

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

April 8, 2025 at 1:30 p.m.

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1.	<a href="#">21-20814-E-13</a>	ARLEANER COLLINS	CONTINUED MOTION FOR RELIEF
	<a href="#">RAS-1</a>	Peter Macaluso	FROM AUTOMATIC STAY
			9-18-24 <a href="#">[45]</a>
	MORTGAGE ASSETS MANAGEMENT,		
	LLC 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 18, 2024. 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.

<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b>
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**April 8, 2025 Hearing**

The court continued the hearing on this Motion as the Parties requested a further continuance to allow the successor representative to proceed with the marketing and sale of the Property, while also coordinating with the probate proceeding that has been commenced. A review of the Docket on April 3, 2025 reveals nothing new has been filed related to this Motion.

At the hearing, XXXXXXX

## **REVIEW OF MOTION**

Mortgage Assets Management, LLC (“Movant”) seeks relief from the automatic stay with respect to Arleaner Collins’ (“Debtor”) real property commonly known as 1828 Jamestown Dr, Sacramento, California 95815 (“Property”). Movant has provided the Declaration of Carlene Reid to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 48.

Movant states that on June 16, 2024, Debtor passed away. Mot. 3:12-13, Docket 45. Movant is still owed \$330,501.41 on the reverse mortgage Note that is secured by the deed of trust in the Property. *Id.* at 4:1; Decl. ¶ 9, Docket 48. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) as Movant’s death has caused the loan to go into default, and the terms of the reverse mortgage permit the balance of the loan to be due and payable upon death of Debtor. Decl. ¶ 7.

## **DEBTOR’S OPPOSITION**

Debtor’s counsel filed an Opposition on October 8, 2024. Docket 52. Debtor’s counsel states he has been unable to determine for himself whether Debtor has passed away and asks the court for a continuance until he can find if Debtor has truly passed away.

## **TRUSTEE’S OPPOSITION**

On October 11, 2024, David Cusick, the Chapter 13 Trustee (“Trustee”) filed an Opposition. Trustee opposes on the ground that Movant has not elaborated how Movant learned of Debtor’s death, and Trustee has not been presented with evidence of Debtor’s death.

## **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 \$330,501.41, while the value of the Property is determined to be \$375,000 as stated in Schedules A/B filed by Debtor. Am. Schedule A/B 4, Docket 29.

## **Absence of Evidence**

In the Motion, the grounds for the requested relief is that the Debtor has died. Motion, p. 5:1-7; Dckt. 45. The Declaration of Carlene Reid, a “Contract Management Coordinator of PHH Mortgage,” includes the following testimony:

8. Arleaner Collins (“Debtor”) is the only borrower on this Note. Debtor passes away on June 15, 2024; thus, calling the Note all due and payable upon such date. The total amount due remains due and owing.”

Dec., ¶ 8; Dckt. 48. This testimony is provided under penalty of perjury. It is also provided by Movant and Movant’s counsel subject to the Federal Rules of Evidence. As counsel knows, witness testimony must be based on that witnesses personal knowledge and not mere speculation or hearsay (with specific exceptions not applicable here).

Ms. Reid, in her testimony under penalty of perjury does not explain how she has personal knowledge of the death for which she provides her testimony. Possibly, she was present with the Debtor in her final minutes and personally witnessed the death.

### **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).

Here, the terms of the reverse mortgage are such that the balance of the Note become due and payable once the Debtor passes away. The confirmation from Debtor’s daughter that the Debtor has passed away, the condition cited by Movant has occurred.

### **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, as it is unclear whether the Property is being properly maintained, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:9-15, Docket 45.

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).

### **Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant’s Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

## **OCTOBER 22, 2024 HEARING**

At the hearing, counsel for Movant, stated that he has not been able to reach his client. Debtor's daughter appeared at the hearing, and confirmed that the Debtor, her mother, has passed away.

In light of there not having been a successor representative for the late Debtor, and Debtor's counsel apparently not having been contacted by the family, the Parties agreed to a continuance to allow Debtor's heirs to determine if they wan to pursue a sale of the Property.

The hearing is continued to 1:30 p.m. on December 10, 2024.

## **December 10, 2024 Hearing**

The court continued the hearing on this Motion after confirming at the prior hearing that Debtor had indeed passed away. The court continued the hearing to provide the parties with an opportunity to

decide if they wanted to pursue a sale of the Property. Nothing new has been filed with the court as of December 4, 2024, under this Docket Control Number. However, Debtor has filed a Motion to Substitute at Docket 61, which will be heard on the 2:00 p.m. calendar on December 10, 2024.

The court having granted the Motion to Substitute a Successor Representative for the late Debtor, the Parties agree to continue the hearing on the Motion.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on January 28, 2025.

### **January 28, 2025 Hearing**

The court continued the hearing on this Motion at the Parties' request, there being a successor in interest appointed in the case. Order, Docket 71. A review of the Docket on January 24, 2025 reveals nothing new has been filed with the court.

Curiously, in the past forty-three (43) days since the December 15, 2024 hearing, no motion to employ a real estate broker has been filed by the Debtor. On Schedule A/B Debtor valued the Property at \$375,000. As of September 2024, Creditor computed its secure claim to be(\$330,501.41). It may be that the Successor Representative for the Debtor has concluded that the debt secured by the Property exceeds any recoverable value from the sale of the Property.

At the hearing, the Parties requested a further continuance to allow the successor representative to proceed with the marketing and sale of the Property, while also coordinating with the probate proceeding that has been commenced.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m on April 8, 2025.

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 Mortgage Assets Management, 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** that the Motion for Relief from the Automatic Stay is  
**XXXXXXX.**

ARTHUR H. SUTTER, TRUSTEE OF  
THE ARTHUR H. SUTTER  
REVOCABLE TRUST ET AL., 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2025. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

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<b>The Motion for Relief from the Automatic Stay is <del>granted</del>.</b>
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Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("Movant") seeks relief from the automatic stay with respect to Erika Lizeth Norman and Kevin James Norman's ("Debtor") real property commonly known as 448 Royal Tern Drive, Vacaville, California 95687 ("Property"). Movant has provided the Declarations of Raquel Veloz, Rich Mendoza, and Reilly D. Wilkinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 207; Decl., Docket 209; Decl., Docket 213.

Prior to the present motion, Movant and Debtor stipulated ("Stipulation") on November 6, 2024, that Debtor must maintain a normal monthly payment to Creditors. Stip. 6:2-5, Ex. A, Docket 149. It is

further stipulated that should Debtor default on the terms laid out in the Stipulation, the court may terminate the stay by *ex parte* motion if Debtor does not cure the default within 10 days. *Id.* at 6:12-17; Order, Docket 158. Additionally, the parties stipulated that should the Creditor obtain relief from the stay, the Creditor will also be granted relief under 11 U.S.C. § 362(d)(4). *Id.* at 7:5-13.

On November 22, 2024, the court ordered (“Order”) Debtor to maintain a normal monthly plan and to remain current under any confirmed Chapter 13 Plan. Order, Docket 158. And should the Debtor default under the plan, the court will also grant relief under 11 U.S.C. § 362(d)(4) and a grant a waiver of the 14-day stay as provided in FRBP 4001(a)(3), as agreed upon under the Stipulation. *Id.*

Movant argues Debtor is in breach of the court Order because Debtor is delinquent on plan payments, breaching the terms of the court approved Stipulation. Mot. 2:23-28, Docket 205. As a result of the breach, Movant filed and served a Notice of Breach upon Debtor and Debtor’s attorney on February 7, 2025. Notice, Docket 197. Debtor needed to cure the delinquency within 10 days, by February 17, 2025, which did not occur. Moreover, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$13,000.00. Decl. 2:7-10, Docket 207. Consequently, Movant moves for relief from the Automatic Stay.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on March 25, 2025. Docket 215. Debtor asserts that \$10,000.00 of the delinquency will be paid by March 24, 2025 and the remaining \$3,000.00 paid off on March 25, 2025. Opp’n, 1:24-27, Docket 215. Debtor states by then the payments will be current. *Id.* Further, Debtor explains that his breach was caused by a car accident that left him indisposed and without income. Opp’n, 2:1-3, Docket 215. Debtor claims as of the date the opposition was filed, he has returned to work. *Id.* at 2:4-8.

## **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 \$441,908.68 (Declaration, Docket 210), while the value of the Property is determined to be \$760,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 11, Docket 1.

### **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).

Here, 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.

Debtor was thus far, obligated to make nine post-petition payments totaling \$32,331.15. Decl. 3:15-19, Docket 209. But Debtor only paid \$21,554.10. *Id.* Since February, Debtor remains delinquent and thus in violation of the court Order confirming the terms of the stipulation. This is adequate grounds for the court to grant the motion to terminate the automatic stay.

Of note, Debtor asserts the delinquency has been cured. At the hearing, **XXXXXXX**

### **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.*

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 need not determine that the elements have been met, the Parties instead stipulating that 11 U.S.C. § 362(d)(4) relief should be granted in the event of a default.

By the court's Order, should the Creditor obtain relief based on Debtor's defaults under the Stipulation, Creditor will also be granted relief under 11 U.S.C. § 362(d)(4). The court thus finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence.

Moreover, the current case would be Debtor's third bankruptcy allegedly affecting the subject property. Decl. 2:13-16, Docket 210. Thus, there is evidence that Debtor may have filed concurrent bankruptcy cases to hinder Creditor.

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.

At the hearing, **XXXXXXX**

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.

**Attorneys' Fees Requested**  
**Request for Attorneys' Fees**

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

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

**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, as agreed upon under the Stipulation, that the court grant relief from the Rule as adopted by the United States Supreme Court. The court by Order verified that should the Debtor's default under the Stipulations, the order granting relief from stay will contain a waiver of the 14 day stay as provided in FRBP 4001(a)(3).

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 Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("Movant") having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion is granted, and 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 448 Royal Tern Drive, Vacaville, California 95687 (“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.

U.S. BANK TRUST NATIONAL  
ASSOCIATION VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 3, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

U.S. Bank Trust National Association, as Trustee of BKPL-EG Holding Trust, its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay with respect to Jolene Norton's ("Debtor") real property commonly known as 5182 Tulip Rd, Marysville, California 95901 ("Property"). Movant has provided the Declaration of Stephen Burns to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 58.

Movant argues Debtor has not made four post-petition payments, with a total of \$3,916.80 in post-petition payments past due. Declaration 3:14, Docket 58. Movant also provides evidence that there are thirteen pre-petition payments in default, with a pre-petition arrearage of \$17,634.07. Relief from Stay Info. Sheet, Docket 59.

**TRUSTEE'S NON-OPPOSITION**

Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a Non-Opposition on March 25, 2025. Non-Opp'n, Docket 64. Trustee states that Debtor listed the Property as a secured claim under Schedule D, but did not provide for it as a secured creditor in the proposed Plan. *Id.* at 2:1-2. Additionally, Trustee asserts that the amount necessary to cure the default as of the date of the petition is \$17,634.07. *Id.* at 2:3-5. Thus, the Trustee requests Movant's motion to be granted.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 25, 2025. Docket 66. Debtor asserts that the Property is insured and that Debtor has sufficient income to fund the First Amended Plan. Opp'n 2:8-11, Docket 66. Further, Debtor claims that there is an excess of \$200,000.00 in equity. *Id.* As such, Debtor argues that there is no cause to grant Movant's motion for relief from the automatic stay.

## 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 \$81,750.40 (Proof of Claim 2-1), while the value of the Property is determined to be \$300,000.00, as stated in Schedules D filed by Debtor. Schedule D at 11, Docket 17.

### 11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

Here, although Debtor is in default of four post-petition payments, that alone is not cause to grant Movant's relief from automatic stay. The Property is adequately protected by the equity as it may be in excess of \$200,000.00. In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant therefore, has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

At the hearing, **XXXXXXX**

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 U.S. Bank Trust National Association ("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 Motion is **XXXXXXX**.

# FINAL RULINGS

4. [25-20234-E-13](#)  
[GAL-1](#)

JOHN BARNWELL  
Peter Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-27-25 [\[19\]](#)

**GREENSTATE CREDIT UNION VS.  
Item 6 and 7 on the 2:00 Calendar**

**Final Ruling:** No appearance at the April 8, 2025 hearing is required.

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**The Motion for Relief is dismissed without prejudice.**

Movant GreenState Credit Union (“Movant”) having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on April 4, 2025, Dckt. 79; no prejudice to the responding party appearing by the dismissal of the Motion; Movant 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 John Michael Barnwell (“Debtor”); the *Ex Parte* Motion is granted, Movant’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 filed by GreenState Credit Union (“Movant”) having been presented to the court, Movant 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. 79, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief is dismissed without prejudice.