3:4-7.

This Objection was filed on July 21, 2023. The hearings have been continued, the Parties stating that they are communicating and working to resolve or reduce the issues actually in dispute. The Parties have gone so far as to advise the court, at one point, that all issues have been resolved and the stipulation was being prepared. Civ. Minutes for December 5, 2023 Hearing; Dckt. 247 (and stated below).

For the January 23, 2024 continued hearing, the court's Civil Minutes state:

> At the hearing, counsel for the Debtor reported that they are still working on getting these numbers determined by agreement. The only dispute from the Debtor is how the grant was applied to determine the principle balance. A proposed stipulation has been drafted.

Dckt. 260 (and stated below).

Given these representations, the court further continued the hearing to February 27, 2024. The Civil Minutes for the February 27, 2024, show that the Parties had not yet completed their stipulation which they state had been reached in December 2023. Creditor's Status Conference Statement (Dckt. 266) reported that an agreement had been reached, in principle, but that Debtor had not returned a signed Stipulation.

Debtor's counsel reported that agreement had been reached on all issues, except for one disputed item as to the application of a payment. The Parties requested and the court continued the hearing so that the Parties would get the settlement executed, clearly identify the one outstanding issue, and advise the court how such issue would then be adjudicated.

The court also had a hearing on the Debtor's Motion to Confirm the Chapter 13 Plan in this case on February 27, 2024. DCN: PGM-4. As show in the Civil Minutes from the hearing, the Debtor had again defaulted in making Plan payments:

> At the hearing, the Trustee reported that the debtor is now in default for two months of Plan payments. From the reaction in the courtroom, it appears that Debtor did not advise his counsel of such defaults and work to see how such would be addressed. Debtor's counsel surmised that this may have resulted from the Debtor having direct communications with some of creditor's loan servicing representative and Debtor determining what payments he should be making, even though they were not consistent with the Plan.
>
> The court noted at the hearing that the Debtor has done this before, and the court has made it expressly clear to Debtor that he must communicate with his counsel, rather than third-parties, and not determine on his own what he thinks is "right," without regard to the Bankruptcy Laws.

Civ. Minutes; Dckt. 275, p. 9.

What appears now clear to the court is that neither the Debtor nor the Creditor, and their respective counsel, can bring their dispute to a conclusion and that Debtor cannot prosecute this Chapter 13 Case. Thus, it appears that the reset button needs to be punched, the case dismissed, and the Parties take up these issues in a new Chapter 13 case, if the Debtor chooses to file one.

At the hearing, **xxxxxxx**

## REVIEW OF OBJECTION

Derek Wolf, the Debtor, filed an Objection to Notice of Mortgage Payment Change that has been filed by Creditor U.S. Bank, N.A. Obj.; Dckt. 183. The Objection focuses on whether Grants obtained by Debtor to be applied to arrearages on Creditor's loan have been properly applied, as well as post-petition payments made pursuant to the proposed Plan.

As the court has observed with the Parties at prior hearings on this and related matters, it does not appear that there is any significant factual dispute about the underlying debt, grants obtained and payments made, but arguing about prior statements, letters, notes, and computations by some predecessors in interest who have communicated directly with the Debtor.

Fortunately, it appears that Debtor, Creditor, and their counsel appreciate that rather than arguing about what others have said, done, and computed, the Parties and their counsel can prepare their joint accounting/application of the grants and payments, interest computation. By focusing on the actual facts and computation, these Parties can get these matters promptly resolved or the actual issues identified and those actual, material disputes litigated.

## STIPULATION TO CONTINUE HEARING

On August 11, 2023, Derek L. Wolf ("Debtor") and US Bank, National Association ("Creditor") filed a Stipulation to continue the hearing on Debtor's Objection to Mortgage Payment Change to October 3, 2023 at 2:00 p.m. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) and Stipulation to continue the hearing.

Federal Rule of Bankruptcy Procedure 9013 requires the filing of a motion or application when requesting an order from the court. Once a matter is set to the court's calendar, it may be continued by the court, not unilaterally by the parties. See, 8 Moore's Federal Practice - Civil § 40.02[5], L.B.R. 9014-1(j).

At the August 22, 203 hearing, counsel for the Debtor notified the court that Creditor filed a "Withdrawal" of the Notice of Mortgage Payment Change. It appears that Creditor believes that it can unilaterally dismiss contested matters pending before this court. It cannot. See Fed. R. Civ. P. 41(a) and Fed. R. Bankr. P. 7041, 9014 providing how matters before the federal court may be dismissed.

The court continues the hearing on the Objection to Notice of Mortgage Payment Change to 2:00 p.m. on October 3, 2023.

At the August 22, 2023 hearing, the Debtor and counsel reported that they had not yet been provided a clear accounting and computation of Creditor's Claim. Reviewing the Original Proof of Claim 2-1 and the two Amended Claims filed by Creditor raise issues concerning the amounts stated. The court by separate order shall order an in-person Status Conference concerning Creditor's Claim in this Case.

On September 26, 2022 Debtor submitted to the court a Reply to Creditor stating this matter is a continuation of another matter in this case, docket control number RHS-1. Debtor asserts RHS-1 should be resolved before this matter can be resolved.

**October 3, 2023 Hearing**

At the hearing, the Parties agreed to continue this hearing, to be conducted in conjunction with the Status Conference regarding Creditor's claim, docket control number RHS-1.

**November 7, 2023 Hearing**

*Ex Parte* Joint Motion to Continue
November 7, 2023 Hearing

On November 2, 2023, Debtor Derek L. Wolf and Creditor Mr. Cooper filed an Ex Parte Motion requesting the court continue the hearing on the Objection to Notice of Mortgage Payment Change to December 5, 2023. The Motion does not state the reason for the requested continuance, but in light of the efforts of the Parties and their counsel to address the issues between the Parties, obtain documentation from predecessors in interest, their focus on these matter, the court grants the *ex parte* request.

**December 5, 2023 Hearing**

On December 1, 2023, a Notice of Mortgage Payment Change was filed by Creditor U.S. Bank, N.A., Trustee, stating that the Debtor's monthly payment to Creditor is $792.89. It states that the escrow payment amount is reduced to $419.06.

Attached to the Notice of Mortgage Payment Change is a letter dated November 27, 2023. It states that Debtor's monthly mortgage payment to Creditor (principal, interest, escrow) is reduced from ($1,274.20) to ($792.89). Notice, p. 5.

At the hearing, counsel for the Debtor reported that a final set of financial terms has been reached, and need to get that documented, including an order thereof.

The Parties agreed to a further continuance as Debtor and Creditor work to get a stipulation documenting the resolution of the dispute.

**January 17, 2024 Hearing**

The court's review of the Docket on January 16, 2024 reveals no new documents have been uploaded, apart from a Motion to Substitute Attorney (Docket 253).

At the hearing, counsel for the Debtor reported that they are still working on getting these numbers determined by agreement. The only dispute from the Debtor is how the grant was applied to determine the principle balance. A proposed stipulation has been drafted.

The hearing is continued to 1:30 p.m. on February 22, 2024, to allow the parties to continue with the analysis of the application of the grant monies.

**February 27, 2024 Hearing**

The court's review of the docket on February 20, 2024 revealed that U.S. Bank National Association ("Creditor") filed a Status Conference Statement. Docket 266. This statement reports that in December 2023, Debtor and Creditor reached an agreement, in principle, to resolve Debtor's Objection to Notice of Payment Change and other loan servicing issues raised by Debtor. *Id.* at 1:24-28. The reported terms of the agreement are stated to be:

1. As of November 1, 2023, Debtor's current post-petition mortgage payment, subject to change pursuant to the terms of the Note and Deed of Trust, is $792.89, which sum includes a current escrow of $419.06 and a principal and interest payment of $373.83 at the current rate of interest of 4.125%.

2. As of November 1, 2023, the unpaid, interest-bearing principal balance of Debtor's loan is $78,096.20.

3. As of November 1, 2023, the deferred principal balance due and owing under Debtor's loan is $36,400, which sum is in addition to the outstanding principal balance above, and is non-interest bearing.

4. As of November 1, 2023, the total principal balance, including both the interest bearing and deferred non-interest bearing principal, is $114,496.20.

5. All issues regarding the application of payments made and received, have been accounted for and applied by the Creditor and resolved between Debtor and Creditor.

6. All issues regarding the receipt and application of Grant/loan monies received by or on behalf of the Debtor have been resolved.

7. Each party to bear their own attorney's fees and costs with regard to the Debtor's Objection to the Notice of Mortgage Payment Change and ancillary issues raised thereby.

Docket 266 ¶¶ 1-7.

Creditor further states that as of February 20, 2024 Debtor has not provided a signed stipulation reflecting this agreement and has not requested any revisions to the proposed agreement. *Id*. at 2:18-19. Creditor states that the Court has provided multiple continuances to allow Debtor time to execute the stipulation, and Debtor still has not done so, and Debtor has not articulated any factual basis as to why he believes any funds were improperly applied. *Id.* at 3:1-4.

At the hearing, counsel for the Creditor agrees that all issues have been resolved issues but the final application of the monies, and the one disputed item as to the application of payments.

The Parties agreed to continue the hearing to 1:30 p.m. on March 12, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Mortgage Payment Change filed by Derek L. Wolf ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Notice of Mortgage Payment Change is **xxxxxxx**.

**4. 23-23242-E-13 PGM-1 — BRYAN GALLINGER — Peter Macaluso — CONTINUED MOTION TO CONFIRM PLAN — 1-5-24 [56]**

**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, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2024. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is xxxxxxx.**

**March 12, 2024 Hearing**

The court continued the Hearing on this Motion from February 27, 2024, to 1:30 p.m. on March 12, 2024, to allow counsel for the Debtor, Counsel for Creditor, and counsel for the Chapter 13 Trustee to expeditiously put together the agreed amendments for a Plan that provides for the prompt sale of the property and the claim objection process (as well as other provisions they deem appropriate).

While Debtor appears to have been stumbling in this case, the court continued the hearing so that Debtor and Debtor's counsel could straighten it out, it appearing that Debtor's shortcomings had been clearly identified and Debtor could promptly move forward the amendments that would resolve any oppositions to confirmation.

The court's order continuing the hearing included the following specific requirements for Debtor to addressing in seeking to confirm the Chapter 13 Plan in this case:

> **IT IS FURTHER ORDERED** that Debtor, Creditor, and the Chapter 13 Trustee shall work to assemble the necessary amendments to the Propose Plan to include:
>
> A. Specifying a calendar date certain (approximately 90 days) for the Debtor to consummate a sale of the property securing Creditor's claim.
>
> B. If Debtor cannot consummate such a timely sale, than a limited successor representative shall be appointed to market and sell (after court authorization) in a timely, commercially reasonable matter, the property that secures Creditor's Claim.
>
> C. If the Debtor has an objection to Creditor's claim, the deadline for filing it is two weeks before the hearing on the Motion to Sell the property that secures Creditor's Claim. If such objection is filed, the court will determine what portion, if any, of the sales proceeds relate to a *bona fide*, good faith dispute, will be retained by the Chapter 13 Trustee, encumbered by Creditor's lien, pending the court's ruling on the Objection to Claim. This amount will include sufficient funds for the disputed portion of the Claim, interest thereon, and reasonable fees and expenses relating to such Objection. The portion of the Claim which is not objected to, as well as any amounts the court determines that the there is not a good faith, bona fide objection thereto, will be disbursed directly from escrow to Creditor. The court shall make that determination in an interim order on the Objection to Claim, and restate it in the Order authorizing the sale of the Property, if such Objection is asserted and the Parties have not resolved the matter. (It appears that if the Objection to Claim is litigated, it will necessitate discovery and a possible evidentiary hearing.)

The hearing is continued to allow counsel for the Debtor, Counsel for Creditor, and counsel for the Chapter 13 Trustee to expeditiously put together the agreed amendments for a Plan that provides for the prompt sale of the property and the claim objection process (as well as other provisions they deem appropriate).

A Review of the Docket on March 5, 2024 reveals that no new documents have been filed with the court. At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

Debtor seeks confirmation of the Amended Plan. The Amended Plan provides for 36 monthly payments in the amount of $2,250.00. Amended Plan, Dckt. 58, § 7. Debtor states in the Amended Plan that he intends to sell real property on or before June 2024, and to contribute an amount sufficient to end the Amended Plan at 100% to all creditors. *Id*. The court assumes that Debtor is referring to real property located at 9421 Fair Oaks Blvd, Fair Oaks, CA ("Property") since this is the only real property that belongs to the bankruptcy estate. Debtor does not specify the address of the real property he intends to sell in the provisions of the Amended Plan.

Levick Family Trust, which is a Class 2 creditor, holds a secured claim in the Property that Debtor intends the sell. The Amended Plan provides that Levick Family Trust is to receive a monthly dividend in the amount of $1,380.00 for 6 months, or until the sale of the Property is completed. *Id*. However, the amount claimed by Levick Family Trust is disputed by the Debtor and is the subject of a pending arbitration. Debtor states in the Amended Plan that should arbitration not be successful, Debtor will file an objection to the claim. *Id*. The Amended Plan provides that the disputed amount of the claim shall be held in trust until there is a resolution. *Id*. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 29, 2024. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor needs to provide more details regarding the sale of real property because the provisions listed in the Amended Plan are vague. The Amended Plan does not provide an address for the property that will be sold, does not estimate the amount to be contributed to the Amended Plan, nor does it describe any effort required to sell the property. Opposition, Docket 68, p. 2:1-10.

B. Debtor's treatment of Class 2 creditor, Levick Family Trust, is ambiguous. The Amended Plan fails to provide any treatment to Levick Family Trust if the sale of the Property is not complete, or what the creditor will receive if the sale is completed. Opposition, Docket 68, p. 2:11-15.

C. Debtor has failed to provide proof that there is a pending arbitration with Levick Family Trust or what the claim is that is being disputed. Opposition, Docket 68, p. 2:16-20.

D. The Trustee is not clear if the Debtor will follow through and file an objection to claim. Debtor states in the Amended Plan "Should arbitration not be successful, Debtor to file an objection to the claim with in 60 days of the claim being filed". Amended Plan, Dckt. 58, § 7. Debtor has not filed an objection to proof of claim to date, and 60 days for the Debtor to object would have been December 3, 2023 because Levick Family Trust filed its proof of claim on October 4, 2023. Opposition, Docket 68, p. 2:21-26.

E. Debtor has not provided any evidence that the Property has been insured. Opposition, Docket 68, p. 2:27-28. Trustee is concerned that Debtor has failed to obtain insurance for the Property and is failing to provide evidence in order to conceal this fact.

F. Trustee is unable to determine if the Debtor's income is sufficient to sustain the Amended Plan payments. Opposition, Docket 68, p. 3:3-7. Debtor's Schedule I shows $1,200.00 in income from "Room Rental". Petition, Docket 14, p. 17:8h. Debtor has failed to provide adequate evidence of the amount received and the reliability of collecting this rent. Opposition, Docket 68, p. 3:3-7.

G. Debtor has failed to amend any Schedules, and the current Schedules contain missing and/or inaccurate information. Opposition, Docket 68, p. 3:8-22. Debtor admitted to the Trustee at the First Meeting of Creditors that he owns Bitcoin, but has failed to amend Schedule A/B to add this asset. *Id*. On Debtor's Schedule I, it shows income from a "Room Rental" for 1,200.00 per month, and $100.00 per month from "Dog Care Services". Petition, Docket 14, p. 17:8h. Trustee states that at the First Meeting of Creditors, Debtor admitted that he receives $1,800.00 per month for the "Rom Rental" and that he does not have "Dog Care Services" income. Opposition, Docket 68, p. 3:8-22. Trustee is concerned about the accuracy of the Debtor's income.

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 69.

**CREDITOR'S OPPOSITION**

Douglas Levick, Melba Levick and Ron Levick ("Creditor") holding a secured claim filed an Opposition on January 29, 2024. Dckt. 71. Creditor opposes confirmation of the Plan on the basis that:

A. There are no creditors in Classes 1, 3, 4, 5, or 6. Class 7 includes one creditor claim in the amount of $11,748.89 to the State of California Franchise Tax Board. Otherwise, Creditor along with the County of Sacramento are the only Class 2 creditors. Opposition, Docket 71, p. 2:3-6.

B. Creditors believe that Debtor has filed this Chapter 13 Case to frustrate foreclosure of a first-priority deed of trust securing a promissory note given by Debtor to Secured Creditors in the purchase and sale of the real property identified above. Opposition, Docket 71, p. 2:1-3.

C. Debtor has failed to pay the 2023-2024 real property taxes owed to the County of Sacramento. His Class 2 debt to the County has increased from $16,970.46 by an additional $7,415.77 for a new debt amount of $24,386.23. The First Amended Plan does not disclose this fact. *Id.* at 2:7-9.

D. Debtor's Amended Plan proposes to reduce the monthly payments to Secured Creditors by $500.00 to a new monthly payment of $1,380.00.

E. Debtor has failed to pay his 2023-2024 real property taxes. *Id.* at 4:18.

F. Debtor asserts that Class 2 secured claims will be paid in full through the plan, but full payment is not possible without a sale of property. *Id.* at 5:4-5.

G. In order for Debtor to distribute property of sufficient value to pay the Claim through the First Amended Plan - for illustration, using only the matured principal amount, $425,000.00 - Debtor would be required to make monthly payments for the benefit of Secured Creditors in the amount of $11,805.55 ($425,000.00 ÷ 36 months = $11,805.55). The Schedules and Statements reveal Debtor cannot pay this amount: He cannot repay Secured Creditors the amount of the Claim through the Plan. *Id.* at 5:15-19.

H. Debtor's income is insufficient to pay the plan. Debtor filed tax returns showing income of $16,812.00 for the year 2021, and $8,259.00 for the tax year 2022. *Id.* at 6:27-28. Therefore, the only way Debtor can pay Secured Creditors is to sell the property.

I. There is no pending arbitration; Debtor has testified and admitted he had not filed any civil action against Secured Creditors and had not filed any petition to compel arbitration. Debtor has not filed any civil action or petition to compel arbitration at any time after the first meeting. *Id.* at 7:16-20.

J. The claim is not disputed. No meet and confer has taken place to identify what counter claim may be asserted against Secured Creditors. Debtor has had three years to bring any action or proceeding against Secured Creditors, but has not done so. *Id.* at 8:1-7.

K. Debtor intends to delay and avoid payment of the debt he owes to Secured Creditors. *Id.* at 8:8-11.

L. Debtor has failed to submit any evidence of payment of rents by tenants he claims to have at the Property. *Id.* at 10:5-6.

M. Debtor has not shown proof that he will be able to receive income as a Pool Manager through the winter. *Id.* at 10:7-10.

Creditor submits the Declaration of Terence Kilpatrick to authenticate the facts alleged in the Opposition regarding Debtor's actions or proceedings against Creditor. Declaration, Docket 72. Creditor further incorporates by reference Docket entries 25 and 26.

Creditor does not support the other claims with any authenticated evidence.

**DEBTOR'S REPLY**

Debtor filed a reply on February 6, 2024. Dckt. 80. Debtor responded as followed:

A. Debtor acknowledges that the Property Taxes are due through 2024, and the amount due through 2023 is $16,836.46. Reply, Docket 80, p. 2:3-5. Debtor also acknowledges that Levick Family Trust Proof of Claim is $453,675.57. *Id*. at 2:6-7.

B. Debtor states that the Property has been insured through 2023, and is presently insured until November 2024. Reply, Docket 80, p. 2:9-11. Debtor submitted proof that the Property is insured through November 16, 2024. Exhibit B, Docket 84.

In reviewing Exhibit B, it is not evidence that insurance is in place, but rather is a Quote of what such insurance would cost from American Modern. At the end of the "evidence" that insurance is in place, there is an important notice:

> **IMPORTANT NOTICE**
> This is an insurance quote only, and is not a binder or confirmation of coverage. This quote is subject to change based on the final underwriting review. Coverage will not begin until after you have provided your agent with all required documentation and you have been notified that the insurance company has accepted your application.
>
> Thank you for this opportunity to provide an insurance quotation for your consideration. If you have any questions about the premium, please give us a call.

Exhibit B, Dckt. 84 at 3-4. Thus, this exhibit is not evidence of insurance, but only that Debtor appears to have requested a quote for insurance coverage.

C. Debtor has filed an application to hire a real estate agent to list the Property, and will include the MLS listing for the hearing on February 27, 2024. Reply, Docket 80, p**.** 2:12-15.

D. Debtor intends to sell the Property within the next 90 days, subject to offers received. Reply, Docket 80, p**.** 2:16-20. Debtor believes that all offers received will close by June 2024. *Id*.

E. The proposed real estate broker has performed an analysis of the fair market value for the Property and believes that its value is $550,000.00. Decl., Docket 77, p. 2:9-11.

F. Debtor intends that the Levick Family Trust receive a monthly dividend of $1,380.00 during the period prior to the sale of the Property. Reply, Docket 80, p**.** 3:1-3.

G. Debtor requests that the Trustee hold any amounts in dispute between Debtor and Levick Family Trust, pending resolution through arbitration. Reply, Docket 80, p**.** 3:4-7.

H. Debtor has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p**.** 3:8-9.

I. Debtor is receiving "Room Rental" income of $1,800.00. Reply, Docket 80, p**.** 3:10-11.

J. Debtor is no longer receiving income for "Dog Care Services". Reply, Docket 80, p**.** 3:12-13.

K. Debtor has paid $9,000.00 through January 25, 2024, and the Amended Plan requires 5 more payments of $2,250.00 for a total of $11,250.00, before payoff from the sale of the Property. Reply, Docket 80, p**.** 3:14-17.

L. In this case, there are no unsecured claims, only claims subject to the Property. Reply, Docket 80, p**.** 3:19-26. Debtor is moving quickly to sell the Property, and is current on the $2,250.00 monthly Amended Plan payments. *Id*. at 4:1-8. Debtor is waiting for the hearing to employ a broker to sell the Property. *Id*. After the sale of the Property, Debtor expects that there will be a profit of $39,487.97. *Id.* at 3:23-26.

M. Debtor request that this Motion to Confirm Amended Plan be continued approximately 60 days. Reply, Docket 80, p**.** 4:1-8.

**DISCUSSION**

**Terms Regarding Sale of Property**

Trustee objects on the grounds that the Debtor does not estimate the amount to be contributed to the Amended Plan, nor does the Amended Plan describe any effort required to sell the Property prior to June 2024. Trustee requests more details regarding the sale, including at a minimum an intended listing price, an estimate of the amount of payment, when the Debtor will file a motion to employ a broker, and when the Debtor will start to market the property. Debtor's reply states that the property has been valued

at $550,000.00. Reply, Docket 80, p. 2:21-24. Debtor supplies Declaration of Broker, Docket 77, in support. Debtor proposes that the Property be sold by a real estate broker, and Debtor's motion to employ a broker was filed on January 31, 2024.

The terms of the sale have been refined with greater clarity, but still miss some critical details, such as what will happen if the Property is not sold, and what amount the real estate broker will receive from the sale.

**Ambiguous Treatment of Class 2 Creditors**

Trustee objects on the grounds that the Creditor will only receive monthly dividends of $1,380.00 per month for 6 months, or until sale is completed. Trustee argues that Debtor fails to provide any treatment to Creditor if the sale does not complete, or what the creditor will receive at the end of 6 months, in June 2024. In response, Debtor states that the Secured Creditor will receive a monthly dividend of $1,380.00 per month during the period prior to the sale, i.e. through June of 2024. Reply, Docket 80, p. 3:1-3. Debtor later states that "with the subject property selling for $550,000.00 . . . less $453,675.57 Secured Creditors' claim, allows for a profit of $39,487.97." Thus, Debtor appears to infer that Creditor will receive the full value of their claim at some time after the sale. However, the Plan does not state specifically when this disbursement to Secured Creditors must take place.

Also, Debtor does not appear to have a contingency in place if the sale does not complete. Highlighting the need for this contingency is Debtor's own words, "Debtor intends to sell the Subject Property within the next (90) days **subject to** offers received." *Id.* at 2:16-20 (emphasis added). Debtor has set an Application to hire a Real Estate Agent hearing for February 27, 2024. Debtor expects that all proper offers would be received by May of 2024. This leaves slightly over three months to receive offers.

**Objection to Claim and Arbitration**

Debtor requests that the Chapter 13 Trustee hold any amounts "in dispute between the Secured Creditors, and the Debtor pending resolution of the disputed amount due by way of Arbitration of Objection to Claim." Docket 80, p. 3:5-7. Debtor provides no evidence that there is arbitration of objection to claim. In fact, Debtor's calculates the Creditor's claim of $453,675.57 into their profits from the sale of the property. *Id*. at 3:25. Debtor's estimation of Creditor's claim is the same as the proof of claim. It is not clear to the court how, why, or on what grounds Debtor objects to Creditor's claim.

On Amended Schedule A/B Debtor lists this dispute as a lawsuit against Levick Family Trust, and has a value of $1.00. Dckt. 93 at 8. It appears that Debtor is trying to estimate a value, and that estimation is only $1.00. Generally, a debtor would list the dollar amount accurately of what the debtor is seeking to recover, not "just a buck." Taken at Debtor's word stated under penalty of perjury, the litigation will only reduce that Creditor's claim by $1.00, clearly not worth the time and expense to litigation such $1.00 issue.

**Evidence of Insurance**

Creditor objects on the grounds that Debtor has failed to insure the Property. As noted above, Debtor has merely provided an provided an unauthenticated quote from an insurance company for coverage at the address. Exhibit B, Docket 84, American Modern Dwelling Basic Quote.

**Insufficient Income**

Trustee and Creditor object to confirmation of the Amended Plan because they are not certain that Debtor's income is sufficient to fund the Amended Plan. Debtor's Schedule I shows $1,200.00 in monthly income from "Room Rental". Petition, Docket 14, p. 17:8h. However, in Debtor's reply, it states that he receiving "Room Rental" income of $1,800.00 per month. Reply, Docket 80, p**.** 3:10-11. No evidence has been provided that verifies the amount the Debtor receives per month for the "Rental Room", nor has there been any evidence presented to show the Trustee that this income will be reliable for the life of the Amended Plan. Debtor states in his Declaration, he "intend[s] to make $2,250.00 per month through June 2024, while [he] prepare[s] to sell the home." Docket 83 ¶ 2. Debtor does not testify as to how he can earn this income.

**Amended Schedules**

Trustee objects to confirmation of the Amended Plan because during the First Meeting of Creditors, Debtor admitted that he owned Bitcoin, but has failed to amend Schedule A/B to include this asset. Opposition, Docket 68, p. 3:8-22. Debtor states in his reply that he has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p**.** 3:8-9.

Amended Schedule A/B filed on February 22, 2024, does not list $1,250.00 in Bitcoin assets and a Wells Fargo Bank saving account with a balance of $1,915.07, which had not been included on original Schedule A/B. Dckt. 93 at 7.

Additionally, Trustee objects because on Debtor's Schedule I, it shows income from a "Room Rental" for $1,200.00 per month, and $100.00 per month from "Dog Care Services." Petition, Docket 14, p. 17:8h. Debtor has stated that he is actually receiving $1,800.00 from the "Room Rental" and is no longer receiving income from "Dog Care Services". Reply, Docket 80, p**.** 3:10-13. Upon the court's review of the Docket, no amended Schedule has been filed with the court that corrects either of these discrepancies.

**Property Taxes**

Creditor states that Debtor actually owes the County of Sacramento $24,386.23, and that Debtor is failing to disclose this fact. Opposition, Docket 71, p. 2:7-9. In Debtor's reply, it states that while property taxes are due through 2024, the amount due through 2023 is $16,836.46. Reply, Docket 80, p. 2:3-5.

**FEBRUARY 13, 2024 HEARING**

As the Parties may be aware, the judge hearing this court's Department E Calendar on February 13, 2024, is not the judge to whom this Case is assigned. It appears that in considering this Motion, a knowledge of the history of the case is of great benefit.

Additionally, it appears that the Debtor may be able to address some of these oppositions and can file a Statement of Amendments to Plan for this court to consider in determining how this matter can go forward and how Creditor's interests are adequately protected.

The court continues the hearing to 2:00 p.m. on February 27, 2024, at which the judge to whom this case is assigned will be conducting the hearing.

**February 27, 2024 Hearing**

In compliance with this court's Order (Docket 89), the debtor, Bryan Gary Gallinger ("Debtor") filed a status report/supplemental briefing with the court on February 22, 2024. Docket 95. In his status report, the Debtor states:

1. The real property located at 9421 Fair Oaks Blvd, Fair Oaks, CA, is to be sold for an asking price of $550,000.

2. Debtor has filed a Motion to Employ a broker to sell the property.

3. Creditor Levick Family Trust, which is a Class 2 creditor, asserts a claim of $453,675.57, but Debtor disputes approximately $200,000 of that claim.

4. The Debtor is prepared to employ Matthew V. Brady, Esq., of 2339 Gold Meadow Way, Gold River, CA 95670, to prosecute either an objection to Proof of Claim 1, request B.D.R., or file a new civil suit, and expects to make a decision by 2/27/24, as recommended by Mr. Brady.

5. Debtor has valid insurance on the property.

6. The rental income stops in February of 2024 to allow for the house to be shown for sale.

7. Debtor has filed his Amended Schedules.

8. A sale of the home would result in a 100% repayment plan, and after all fees and costs, the sale would generate a profit of $39,487.97 for Debtor.

At the hearing, long but very productive discussion ensued with the court by the respective counsel for Creditor and Debtor. Debtor's counsel reported that all of the outstanding issues can be resolved, and Debtor will put together amendments to the Plan which include:

A. Specifying a calendar date certain (approximately 90 days) for the Debtor to consummate a sale of the property securing Creditor's claim.

B. If Debtor cannot consummate such a timely sale, than a limited successor representative shall be appointed to market and sell (after court authorization) in a timely, commercially reasonable matter, the property that secures Creditor's Claim.

C. If the Debtor has an objection to Creditor's claim, the deadline for filing it is two weeks before the hearing on the Motion to Sell the property that secures Creditor's Claim. If such objection is filed, the court will determine what portion, if any, of the sales proceeds relate to a *bona fide*, good faith dispute, will be retained by the Chapter 13 Trustee, encumbered by Creditor's lien, pending the court's ruling on the Objection to

> Claim. This amount will include sufficient funds for the disputed portion of the Claim, interest thereon, and reasonable fees and expenses relating to such Objection. The portion of the Claim which is not objected to, as well as any amounts the court determines that the there is not a good faith, bona fide objection thereto, will be disbursed directly from escrow to Creditor. The court shall make that determination in an interim order on the Objection to Claim, and restate it in the Order authorizing the sale of the Property, if such Objection is asserted and the Parties have not resolved the matter. (It appears that if the Objection to Claim is litigated, it will necessitate discovery and a possible evidentiary hearing.)

The hearing is continued to 1:30 p.m. on March 12, 2024, to allow counsel for the Debtor, Counsel for Creditor, and counsel for the Chapter 13 Trustee to expeditiously put together the agreed amendments for a Plan that provides for the prompt sale of the property and the claim objection process (as well as other provisions they deem appropriate).

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 Confirm the Amended Chapter 13 Plan filed by the debtor, Bryan Gary Gallinger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **xxxxxxx**.

**5. 24-20145-E-13 DONALD DUPONT**
**Pro Se**

**MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11**
**1-30-24 [21]**

**5 thru 6**

**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 all parties of the ailing list and Office of the United States Trustee on February 23, 2024. *See* Order Setting Hearing, Docket 44. By the court's calculation, 13 days' notice was provided.

The Motion to Convert 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 to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is xxxxxxx .**

This Motion to Convert the Chapter 13 bankruptcy case of Donald DuPont ("Debtor") has been filed by Donald DuPont ("Movant"), the Chapter 13 Debtor in *pro se*. Movant asserts, in his bare-bones Motion which improperly lacks a Docket Control Number (LOCAL BANKR. R. 9014-1(c)), that the case should be converted because Movant's noncontingent, liquidated debts exceed the $2,750,000 debt limit prescribed in 11 U.S.C. § 109(e). Docket 27.

However, on February 23, 2024, Movant, filed what could be a response to the Order to Show Cause why this bankruptcy case should not be dismissed. Debtor states that he has now concluded that he could remain in Chapter 13, asserting Movant will "negotiate with MCA creditors to take no more than 10 cents on the dollar and get the total secured and unsecured debt below the maximum allow of $2,750,000." Docket 47, p. 1.

With respect to the debts limits for an individual to qualify to file a Chapter 13 bankruptcy case, 11 U.S.C. § 109(e) provides:

> (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

As the court addressing in greater detail below, the debt limitations required that the individual must have less than $2,750,000 as of the date of filing the bankruptcy case that are:

1. Noncontingent,

2. Liquidated

debts. The individual cannot reduce the amount of the noncontingent (meaning that there are no remaining conditions for the creditor to assert the debt against the debtor) and liquidated (the amount being claimed are for damages that have occurred and not future, potential damages) "merely" because the debtor disputes the debt, no judgment has been entered, or that debtor believes that some basis to exist to reduce the amount of the debt (such as offsetting a counterclaim).

When the court continued the prior hearings, the court and debtor discussed the need for knowledgeable bankruptcy attorneys when someone has business debt, debts that are more complex than consumer credit card and other similar debts.

At the hearing, **xxxxxxx**

**APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C.

§ 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

Eligibility for Chapter 13 depends on the debt limits prescribed in 11 U.S.C. § 109(e), which states,

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

Importantly, "the date of filing of the petition" determines eligibility. 11 U.S.C. § 109(e); *In re Scovis*, 249 F.3d 975, 985 (9th Cir. 2001).

Noncontingent debt is debt that is "based on and arises from events that occurred entirely pre-petition." *In re Aparicio*, 589 B.R. 667, 675 (Bankr. E.D. Cal. 2018) (internal citations omitted). If a debt will be triggered upon the occurrence or happening of an extrinsic event that occurs postpetition, the debt is contingent. *Id.* A debt is liquidated if "the amount of the debt is readily determinable," regardless if there are outstanding disputes regarding liability. *In re Slack*, 187 F.3d 1070, 1073 (9th Cir. 1999).

Debt limits as asserted on Schedules at the time of filing the bankruptcy petition determine eligibility. *In re Scovis*, 249 F.3d 975 (9th Cir. 2001). In *Scovis*, debtors initially scheduled their general unsecured debt in the amount of $40,499.83. Debtors then attempted to reduce that amount to $22,919.85 during the pendency of the case. The Bankruptcy Appellate Panel used the $22,919.85 number to calculate the general unsecured debt, and the Ninth Circuit Court of Appeals overturned that decision, holding instead the originally scheduled $40,499.83 number should be used in the calculation. *Scovis*, 249 F.3d at 985 ("Since we determine eligibility from the time the petition is filed, and since ordinary events occurring subsequent to the filing (e.g. paying down debt) do not affect the eligibility determination, the correct amount of general unsecured debt is $40,499.83.").

**DISCUSSION**

Movant has not provided the court with any legal analysis or persuasive authority in his Motion describing why the debts scheduled are either contingent or unliquidated. Movant has simply asserted he plans to negotiate down his debts, so he should stay in Chapter 13. The court disagrees. The Ninth Circuit case law is clear; debt limits for eligibility purposes are determined at the time of filing the petition. Movant fails to address this fact in any of his Motions.

Movant's Schedules, filed on January 30, 2024, assert his noncontingent, liquidated debts in the amount of $3,310,509. Docket 23, p.1 line 3b. Any dispute over liability does not render this number unliquidated. Any attempt to reduce this number during the pendency of the case will not affect this number for purposes of determining Chapter 13 eligibility. By the court's calculation, this number exceeds the debt limits allowed under 11 U.S.C. § 109(e) by approximately $560,000.

Therefore, cause exists to convert this case pursuant to 11 U.S.C. §§ 1307(d) and 109(e). The Motion is granted, and the case is converted to a case under Chapter 11.

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 Convert the Chapter 13 case filed by Donald DuPont ("Movant"), the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 11 of Title 11, United States Code.

**6. 24-20145-E-13 RHS-2** | **DONALD DUPONT** **Pro Se** | **CONTINUED NOTICE OF INTENT TO DISMISS CASE IF DOCUMENTS ARE NOT TIMELY FILED** **1-16-24 [9]**

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

---

The Notice of Intent to Dismiss the Case if Documents are not Timely Filed was served by the Clerk of the Court on Debtor, creditors, and Chapter 13 Trustee as stated on the Certificate of Service on January 18, 2024. The court computes that 34 days' notice has been provided.

The court issued a Notice of Intent to Dismiss the Case if Documents are not Timely Filed ("Notice") based on Debtor's failure to file the following documents: Chapter 13 Plan, Form 122C-1 Statement of Monthly Income, Schedule A/B - Real and Personal Property, Schedule C - Exempt Property, Schedule D - Secured Creditors, Schedule E/F - Unsecured Claims, Schedule G - Executory Contracts, Schedule H - Codebtors, Schedule I - Current Income, Schedule J - Current Expend., Statement of Financial Affairs, and Summary of Assets and Liabilities.

**The Notice of Intent to Dismiss the Case is dismissed, Debtor having fully cured the default in the filing requirements.**

**March 12, 2024 Hearing**

A review of the Docket on March 1, 2024 reveals that the defects in filing have now been fully cured. On February 21, 2024, Debtor filed the remaining missing documents, a Chapter 13 Plan (Docket 36) and Form 122C-1 (Docket 35).

**REVIEW OF THE NOTICE**

The court's docket reflects that the default in filing required documents that is the subject of the Notice has been partially cured. The following documents were filed by Debtor: Schedule A/B - Real and Personal Property, Schedule C - Exempt Property, Schedule D - Secured Creditors, Schedule E/F - Unsecured Claims, Schedule G - Executory Contracts, Schedule H - Codebtors, Schedule I - Current Income, Schedule J - Current Expend., Statement of Financial Affairs, and Summary of Assets and Liabilities. Docket 23. However, Debtor has not filed a Chapter 13 Plan or Form 122C-1 as of the court's review of the docket on February 14, 2024.

At the hearing, the court addressed with the Debtor the filing requirements, the Debtor stating that he has the documents on file and there is no need for a Chapter 13 Plan since he is seeking to convert this case to once under Chapter 11 counsel for Creditor Confidant Board, LLC questioned the accuracy of the information on the filed Schedules and Statement of Financial Affairs.

The court the hearing on the Notice of Intent to Dismiss the Case is continued to 1:30 p.m. on March 12, 2024, (Specially Set Day and Time) to be conducted in conjunction with the hearing on the Debtor's *pro se* Motion to Convert this case to one under Chapter 11.

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 Order to Show Cause 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 Notice of Intent to Dismiss the Case is dismissed, Debtor having fully cured the default in the filing requirements.

**7.** **23-20658-E-13** **STEVEN JIMENEZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
**CJC-2** **Michael Hays** **2-14-24 [25]**

**ANDREWS FEDERAL CREDIT UNION**
**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 February 14, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2), which is required by Local Bankruptcy Rule 4001-1(c). The Notice of Motion states that a hearing will be held and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be appearances at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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

Andrews Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford Explorer, VIN ending in 7446 ("Vehicle"). The moving party has

provided the Declaration of Charmaine Padgett to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Steven Jiminez ("Debtor"). Decl., Docket 27.

Movant argues Debtor has not made three post-petition payments, with a total of $1,290.24 in post-petition payments past due. Declaration, Dckt. 27 ¶ 6.

**Manheim Market Report Provided**

Movant has also provided a copy of the Manheim Market Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

**STIPULATION**

Creditor filed a Stipulation with the court on February 27, 2024. Docket 31. The court construes the Stipulation to be a nonopposition by Debtor. The terms of the Stipulation are:

1. The Automatic Stay of 11 U.S.C. §362(a) is terminated as to the Debtor and the Debtor's bankruptcy estate to allow Movant to exercise its right to take any and all actions necessary and appropriate to enforce Movant's interest against the 2017 Ford Explorer, VIN#1FM5K7D84HGB07446 (the "Vehicle"), including but not limited to, the right to liquidate on and/or take possession and control of the Vehicle.

2. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

3. This Order shall remain binding and effective in any conversion of this case to another chapter under the bankruptcy code.

4. The Chapter 13 Trustee shall make no further distribution to Movant on its secured claim (Claim No.: 1).

5. Upon the Court's entry of the Order approving the Stipulation, the hearing currently scheduled for March 12, 2024 at 01:30 PM may be taken off the Court's calendar.

Docket 31. The parties request the court take the matter of its calendar; however, a Motion for Relief must be sought pursuant to Fed. R. Bankr. P. 9014. Fed. R. Bankr. P. 4001(a)(1). According to Fed. R. Bankr. P. 9014, a hearing in a contest matter, such as a Motion for Relief, "shall be afforded [to] the party against whom relief is sought."

**Review of the Confirmed Chapter 13 Plan**

On May 5, 2023, the court issued an Order (Docket 18) confirming Debtor's Chapter 13 Plan filed on March 1, 2023 (Docket 3). The Plan calls for a monthly payment of 110$ for a 36 month duration. Plan, Docket 3 ¶¶ 2.01, 2.03. By the court's calculation, this amount comes to $3,960. After subtracting

Chapter 13 Trustee fees at around 8%, that would leave $3,643 to pay creditors over the life of the Plan. The court notes that there are not classified creditors being paid through the life of the Plan. General unsecured claims come in at $18,310, and will be paid no less than an estimated 1%, coming in at $183.10. Attorneys' fees are $4,000 with $500 being paid prepetition and $3,500 being paid through the life of the Plan. By the court's calculations, that would leave -$40.10 after paying Chapter 13 Trustee's fees at 8%, Attorney's fees, and the unsecured creditors at no less than 1%.

The only classified creditor is in Class 4 of the Plan, who is also the Creditor bringing this Motion for Relief. Class 4 claims "mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed." Plan, Docket 3 ¶ 3.10. Further, "[u]pon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are. . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." *Id.* at ¶ 3.11. Because Creditor has been classified in Class 4, it is apparent that Creditor need not bring a Motion for Relief to pursue its rights in the collateral if there has been a default.

Of more concern to the court, Debtor is voluntarily giving up his only car of which he relies on to care for himself and his family. The Plan will now be paying merely $183.10 to creditors and over $3,500 to the Chapter 13 Trustee and Debtor's attorney while Debtor no longer keeps his vehicle. At the hearing, xxxxxxx

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief from the Automatic Stay/Motion for Adequate Protection, the debt secured by this asset is determined to be $26,655.89 (Declaration, Dckt. 27 ¶ 7), while the value of the Vehicle is determined to be $16,150, as stated on the Manheim Market Report. Exhibit 3, Docket 28 p. 9.

**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 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.

**Federal Rule of Bankruptcy Procedure 4001(a)(3)**
**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Because Debtor has entered into a Stipulation indicating non-opposition, the court will waive the 4001(a)(3) 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 Andrews Federal Credit 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 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 2017 Ford Explorer, VIN ending in 7446 ("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.

**8. 24-20297-E-13 LORELL LEAL**
**Pro Se**

**MOTION FOR SPECIAL POWER OF ATTORNEY**
**3-1-24 [15]**

**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 Debtor, in *pro se*, filed the Motion for Special Power of Attorney on March 1, 2024. Docket 15. This court entered an Order setting the hearing on this matter for March 12, 2024 at 1:30 p.m. Docket 16.

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 Special Power of Attorney is denied without prejudice.**

Lorell Leal ("Debtor") moved the court to grant her attorney-in-fact, Lisa Schlein, power of attorney to act on Debtor's behalf in her bankruptcy case. With her Motion, Debtor submits unauthenticated Exhibits showing that Ms. Schlein has been authorized to act as attorney-in-fact. Docket 15, ps. 2-3. Fed. R. Bankr. P. 9010, titled "Representation and Appearances; Powers of Attorney," states,

> (a) Authority To Act Personally or by Attorney. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.
>
> (b) Notice of Appearance. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.
>
> **(c) Power of Attorney**. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of

> claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. §459, §953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

There is no "granting" of a power of attorney by the court. If the debtor seeks to have another person to have a power of attorney and act in the name of the debtor (rather than the debtor) in a case, the debtor may do so. But a power of attorney is not a device to create "multiple debtor entities" in a bankruptcy case.

While a power of attorney may allow a person other than the debtor appear in the case rather than the debtor, it does not allow the person who receives the power of attorney to act as the debtor's attorney. For someone participating in federal court to appear, the recipient must be represented by a licensed attorney. *See* 10 Collier on Bankruptcy ¶ 9010.02, which states:

> A party may also appear through an authorized agent, attorney in fact, or proxy. However, these entities cannot perform any act that would constitute the unauthorized practice of law.

If a debtor (or other party in a federal court case) is not legally competent to participate in such proceeding, then Federal Rule of Civil Procedure 25(b) and Federal Rules of Bankruptcy Procedure 7025 and 1016, which provides:

> Rule 1016. Death or Incompetency of Debtor
>
> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

It may be that this Debtor, acting in pro se, is working to prosecute this case in a clear and transparent manner.

> At the hearing, **xxxxxxx**
>
> Upon review of the Motion, there appears to be no relief for the court to grant.

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 Special Power of Attorney having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice, there being no basis for granting such relief shown.

# FINAL RULINGS

**9.** **23-23696-E-13** **JARED GOODREAU**
**DWE-1** **Eric Wood**

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY**
**2-5-24 [28]**

**U.S. BANK NATIONAL ASSOCIATION VS.**

**Final Ruling:** No appearance at the March 12, 2024 Hearing is required.
---

**The Motion for Relief from Stay / Motion to Confirm Termination or Absence of Stay is dismissed without prejudice.**

U.S. Bank National Association, having filed a Notice of Voluntary Dismissal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on March 5, 2024, Dckt. 54; no prejudice to the responding party appearing by the dismissal of the Motion; U.S. Bank National Association having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jared Michael Goudreau ("Debtor"); the *Ex Parte* Motion is granted, U.S. Bank National Association's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Stay / Motion to Confirm Termination or Absence of Stay filed by U.S. Bank National Association, having been presented to the court, U.S. Bank National Association having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from Stay / Motion to Confirm Termination or Absence of Stay is dismissed without prejudice.

**10. 23-23547-E-13 CAS-1** | **KIMBERLY SMITH** | **Mo Mokarram** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **2-2-24 [20]**

**BRIDGECREST CREDIT COMPANY, LLC VS.**

**Final Ruling:** No appearance at the March 12, 2024 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 2, 2024. By the court's calculation, 39 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.**

Bridgecrest Credit Company, LLC, as Servicer for Carvana, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Toyota Camry SE Sedan 4D, vin ending in 2839 ("Vehicle"). The moving party has provided the Declaration of Keisha Walker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kimberly Ann Smith ("Debtor").

Movant argues Debtor has not made 4 post-petition payments, with a total of $2,300.00 in post-petition payments past due. Declaration, Dckt. 23, p. 2:20-21. Movant does not assert that there are any pre-petition payments in default. Relief from Stay Summary Sheet, Docket 22 ¶8(a).

**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 $22,010.28 (Declaration, Dckt. 23 ps. 2:24-3:1), while the value

of the Vehicle is disputed. Debtor states that the value is $18,500.00. Voluntary Petition, Docket 1, Schedule A/B, line 3.1. Movant states the value is $9,865.00 as calculated by Kelley Blue Book. Exhibit C, Docket 24. The debt secured by this asset exceeds the Vehicle's value under either valuation.

**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 Vehicle when the liens against the Vehicle exceed the Vehicle'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 Vehicle for either Debtor or the Estate, and the Vehicle is not necessary for any effective rehabilitation in this Chapter 13 case. 11 U.S.C. § 362(d)(2).

**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 argues that there is no equity in the collateral, and that it continues to depreciate.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Bridgecrest Credit Company, LLC, as for Carvana, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Toyota Camry SE Sedan 4D, vin ending in 2839 ("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.