UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 21, 2023 at 1:30 p.m.

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1. **22-22864-E-13** **NATHANIEL SOBAYO** **MOTION FOR RELIEF FROM**
AP-2 **Pro Se** **AUTOMATIC STAY**
2-15-23 [145]

SELECT PORTFOLIO SERVICING INC. VS.

1 thru 2

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 (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Select Portfolio Servicing Inc., as servicer for Wells Fargo Bank, N.A. as Trustee f/b/o holders of Structured Asset Mortgage Investments II Trust 2007-AR4, Mortgage Pass-Through Certificates, Series

2007-AR4 ("Movant") seeks relief from the automatic stay with respect to Nathaniel Basola Sobayo's ("Debtor") real property commonly known as 2112 Lincoln Street, East Palo Alto, California ("Property"). Movant has provided the Declaration of Heather Johnson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one post-petition payments, with a total of $3,351.93 in post-petition payments past due. Declaration, Dckt. 147. Movant's Information Sheet also provides evidence that there are fifty-three pre-petition payments in default, with a pre-petition arrearage of $179,680.74. Movant's Information Sheet, Dckt. 151.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 6, 2023. Dckt. 169. Debtor asserts:

1. Their case has already been dismissed as of the hearing of February 2023.

The court notes, Debtor's case has not yet been dismissed. Rather, both Debtor and Trustee's Motion to Dismiss has been granted, with a delay entry of the order dismissing the case after this Motion has been heard and decided. Order, Dckt. 159.

2. They seek clarification of docket entries 156-159, 161.

3. Movant is not a serial filer.

4. Movant is requesting a continuance on the grounds they are not a lawyer and "must have adequate and sufficient time in order to do so, in securing a loyal attorney and law firm competent enough to make right all wrongs perpetrated against this petitioner."

The court has previously addressed Debtor's requests for seeking representation in the pending Adversary. Adv. Case No. 23-02001, Order on Motion for Continuance to Permit Time to Seek Attorney, Dckt. 29. Debtor has now had four (4) months since filing the current bankruptcy case to secure counsel. Debtor has not provided credible evidence of their attempts to seek counsel, and the court finds Debtor's continued request to prolong proceedings in order to seek counsel is an attempt to delay or hinder the bankruptcy process.

5. Special changes in circumstances occurred including:

   a. Substantial studies, research, and due diligence has been done by the Debtor.

Debtor does not provide evidence to support why Debtor's independent studies, research, and due diligence supports denial of this Motion.

   b. Debtor's monthly income has increased.

Debtor does not provide evidence of their increased income nor why Debtor's increased income supports denial of this Motion.

c. Debtor has "knowledge of all required tax preparations and filings . . . ."

The court does not find this statement as relevant to the pending Motion.

d. Debtor will perform the terms of a confirmed plan in this chapter 13 case.

The court notes, Debtor voluntarily requested dismissal of this case. Debtor's Motion to Dismiss, Dckt. 137. Therefore, it is unclear to the court why Debtor now seeks to perform the terms of a confirmed plan in this case.

TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed a response on March 6, 2023. Dckt. 170. Trustee states Debtor has not commenced Plan payments and is currently $480.00 delinquent. Trustee does not oppose this Motion.

DEBTOR'S SECOND OPPOSITION

Debtor filed a second opposition. Dckt. 174. However, this opposition appears to oppose Trustee's objection to exemptions. Therefore, it appears to be inadvertently filed with the Motion for Relief.

MOVANT'S REPLY

Movant filed a reply on March 14, 2023. Dckt. 175. Movant states Debtor's argument that they are unable to obtain adequate legal counsel is no longer credible. Additionally, Debtor's argument that they have experienced a change in circumstances is not supported by credible evidence. Movant requests the court grant the Motion.

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 $869,130.41 (Declaration, Dckt. 147), while the value of the Property is stated to be $1,300,000.00 in Schedules A/B and D filed by Debtor. Dckt. 19. The court notes, Movant has provided the declaration of Salley Kit-Yee Chung, a Real Estate Broker, who indicates that based on their comparison of the Property and six (6) examined properties, as of October 4, 2022, a fair market value of the Property is $900,000.00. Declaration, Dckt. 148. Movant filed, as Exhibit 9, Ms. Chung's "Broker's Price Opinion." Exhibit 9, Dckt. 150 at 56-63. The Opinion compares other listings in the area, and provides an "As Is" value of $900,000.00. The court finds this evidence as credible in establishing the Property's value as $900,000.000

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

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

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Debtor has three prior bankruptcy cases that were dismissed. The court has previously listed in detail Debtor's prior bankruptcy cases, not only filed in this district, but also the Northern District of California. Adv. Case No. 23-02001, Order on Motion for Continuance to Permit Time to Seek Attorney, Dckt. 29. In relevant part, the court stated:

a. Eastern District of California Chapter 13 Case 22-20063 (Debtor's "Third Bankruptcy Case"):

i. Filed.....January 11, 2022
ii. Dismissed.....September 14, 2022

iii. Debtor was represented by counsel when the Third Bankruptcy Case was filed. Said counsel withdrew from representation of Debtor, with Debtor stating at the hearing that he did not oppose the withdrawal of counsel and that Debtor was seeking new counsel. 22-20063; July 7, 2022 Order, Dckt. 73.

iv. On July 28, 2022, Debtor filed an *Ex Parte* Application For Order of Continuance of Trustee's Motion to Dismiss in Order to Permit Adequate Time to Hire a Lawyer for Competent and Zealous Representation. *Id*.; Dckt. 74.

(1) Debtor requested that the hearing on the Trustee's Motion to Dismiss be continued from August 2, 2022, to September 19, 2022.

(a) Debtor states that the prior time granted by the court "is not reasonably sufficient for debtor to secure a competent and zealous attorney. . . ." *Id*., p. 1:27-28. Debtor continues listing seven lawyers or Legal Services/Senior Adult Legal Assistant referrals he received.

(2) The Motion continues, appearing to include portions from a prior pleading.

(3) The court granted the *Ex Parte* Motion, continuing the hearing on the Trustee's Motion to Dismiss to September 13, 2022. *Id*.; Order, Dckt 82.

v. Previously in the Third Bankruptcy Case, on June 15, 2022, Debtor filed a *pro se* Opposition to the Trustee's Motion to Dismiss. *Id*. Dckt. 62. In the accompanying Memorandum with his Opposition, Debtor requested: (1) a jury trial on the Motion to Dismiss, and (2) that the hearing on the Motion to Dismiss be continued at least

120 days from the then set July 7, 2022 hearing date, so that Debtor can hire "a new lawyer to zealously, represent me, the same debtor, petitioner and plaintiff. . . ." *Id.*; Memorandum, Dckt. 62.

vi. The court granted Debtor's Motion to Continue the July 7, 2022 hearing date, continuing it to August 2, 2022. *Id.*; Order, Dckt. 72.

vii. The court then continued the hearing on the Motion to Dismiss again, to the September 6, 2022 hearing date. *Id.*; Order, Dckt. 82. Debtor requested the further continuance; *Id.*; *Ex Parte* Motion, Dckt. 74; with Debtor stating that the time previously given was not sufficient for "debtor to secure a competent and zealous representation attorney."

viii. The court denied the request for a further continuance, and granted the Trustee's Motion to Dismiss the Third Bankruptcy Case. *Id.*; Order, Dckt. 92.

Looking at just Debtor's Third and Fourth Bankruptcy Cases in the Eastern District of California, Debtor has been seeking to "secure a competent and zealous attorney" since June 15, 2022, here in the Eastern District of California. Debtor has had now more than seven (7) months to secure such counsel.

b. Northern District of California Chapter 13 Case 19-50887 (Debtor's "Second Bankruptcy Case"):

i. Filed.....April 20, 2019
ii. Dismissed.....August 18, 2022.

iii. Debtor was represented by counsel in his Second Bankruptcy Case.

iv. On July 8, 2019, the Chapter 13 Trustee in Debtor's Second Bankruptcy case filed a Motion to Dismiss the case; 19-50887; Motion, Dckt. 31.

(1) The Trustee Motion grounds stated in the Motion include:

(a) Debtor failed to provide proof of Debtor being current on all Post-Petition payments on a Class 1 Secured Claim under the proposed plan. *Id.*, p. 1.

(b) Debtor's proposed plan included a nonstandard provision to pay the Class 1 Claim (a secured claim with prepetition defaults to be cured) directly rather than through the Plan as otherwise required for Class 1 claims.

(c) General Order 34 of the Northern District Bankruptcy Court requires that debtors seeking to use that nonstandard provision to provide evidence that such payments have been made.

(2) Debtor responded on July 22, 2019, to the Motion to Dismiss with a Motion to Continue the Chapter 13 Bankruptcy Case Proceeding; *Id*.; Dckt. 36, which grounds included the following grounds (the below listing not recounting all of the statements and allegations in the Motion to Continue):

(a) It has become apparent to Debtor that his bankruptcy counsel in the Second Bankruptcy Case is "not enthusiastic, passionate, nor zealous about the debtor's case. . . ." *Id*., p. 1.

(b) Debtor has claims against "some Predatory, Fruadulent [sic] and Malicious Illegal Lenders . . . Yet, the attorney of records, continues to ignore, any such plea, nor all other series of pleas. . . ." *Id*., p. 2.

(c) Thus, Debtor requested of the court in his Second Bankruptcy Case:

> [g]rant this debtor 120 days of continuance from the date of the granting of debtor's motion, or from the date of the hearing to dismiss case as scheduled by the Chapter 13 Trustee. It is also estimated that, seeking and getting approval of a pro bono bankruptcy law firm and or other attorney or attorneys to handle and help to handle and cure all errors of deficiencies as claimed by the chapter 13 trustee, in order to be enabled to protect debtor's ;

STATE OF CALIFORNIA AND UNITED STATES FEDERAL CONSTITUTIONAL LEGAL PROTECTIONS, but not limited to a comprehensive legal bankruptcy rights, civil rights, in efforts; to secure relief and peace in debtor's life, this will take, in the minimum, 120 days or longer, without creating and any harm what so ever to any and all legally bonafide creditors.

Id., p. 4.

(d) The bankruptcy judge did not grant the continuance and ordered the case dismissed by an Order entered on August 6, 2019. *Id*.; Dckt. 39.

v. On August 23, 2019, Debtor filed an *Ex Parte* Motion to Vacate the court's order dismissing the Second Bankruptcy Case. *Id*.; Dckt. 40.

(1) Debtor's grounds for vacating the Order Dismissing the Case included (but are not limited to):

(a) Reference is made to Debtor being the victim of

(i)"series of illegal lynching by a group of predatory lenders, probable money launders, fraudsters, and tricksters, for the past 27 months and still counting hitherto." *Id*., p. 2:6-8.

(b) Debtor seeks to:

[c]orrect possible conflicting errors caused by the manipulations of this debtor's enemies in series of their **DIABOLICAL TACTICS USED TO DECEIVE THIS HONORABLE COURT AND THE CHAPTER 13 TRUSTEE IN DISMISSING A GOOD FAITH EFFORTS TO RE-ORGANIZE THIS DEBTOR'S FINANCIAL CONDITIONS FOR SUCCESS AND A PEACEFUL LIFE.**

Id., p. 2:14-19.

(2) Identified state court proceedings were not stayed by the state court judge after the Second Bankruptcy Case was filed.

(3) That Debtor's lawyers were not providing "Zealous, Competent, and Or Loyal Legal Representation" for the Debtor. *Id*., p. 4:2-8.

(4) Improper rulings have been issued in the various state court actions.

(5) Parties in the state court actions failed to comply with the meet and confer requirements.

(6) Much of the grounds are stated as collateral attacks on various state court rulings and proceedings. Much of the pleading reads as if it were written to be filed in state court proceedings or copy and pasted from such pleading into the Motion to Vacate.

(7) In addition to vacating the order dismissing the case, all proceedings in the Second Bankruptcy Case should be continued to afford Debtor time for:

> Searching, Interviewing, Investigating, Making of Decisions; and For; Hiring Competent and Zealous Lawyers; With the Required Loyalty of this Debtor Petitioner. . . .
>
> *Id*., p. 30:7-15.

When this earlier date of July 22, 2019, when Debtor stated he was seeking "Zealous" and "Loyal" counsel, is cobbled onto the periods of the Third Bankruptcy Case and the Current Fourth Bankruptcy Case, Debtor has been on this search for forty (40) Months (August 2019 through January 24, 2023).

vi. On September 8, 2019, the bankruptcy judge denied the Motion to Vacate the Order Dismissing the Bankruptcy Case. *Id*.; Dckt. 43. In the Order the court:

(1) States that the bankruptcy case was dismissed not only due to the failure of Debtor to document that the post-petition payments had been made to the Class 1 creditor, but that Debtor had also failed to make any Chapter 13 Plan payments and that Debtor exceeded the debt limits for a Chapter 13 case. *Id*.; 2:13-17. Further, Debtor had not disputed these facts.

(2) The court then provided a discussion, including the applicable legal authorities, that

the federal court did not have authority to review, and overrule, determinations in state court judicial proceedings. *Id*., p. 2:18-22, 3:1-3.

vii. On September 16, 2019, Debtor filed a Notice of Appeal of the Order Denying the Motion to Vacate. Bankruptcy Appellate Panel No. NC-19-1231.

(1) The Bankruptcy Appellate Panel affirmed the bankruptcy court's order denying the Motion to Vacate. *Sobayo v. Derham-Burk (In re Sobayo)*, 9th Cir. Bankruptcy Appellate Panel No. NC-19-1231, 2020 Bankr. LEXIS 1403 (B.A.P. 9th Cir. 2020).

(a) In sustaining the bankruptcy court, the Bankruptcy Appellate Panel's decision includes the following:

> Mr. Sobayo has never advanced a relevant argument supporting reconsideration of the dismissal of his case. He did not assert, nor does the record reflect, any circumstances that would constitute mistake, inadvertence, surprise, or excusable neglect under Civil Rule 60(b)(1). While he states on appeal that the three bankruptcies he filed were "needlessly, negligently, and abusively dismissed without merits" due to "mistakes" of the bankruptcy court and the trustee, he failed to specifically identify any "mistakes" warranting reconsideration. Nor did he offer newly discovered evidence under Civil Rule 60(b)(2), argue that the dismissal order was void under Civil Rule 60(b)(4), or argue that it had been satisfied, discharged, or released under Civil Rule 60(b)(5). At best, his desire for adversary proceedings to address alleged issues in state court matters could be considered under the catch-all provision, Civil Rule 60(b)(6). But, his desire to file adversary proceedings does not excuse his missed plan payments, noncompliance with local rules, and chapter 13 ineligibility.
>
> We acknowledge the sincerity of Mr. Sobayo's view that he has been ill-served by his attorneys, lenders, and others. And we do not underestimate

> the difficulties that he has faced in navigating through disputes in several courts. But there is no basis consistent with controlling law for a reversal of the bankruptcy court's decision to deny the Reconsideration Motion.

Sobayo v. Derham-Burk (In re Sobayo), 2020 Bankr. LEXIS 1403, *2-3.

c. Northern District of California Chapter 13 Case 18-52678 (Debtor's "First Bankruptcy Case"):

i. Filed.....December 5, 2018
ii. Dismissed.....February 4, 2019

iii. Debtor was represented by counsel in his First Bankruptcy Case.

iv. The First Bankruptcy Case was dismissed when Debtor failed to file, after having been granted an extension of time, required documents (amended Schedules, Amended Statement of Financial Affairs, and Chapter 13 Plan) and federal income tax returns. 18-52678; Order, Dckt. 33. *See,* Motion for Extension of time; *Id*., Dckt. 7.

Id.

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

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the three prior bankruptcy cases, with limited prosecution on behalf of the Debtor to move forward with confirming a plan and making payments, and numerous attempts to delay bankruptcy proceedings due to Debtor failing to find adequate counsel, yet having almost nine (9) months since Debtor's first Eastern District bankruptcy case was filed and almost four (4) years since Debtor's second bankruptcy case, which he first argued he was seeking competent counsel. In effect, this is a series of bankruptcy attempts by Debtor to delay Movant foreclosing on the Property as they have been attempting to since 2018.

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

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

Request for 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. Although Movant's Motion does not state grounds for relief, their Memorandum of Points and Authorities, Dckt. 149, pleads adequate facts and presents sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3). Movant is reminded that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013.

This 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 Select Portfolio Servicing Inc., as servicer for Wells Fargo Bank, N.A. as Trustee f/b/o holders of Structured Asset Mortgage Investments II Trust 2007-AR4, Mortgage Pass-Through Certificates, Series 2007-AR4 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2112 Lincoln Street, East Palo Alto, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

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

No other or additional relief is granted.

2. 22-22864-E-13 DPC-2 | **NATHANIEL SOBAYO** **Pro Se** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-11-23 [92]**

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:

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 (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2023. By the court's calculation, 79 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Debtor's Claim of Exemptions is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Nathaniel Basola Sobayo's ("Debtor") claimed exemptions under Federal Law because California law does not allow federal exemptions, but allows a choice of state exemptions. California Code of Civil Procedure § 703.140 does not allow for a debtor domiciled in California to elect federal exemptions. Given the evidence that Debtor has been domiciled in California for the last 730 prior to filing, Debtor's claimed exemptions under 11 U.S.C. § 522(b)(2), including:

1. 519 Granite Way
2. 2112 Lincoln Street
3. 329 Hawkridge Drive

are disallowed. Debtor has also listed a Mitsubishi Outlander in which Debtor states a $20,000 exemption is claimed, but no basis for such exemption is stated on Schedule C. Dckt. 19 at 13-14.

The Chapter 13 Trustee's Objection is sustained.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Court's Continuance

The case having been ordered to be dismissed after the hearing on the Motion for Relief From the Automatic Stay filed by Wells Fargo, Bank, N.A., as Trustee, , the hearing on the Objection to Claim of Exemption is continued to 1:30 p.m. on March 21, 2023, specially set at the same time as the Motion of Wells Fargo Bank, N.A., as Trustee. This avoids the refiling of such motion in the event Debtor seeks to not have the case dismissed pursuant to his prior motion, with the entry of the Order of dismissal not being entered until after the March 21, 2023 hearing on the Motion for Relief From the Automatic Stay.

Debtor's Opposition

Debtor filed an opposition on March 10, 2023. Dckt. 173. Debtor states they are not competent to handle such an objection and thus requests the court to "voluntarily take the trustee's objection from the calendar of the court."

March 21, 2023 Hearing

California, exercising the powers granted to it by Congress in 11 U.S.C. § 522(b)(2) to make the Federal Exemptions not applicable in a bankruptcy case filed in one of the federal districts in California. Cal. C.C.P. 703.140. However, California provides both a special set of bankruptcy exemptions that a debtor may elect to claim, in addition to the non-bankruptcy exemptions that exist in California. *Id*.

At the hearing, XXXXXXXXXX

The court sustains the Objection to the Claim of Exemptions given that they are claimed under the federal statutory scheme which are not permitted as exemptions in the State of California.

This is without prejudice to Debtor claiming exemptions permitted in a bankruptcy case filed in California.

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 Objection to Claim of Exemptions 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 Objection to Exemptions is sustained and the exemptions claimed in the real property identified as 519 Granite Way, 2112 Lincoln Street, and 329 Hawkridge Drive, and the vehicle identified as Mitsubishi Outlander are disallowed in their entirety, without prejudice to Debtor asserting an exemption provided under the applicable law..

3.	**18-20567-E-13** **DPC-2**	**JOYCE BILYEU** **Lucas Garcia**	**CONTINUED MOTION TO DISMISS CASE** **7-27-22 [57]**

The Motion to Dismiss is xxxxxxxxx

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Motion on July 27, 2022 requesting that the court seeks dismissal of the case on the basis that:

1. the debtor, Joyce Ann Bilyeu ("Debtor"), is delinquent in Plan payments.

Debtor was determined to be $2,799.00 delinquent in plan payments, which represents multiple months of the $700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, the court dismissed the case. Order, Dckt. 62.

VACATING DISMISSAL AND RESETTING HEARING ON MOTION TO DISMISS

On November 9, 2022, this court entered an order vacating the dismissal. Dckt. 83. The court's detailed findings in vacating the dismissal order and the recitation of the Debtor's "mistakes" is set forth in the Civil Minutes from the hearing on the Motion to Dismiss. Dckt. 82.

DECEMBER 13, 2022 RESET HEARING
ON MOTION TO DISMISS

On December 6, 2022, the Trustee provided the court with a Supplemental Pleading (titled Status Report), Dckt. 86, asserting the following:

A. Debtor's Plan payments are currently delinquent $4,899.00, and no Plan payment has been made since September 1, 2022.

B. The delinquency includes the $3,500.00 that Debtor's counsel was ordered to disburse from his Trust Account to the Chapter 13 Trustee.

C. The Debtor is now in month 58 of a 60 month Plan. While 57 payments totaling $41,241.00 are required under the Plan, Debtor has made payments totaling only $36,342.00.

D. Debtor has taken no action to prosecute this case since the court vacated the dismissal.

Based on the Debtor's further defaults, the Trustee renews the request that this case be dismissed.

As was clear in the court addressing the Motion to Vacate, the monetary defaults were caused by the Debtor incorrectly terminating the Plan payments. From the Trustee's report, Debtor (though presumably having the excess funds by not having made the Plan payments) is not prosecuting this case.

Though Debtor has offered no opposition, the Trustee requested a continuance. The Trustee reports that the Debtor and Debtor's counsel have not yet complied with this court's prior order to disburse the $3,500.00 that Debtor's counsel held in his trust account for the plan payments be immediately disbursed to the Trustee so that the monies could be disbursed through the Plan to creditors.

The court continues this hearing to afford the Trustee to consider whether further motions will be required in the administration of this case.

January 17, 2023 Status Report

Trustee filed a Status Report on January 17, 2023. Dckt. 92. Trustee states Debtor is still delinquent $1,399.00. Trustee requests the Motion is granted.

January 24, 2023 Hearing

At the hearing, counsel for the Trustee reported that Debtor is still delinquent several payments, however, Debtor's counsel has sent over the money he was holding and Debtor has made one partial monthly payment. The Trustee also noted that this is the 59th month of the Plan and requested that the hearing be continued to March 21, 2023.

Counsel for the Debtor concurred with the request for a continuance.

March 10, 2023 Status Report

Trustee filed a Status Report on March 10, 2023. Dckt. 99. Trustee states Debtor remains $1,399.00 delinquent in Plan payments. Therefore, Trustee still requests the case be dismissed.

March 21, 2023 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is xxxxxxx

4. **22-21770-E-13** **RICHARAD PILA** **ORDER TO SHOW CAUSE**
23-2015 **Pro Se** **2-16-23 [16]**
RHS-1

PILA V. PHH MORTGAGE CORPORATION ET AL

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 Order to Show Cause was served by the Clerk of the Court on Debtor(s) / Plaintiff-Debtor(s) Attorney for the Debtor(s) / Plaintiff-Debtor(s) (if any), Trustee, and Office of US Trustee on February 17 and 18, 2023. The court computes that 31 and 32 days' notice has been provided.

The Order to Show Cause is xxxxxxx

ORDER TO SHOW CAUSE
WHY COURT SHOULD NOT ABSTAIN FROM ADJUDICATING
NON-CORE MATTERS

On January 27, 2023, Defendants PHH Mortgage Corporation and Deutsche Bank National Trust Company, as Trustee for Indymac Indx Mortgage Loan Trust 2006-AR4, Mortgage Pass-Through Certificates Series 2006-AR4, removed the action then pending in California Superior Court for the County of Solano ("State Court Action"), the Plaintiff there being Richard Pila ("Plaintiff"). Ntc of Removal; Dckt. 1. The State Court Complaint filed in the State Court Action was filed by Plaintiff on December 28, 2022.

The State Court Complaint (Exhibit A; Dckt. 6, 13-31) lists twelve (12) Causes of Action, which are stated by Plaintiff as:

First Cause of Action
Violation of California Civil Code § 2923.5
Failing to Notify the Homeowner About Possible Foreclosure
and to Wait 30 Days After Notice to Record a Notice of Default.

Second Cause of Action
Violation of California Civil Code § 2924(a)(1),
Lack of Authority To Foreclose on Property.

Third Cause of Action
Violation of California Civil Code § 2923.6(c),
Failure to Rescind Foreclosure Efforts After Loan Modification Filed

Fourth Cause of Action
Violation of California Civil Code § 2923.7
Failure to Assign a Single Point of Contact

Fifth Cause of Action
Violation of California Civil Code § 2924.9
Failure to Provide Homeowner with Foreclosure Alternatives

Sixth Cause of Action
Violation of California Civil Code § 2924.10
Failure to Provide Homeowner With Written Notice of
Receipt of Loan Modification Application

Seventh Cause of Action
Violation of California Civil Code § 2924.11
Dual Tracking

Eighth Cause of Action
Negligence

Ninth Cause of Action
Wrongful Foreclosure

Tenth Cause of Action
Unfair Business Practice
Violation of California Business & Professions Code § 17200, ET SEQ

Eleventh Cause of Action
Cancellation of Written Instruments, California Civil Code § 3412

Twelfth Cause of Action
Violation of Bankruptcy Automatic Stay Pursuant to Title 11 U.S.C. § 362(k)(1)

The allegations in each of the respective claims are consistent with the title thereof and law cited.

GROUNDS FOR REMOVAL
STATUS OF PLAINTIFF'S BANKRUPTCY CASE

In the Notice of Removal, Defendants state that removal of the State Court Action is proper "[b]ecause this Court has original and exclusive jurisdiction of all cases under title 11, pursuant to 28 U.S.C. § 1334(a), and original jurisdiction of all civil proceedings arising in or related to cases under title 11, pursuant to 28 U.S.C. § 1334(b)." Ntc of Removal, p. 2:8-11; Dckt. 1.

FEDERAL COURT JURISDICTION
AND
NATURE OF ADVERSARY PROCEEDING RELIEF REQUESTED

Congress provides in 28 U.S.C. § 1334 and § 157 for federal court jurisdiction for bankruptcy cases and matters related to a bankruptcy case. The relevant jurisdictional provisions in these statutes are (emphasis added):

> § 1334. Bankruptcy cases and proceedings
>
> (a) Except as provided in subsection (b) of this section, the **district courts shall have original and exclusive jurisdiction of all cases under title 11**.
>
> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, **the district courts shall have original** but not exclusive jurisdiction of all civil proceedings arising under title 11, or **arising in or related to cases under title 11.**

28 U.S.C. § 1334(a), (b).

> § 157. Procedures
>
> (a) Each district court may provide that **any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title** 11 shall be referred to the bankruptcy judges for the district.
>
> (b)
>
> (1) **Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11**, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
>
> (2) Core proceedings **include, but are not limited to**—
>
> (A) matters concerning the administration of the estate;
>
> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
>
> (C) counterclaims by the estate against persons filing claims against the estate;
>
> (D) orders in respect to obtaining credit;
>
> (E) orders to turn over property of the estate;
>
> (F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

. . .

(c)

(1) A **bankruptcy judge may hear a proceeding that is not a core proceeding** but that is otherwise **related to a case under title 11.** In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the **consent of all the parties** to the proceeding, may refer a proceeding related to a case under title 11 to **a bankruptcy judge to hear and determine and to enter appropriate orders and judgments**, subject to review under section 158 of this title.

28 U.S.C. § 157,

Even when related to federal court jurisdiction exists, Congress provides for discretionary abstention by the federal judge, providing in 28 U.S.C. § 1334(c):

(c)

(1) Except with respect to a case under chapter 15 of title 11, **nothing in this section prevents** a district court in the interest of justice, **or in the interest of comity with State courts or respect for State law**, from **abstaining from hearing a particular proceeding** arising under title 11 or arising in or **related to a case under title 11**.

As provided in 11 U.S.C. § 105(a), the court may *sua sponte* take action or make a necessary or appropriate order notwithstanding the failure of a party raising such issue.

Non-Core Relief Requested

Plaintiff commenced his Chapter 13 Bankruptcy Case, 22-21770, on July 18, 2022. That Bankruptcy Case was dismissed on July 29, 2022, just eleven (11) days later. No Plan was filed, no Schedules or Statement of Financial Affairs were filed, and no acts of the Plaintiff, as the Chapter 13 debtor fiduciary for the Bankruptcy Estate, to administer any property of the Bankruptcy Estate were taken.

None of the first eleven Causes of Action in the State Court Complaint arise under the Bankruptcy Code or in the Bankruptcy Case. They are all claims arising under the laws of the State of California and are unrelated to any administration of the former Bankruptcy Case. These are not what would be "Core Proceedings" for a bankruptcy judge.

Plaintiff does state one cause of action which states claims arising under Title 11 of the United States Codes, the Bankruptcy Code, for the alleged violation of the automatic stay. The Twelfth Cause of Action is stated by Plaintiff as:

TWELFTH CAUSE OF ACTION
VIOLATION OF BANKRUPTCY AUTOMATIC STAY
PURSUANT TO TITLE 11 U.S.C. §362(k)(1)

106. PLAINTIFF realleges and incorporate by reference all proceeding paragraphs as though fully set forth herein.

107. PHH DEFENDANT and INDX DEFENDANT violated Title 11 U.S.C. 362(a)(4) by foreclosing on the Subject Property while a Chapter 13 Bankruptcy petition was pending.

108. PLAINTIFF is entitled to all actual damages as a result of the violation of the automatic stay pursuant to Title l I U.S.C. §362(k)(1).

This seeks Core Proceeding relief for a claim which uniquely arises under the Bankruptcy Code, separate and apart from any State or non-bankruptcy law. Additionally, the alleged violation of the Bankruptcy Code is a claim unique to the Twelfth Cause of Action and not a basis for the claims made or relief sought under the other eleven Causes of Action in the State Court Complaint. (Plaintiff does include several references to 11 U.S.C. § 362(a)(4), enforcing a lien against property of the bankruptcy estate, in long lists of alleged improper conduct bases on numerous State Law statues and grounds.)

In the Twelfth Cause of Action, Plaintiff requests actual damages pursuant to 11 U.S.C. § 362(k) for the alleged violation of the automatic stay, which request is included in the prayer. In the prayer, Plaintiff requests several different injunctions be granted, including an "injunction vacating the wrongful foreclosure." (This sounds in the nature of a quiet title request of the court to determine that the foreclosure deed is invalid and of no legal force and effect as to the real property at issue.)

With respect to the grounds stated with respect to the alleged violation of the automatic stay, the State Court Complaint includes (identified by the paragraph number in the State Court Complaint):

> ¶ 15. On July 18, 2022, Plaintiff filed his Chapter 13 Bankruptcy Case and notified the trustee under the deed of trust of that filing at 9:13 a.m. that day. The nonjudicial foreclosure sale was set for 9:30 a.m. on July 18, 2022. The sale was then conducted at 9:30 a.m. on July 18, 2022, after the bankruptcy case had been filed.
>
> ¶ 23. Plaintiff states that "Per Property Radar" a new Notice of Trustee's Sale was issued, with the date of the sale set for October 20, 2022. Plaintiff states that this supports reversal of any foreclosure sale purported to have been conducted on July 18, 2022, after the Bankruptcy Case had been filed.

As is well established under federal law, an act taken in violation of the automatic stay is void, not "merely" voidable. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992); *See* 3 COLLIER ON BANKRUPTCY ¶ 362.12[1]. If acts are taken in violation of the automatic stay, while void, Congress provides in 11 U.S.C. § 362(d) relief from such "voidness" that may be sought by the violator of the stay.

While the alleged violation of the automatic stay is significant as a matter of federal law, it is a minor part of the State Court Complaint.

Upon considering the totality of the State Court Complaint, the Causes of Action stated, and the narrow federal law issues, the court believes that it should abstain from addressing all but the Twelfth Cause of Action, the alleged violation of the automatic stay. The first eleven Causes of Action do not arise in any bankruptcy case (it having been dismissed) and are not in substance related to the Bankruptcy Case filed by Plaintiff – it having been dismissed and this not relating to any claims to be addressed in a bankruptcy case or property to be administered.

The Supreme Court provides in Federal Rule of Civil Procedure 54(b), which is incorporated into Federal Rule of Bankruptcy Procedure 7054, provides that when multiple claims for relief are sought, the court may enter judgment on one claim for relief and have the other claims addressed at a later date.

Here, the only claim for which federal court jurisdiction properly exists is the Twelfth Cause of Action, the alleged violation of the automatic stay. All of the other claims for relief are based on non-bankruptcy law and do not relate to the dismissed Bankruptcy Case.

For all other claims for relief, the court can remand those to the State Court. Because an alleged violation of the stay claim is adjudicated in a contempt-like proceeding (usually brought by motion and not adversary proceeding), it can be promptly determined by this court so long as the parties diligently prosecute the claim and defenses for those narrow issues. This court's ruling on the alleged

violation of the stay can then be used as a federal judgment on that issue in the State Court Action to the extent it is relevant to any of the other eleven Causes of Action.

Defendants' Response

Defendants filed a response on March 3, 2023. Dckt. 18. Defendants "urge the [c]ourt to fully evaluate the equitable facts set forth" in a footnote of a Ninth Circuit Bankruptcy Appellate Panel decision to determine in favor of maintaining jurisdiction over the removed action. *In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n. 18 (B.A.P. 9th Cir. 2009). The court will consider the equitable arguments Defendants raise to prevent remand. Defendants argue:

> 1. A remand will have effect on the administration of the estate, allowing Debtor to continue delay reorganization on any pending litigation. Response, Dckt. 18 at 3:10-13.

The bankruptcy case to which this Adversary Proceeding was dismissed on July 29, 2022. There no "estate" being "administered."

In reviewing the In re Cedar Funding, Inc. Decision, the court first notes that the Decision related to the court exercising federal court jurisdiction for claims being asserted against a Chapter 11 trustee relating to his actions as trustee. In discussing the "related to" jurisdiction, the Bankruptcy Appellate Panel stated ti to be:

> The bankruptcy court appropriately exercises its "related to" jurisdiction when "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1193 (9th Cir. 2005) (citation omitted). The standard formulation is that **an action is "related to" bankruptcy if it "in any way impacts upon the handling and administration of the bankrupt estate."** *Id.* (citation omitted).

Nilsen v. Neilson (In re Cedar Funding, Inc.), 419 B.R. 807, 818 (B.A.P. 9th Cir. 2009). As noted herein, the bankruptcy was long ago dismissed, shortly after it was filed, and there it no way it impacts on the handling or administration of a bankruptcy estate (there being no bankruptcy estate in this case).

> 2. Many of the state law claims are derivative of the alleged violation of the automatic stay. Bifurcation of only the twelfth cause of action would not entirely untangle the state law issues from the bankruptcy issues. *Id.* at 3:15-23.

It is asserted that the Causes of Action Eight, Nine, and Ten allege Negligence, Wrongful Foreclosure, and Unfair Business Practices based in part on the violation of the automatic stay. Looking at these causes of action, they state a plethora of non-Bankruptcy Code grounds, and make an "oh by the way" reference to 11 U.S.C. § 362(a). The court can manage this concern by delaying the remand until the court has entered judgment on the alleged violation of the automatic stay cause of action.

3. The applicable state law is neither unsettled nor difficult. *Id.* at 3:25-27, 4:1-25.

While the court is confident that it can understand and adjudicate the overwhelming number of state law grounds, that does not credit a basis for this federal court using the bankruptcy jurisdiction created under 28 U.S.C. § 1334 to intrude on the courts of the State of California.

4. There are no related proceedings in state or federal court. *Id.* at 5:1-2.

There are no related proceedings in federal or state court – that include there being no bankruptcy case that adjudication of the various state law claims being asserted can have any impact on. There is only a narrow issue of whether there has been a violation of the stay and what damages could properly be awarded for that violation.

5. Under 28 U.S.C. §§ 1332(a), 1331, and 1367(a), there is diversity, federal question, and supplemental jurisdiction. *Id.* at 5:4-12.

Defendants point out that there is a basis for there being diversity jurisdiction for the federal court to adjudicate all of the causes of action in the Complaint. In looking at the Notice of Removal (Dckt. 1), the basis of removal was made by Defendants who stated:

> [Defendants] [h]ereby remove this action from the Superior Court of the State of California, for the County of Solano, to the United States Bankruptcy Court for the Eastern District of California pursuant to 28 U.S.C. §§ 1452 and 1334. Removal is proper because this Court has original and exclusive jurisdiction of all cases under title 11, pursuant to 28 U.S.C. § 1334(a), and original jurisdiction of all civil proceedings arising in or related to cases under title 11, pursuant to 28 U.S.C. § 1334(b).

The Removal to this Bankruptcy Court was made based upon the Bankruptcy Court having federal court jurisdiction over:

1. Exclusive Jurisdiction for all Cases Under Title 11,

2. Original, but Not Exclusive Jurisdiction over all proceedings:

    a. Arising under Title 11, or

    b. arising in or related to cases under Title 11.

It was not asserted that removal of a state court proceeding to this Bankruptcy Court was based on diversity jurisdiction or supplemental jurisdiction.

While the adjudication of whether there is a violation of the automatic stay arises under Title 11, the multitude of other causes of action do not arise under Title 11 or in or related to the case under Title 11. Rather, the multitude of State Law claims asserted have no impact on the bankruptcy case or what was done in the bankruptcy case.

6. There is a strong degree of relatedness to the main bankruptcy case. *Id.* at 8:18-23.

While there is a direct connection to an act alleged to have been conducted in violation of the automatic stay and the court adjudicating that dispute, there is not such a degree of relatedness to the myriad of State Law Causes of Action stated in the Complaint. There are somewhat "after thought," oh by the way, Defendants violated the stay in addition to the various State Law grounds asserted. The "relatedness" to all but the violation of the stay Cause of Action is tenuous at best.

7. At issue is an alleged violation of the stay which weighs in favor of maintaining jurisdiction over the entire case. *Id.* at 9-10.

8. Bifurcating the claims would further delay resolution of the case. This case can quickly be resolved on dispositive motions in the pending action. *Id.* at 9:4-15.

If Defendants diligently prosecute their defendant of the Violation of Stay Cause of Action, the "simple" Violation of the Stay allegations can be quickly adjudicated. If Defendant, as they sound confident they will, prevail on the Violation of the Stay Cause of Action, then it disappears completely from the Complaint. They can then diligently, and quickly, pursue their dispositive motion in the State Court (or if they have non-bankruptcy jurisdiction grounds, seek to have it removed to the District Court).

9. There will be limited burden to the court's docket because the claims can be resolved quickly on dispositive motions. *Id.* at 9:17-21.

This mitigates strongly in favor of abstaining and let the California Judges quickly resolve the dispositive motions on the myriad of State Law Causes of Action.

10. Maintaining a single case will most efficiently resolve this action. Removing the action to bankruptcy court over the alleged violation of the stay shows Defendants were not forum shopping. *Id.* at 10.

This federal court using the thin reed of one cause of action for violation of the automatic stay as a basis for enveloping the other eleven Causes of Action would create a much stronger appearance of forum shopping. While Federal Court jurisdiction under 28 U.S.C. § 1334 (which is the huge exception to the normal limited jurisdiction of a Federal Court) is so broad, the matters to be adjudicated must arise under the Bankruptcy Code, or in the bankruptcy case or related to the bankruptcy case.

11. There is no need for a jury trial. *Id.* at 10:9-11.

12. All Defendants are nondebtor parties. *Id.* at 10:13-15.

13. Although comity is important, it should not outweigh other factors in favor of this court retaining jurisdiction. *Id.* at 10:17-19.

14. Bifurcating would prejudice parties by delaying a promptly resolved matter. *Id.* at 10:21-23.

This appears to be premised on a belief that a Bankruptcy Judge would just quickly slap out a decision (Defendants believing it to be in their favor), rather than a deliberate, proper adjudication that would take much more time in State Court.

The court can remand on any equitable ground. 28 U.S.C. § 1452(b).

Allegations of Violation of the Automatic Stay.

The court summarizes the short and plain statement showing the entitlement to relief (Fed. R. Civ. P. 8(b), Fed. R. Bankr. P. 7008):

A. On July 18, 2022, Plaintiff-Debtor commenced his bankruptcy case, with the petition having been filed before 9:00 a.m. Complaint, ¶ 15.

B. The foreclosure sale was set for 9:30 a.m. on July 18, 2022, which was after the bankruptcy case was filed. *Id*.

C. A "Non-Profit" notified PHH that the bankruptcy case had been filed, and that the sale "must be rescinded." *Id*., ¶ 15.

For the notice of the bankruptcy filing having been given and that the sale must be "rescinded" indicates that notice was given after the foreclosure sale occurred.

In the affirmative defenses, Defendants assert that since they lacked knowledge of the bankruptcy case having been filed, Plaintiff-Debtor fails to state a claim for relief pursuant to 11 U.S.C. § 362(k). Answer, Second Affirmative Defense. Dckt. 13 at 13. Defendants cite to the Ninth Circuit Decision *Eskanos & Alder, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002). This and subsequent decision address that for actionable damages, there must be a wilful violation of the stay. However, that does not limit the effectiveness of the automatic stay for any acts taken after the filing of the bankruptcy case, whether or not the person taking the act in the violation of the stay was aware of the bankruptcy filing. As this court has addressed in decisions, an innocent violation of the stay is not the problem, but what the creditor/party who violated the stay does when learning of the bankruptcy (which rendered the act taken void). There is an affirmative obligation on the person violating the stay to either unwind the void conduct or seek relief to make such conduct and action not void.

Reviewing the Docket in the Bankruptcy Case, 22-21770, discloses that no action has been taken to "unvoid" any action taken in violation of the automatic. [Fn.1.]

FN. 1. 3 Collier on Bankruptcy ¶ 362.02 provides a nice summary of the automatic, no notice required effect of the automatic stay (emphasis added):

¶ 362.02 Effective Time of Stay and Notice

The stay is effective automatically and immediately upon the filing of a bankruptcy petition, whether voluntary, joint or involuntary.1 Formal service of process is not required, and **no particular notice need be given in order to subject a party to the stay.**2 In certain limited situations involving repeat bankruptcy filings, the stay does not arise automatically.3 At least one court has held that, in unusual cases involving abuse of the bankruptcy court's jurisdiction, the stay might not apply.4 But a creditor acting in reliance on such an exception does so at its peril.5

In general, actions taken in violation of the stay will be void, or at least voidable, **even where there was no actual notice of the existence of the stay.** Violation of the stay is punishable as contempt of court. Particularly if the violation is willful, the court may punish the violator for contempt and take other appropriate steps to negate the impact of the improper action. In addition, if the debtor is an individual who has been injured by a willful violation of the stay, a court may award damages under section 362(k). A party that has received notice of the bankruptcy case, even if only oral notice, can be sanctioned for violation of the stay. If there are doubts about the veracity of the notice, it is incumbent upon the party receiving notice to determine for itself, before acting, whether a case has been filed.

See, Bank of NY Mellon v. Enchantment at Sunset Bay Condo. Ass'n, 2 F.4th 1229, 1233-1234 (9th Cir. 2021); *In re Taylor*, 884 F2.ed 478, 483, (9th Cir. 1989), addressing acts in violation of the automatic stay (such as a foreclosure sale) are void, not voidable.

At the hearing, XXXXXXXXXX

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

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

The 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 Order to Show Cause is xxxxxxxxxx

FINAL RULINGS

5. **23-20299-E-11** **DENNIS/BRENDA PINE** **STATUS CONFERENCE RE: VOLUNTARY PETITION 1-31-23 [1]**
CAE-1 **Pro Se**

CASE DISMISSED: 2/17/23

Final Ruling: No appearance at the March 21, 2023 Status Conference is required.

Debtors' Atty: Pro Se

Notes:
Order Dismissing Case for Failure to Timely File Document(s) filed 2/17/23 [Dckt 9]

The Bankruptcy Case having been dismissed pursuant to prior Order of the court (Dckt. 19) **, the Status Conference is concluded and removed from the Calendar.**

6. 21-21844-E-13 SKI-1 | **THOMAS/WHITNEY JOHNSON** Steele Lanphier | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **2-17-23 [61]**

HYUNDAI CAPITAL AMERICA VS.

Final Ruling: No appearance at the March 21, 2023 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 17, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

HYUNDAI CAPITAL AMERICA AS SERVICER FOR HYUNDAI LEASE TITLING TRUST ("Movant") seeks relief from the automatic stay with respect to personal property identified as a 2020 KIA FORTE, VIN ending in 9726 ("Vehicle"). The moving party has provided the Declaration of Brandie Allen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Thomas Winton Johnson and Whitney Eriksmoen Johnson ("Debtors"). Declaration, Dckt. 64.

Movant argues:

a. The lease matured on December 18, 2022.

b. All payments under the lease have been made.

c. The Vehicle was returned on November 18, 2022.

d. The Movant is holding possession of the Vehicle pending relief from stay.

Movant provides that the Debtors do not have an ownership interest in or a right to maintain possession of the Vehicle. Title and Lease Agreement, Exhibits A-B in Support of this Motion, Dckt. 65

TRUSTEE'S RESPONSE

Trustee filed a response on March 1, 2023. Dckt. 68. Trustee does not oppose the motion so long as the 2020 KIA FORTE indicated by the Movant relates to the 2019 KIA FORTE indicated by the Debtor.

DISCUSSION

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

Based upon the evidence submitted, the court determines that cause exists for terminating the automatic stay because the lease matured and the vehicle was returned on November 22, 2022, and, in addition, there is no equity in the vehicle for the estate.. 11 U.S.C. § 362(d)(1)-(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, on grounds that the vehicle has been returned, that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

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 HYUNDAI CAPITAL AMERICA AS SERVICER FOR HYUNDAI LEASE TITLING TRUST ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors to exercise its right to possess and control the asset identified as a 2020 KIA FORTE, VIN ending in 9726 ("Vehicle").
>
> **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.