



Movant argues Debtor has not made 10 post-petition payments, with a total of \$8,870.00 in post-petition payments past due. Declaration, Docket 49, ¶ 9. Debtor has also not paid the property taxes on the Property that were due on December 11, 2023. *Id.* at ¶ 10. Movant also states that the Property is worth \$200,000.00. *Id.* at ¶ 11. Movant’s Motion also states that this Property is not necessary for the Debtor’s reorganization. Motion, Docket 47, ¶ 13. Furthermore, Movant states that because Debtor is not providing adequate protection payments, their position is getting worse each month. *Id.* at ¶ 14. For these reasons, Movant asks the court to grant an order for relief from the automatic stay. *Id.*

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on March 26, 2024. Opposition, Docket 61. Debtor asserts that they have already paid a majority of the delinquency and will pay the remaining balance prior to the Hearing. *Id.* at p. 2:4-6. Debtor also states that there is approximately \$273,325.00 of equity in the Property, which gives the Movant a 68% equity cushion. *Id.* at p.2:7-14. Additionally, Debtor claims that this Property is absolutely necessary for the effect reorganization of the Debtor’s estate because he operates two businesses on the Property. *Id.* at p.2:21-28.

Debtor submits a Declaration in support of the Opposition. Decl., Docket 63. Debtor states in his Declaration that he operates a bookkeeping business and an egg production business on the Property. *Id.* at p. 2:10-13. A large part of his income from the bookkeeping business comes during the tax season. *Id.* at p. 2:15-23. The income he has received so far this year has been favorable, and it has allowed him to correct his delinquency with the Movant. *Id.* Debtor states that he has paid Movant \$7,096.00 on March 26, 2024. *Id.* at p. 2:24-28. He also states that he had been trying to make payment earlier, but that the Zelle information he had for Movant was not valid. *Id.* Debtor expects to pay \$3,152.48 to Movant on March 29, 2024 which will cure the delinquency, and he expects to pay the property taxes on the property by April 5, 2024. Debtor also states that the Property is worth \$400,000.00 which means there is \$273,325.00 in equity. *Id.* at p. 3:17-19.

## **MOVANT’S REPLY**

Movant filed a Reply to Debtor’s Opposition on April 2, 2024. Docket 65. Movant states it has received some money but is still owed \$801.93 for March 2024 and \$887.33 for April 2024. *Id.* at ¶ 5. Movant states the equity cushion does not matter for purposes of this Motion; the Motion should be granted for failing to comply with the Plan and Debtor’s inability to make payments under the Plan. *Id.* at ¶¶ 7-8.

## **DISCUSSION**

### **11 U.S.C. § 362(d)(1): Deny Granting 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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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).

In this case, Movant claims that Debtor has not made any plan payments since the Plan was confirmed on May 5, 2023. Motion, Docket 47, ¶ 7-9. However, Debtor has shown that they have paid \$7,096.00 to Movant on March 26, 2024 and Debtor has submitted a transaction receipt as evidence. Exhibit A, Docket 62. Debtor states that the remaining balance of \$3,152.48 owed to Movant will be paid by March 29, 2024, and that the Property taxes will be paid by April 5, 2024. Debtor is making payments on Movant's Claim and explains that the payments are late because the Zelle information for Movant was incorrect. Exhibit B, Docket 61 p. 3.

### **Overview of Chapter 13 Case**

Debtor commenced in this Bankruptcy Case on December 14, 2022, approximately fifteen months prior to the hearing on this Motion. The court's records do not show Debtor having filed a prior bankruptcy case in this District.

Debtor's Confirmed Chapter 13 Plan (Dckt. 3) requires Debtor to make monthly plan payments of \$1,180.00 for a period of sixty (60) months. Movant has two claims provided for in the Plan. One is a class 2 claim for (\$12,000), Plan, § 3.07, for which Movant is to be paid \$200.00 a month.

A second secured claim is provided for in Class 4 (which is for claims for which there is not a default), that Debtor is paying directly with monthly payments of \$877. Plan, § 3.10.

Movant has filed two proofs of claim in this Case. Proof of Claim 12-1 asserts a \$12,000 secured claim as being for "delinquent property taxes." Given that Movant is not the tax collector, it appears that Movant has advanced monies (Movant makes a reference to a receipt for the taxes) to pay the taxes and is asserting that the failure to repay the taxes is a default on Debtor's obligation to Movant. Movant asserts the right to recovering these monies is based on the deed of trust which secures Movant's claim.

Movant's second Proof of Claim 12-1, is for a \$21,025.00 amount which is stated to be for "delinquent installment payments." Movant states in Proof of Claim 12-1 that there is a promissory note for this obligation and it has been "Perfected" by a document stated to be "Invoice #A." POC 12-1 § 9.

Attached to Proof of Claim 12-1 is a Document titled "Promissory note for Down-Payment Loan." POC 12-1, p. 4-6. The Note states that the sum of \$19,000 is owed, with there to be four equal annual payments of \$5,459.76 each, which includes 7% interest. Note, introductory paragraph at ¶ 1. The Note is dated October 22, 2013. The final payment is to be in November 2017.

The Note states it is secured by a deed of trust by property in El Dorado County (the property not identified) and a financing statement on a mobile home.

No copy of the deed of trust or the filed financing statement are included with Proof of Claim 12-1.

It appears that both of these obligations came due and were in default prior to the filing of this Bankruptcy Case.

On Schedule D Debtors lists Movant has a claim in the amount of (\$127,719), and that it is secured by a Deed of Trust encumbering the real property commonly known as 5001 Bonanza Auto Rd, Shingle Springs, California. Schedule D; Dckt. 1 at 22.

Debtor then lists Movant as having a claim for \$12,000, which is disputed, that is secured by a Deed of Trust against the same property.

### **Documents Filed with Motion for Relief**

Movant provides a copy of the recorded Deed of Trust, which was recorded in El Dorado County, California on October 29, 2013. Exhibit B; Dckt. 52 at 8. The Motion for Relief states that there is owing \$136,938.75 owing on the Note, which includes a \$2,460.14 advance for property taxes. Motion, ¶ 12; Dckt. 47. These amounts are not consistent with the Proof of Claim filed by Movant under penalty of perjury.

At the hearing, **XXXXXXX**

### **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.* 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 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).

Here, Movant claims that the Property is worth \$200,000.00. Decl., Docket 49, ¶ 11. Movant also claims that the amount Movant would be required to pay to ensure its rights in the Property totals \$136,938.75. Motion, Docket 47, ¶ 12. Movant offers absolutely no independent evidence as to why the Property should be valued at \$200,000. No valuation reports, no images of the home, no market analysis, nothing of the kind is submitted. Instead, the only evidence offered is one line stating, "it is my opinion that the Property is worth \$200,000." Decl., Docket 49, ¶ 11. The court is not inclined to value the collateral based off this testimony.

Debtor scheduled the Property at \$300,000 when the case was filed in 2022. Schedule A, Docket 1 p. 11 line 1.1. Movant has not given any reason why the Property has dropped \$100,000 in value. Such an assertion appears completely without merit.

Debtor claims that the Property is worth \$400,000.00. Decl., Docket 63, p. 3:17-19. Debtor likewise does not submit evidence as to the Property's valuation, but says a simple online search should reveal it's value is between \$400,000-\$500,000. *Id.* at p. 3:15-16. The court has checked realtor.com and found the Property to be worth an estimated \$349,050.

Given a value of \$349,050, and evidence that payments are coming in to Movant, the court finds there is sufficient adequate protection to deny a Motion for Relief.

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 Mary Drader and David Drader (“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 denied without prejudice.

2. [20-24158-E-13](#)      **GEORGE/DOLORES PENCE**      **STATUS CONFERENCE RE:**  
[RHS-1](#)                **VOLUNTARY**  
                     **PETITION**  
                     **8-28-20 [1]**

Debtors’ Atty: Nicholas Wajda

Notes:

Set by order of the court filed 3/25/24 [Dckt 48]

[WLG-2] Notice on Suggestion of Death and Motion for Substitution of Representative for Debtor’s filed 3/29/24 [Dckt 51]; set for hearing 5/7/24 at 2:00 p.m.

**The Status Conference is ~~XXXXXX~~**

**APRIL 9, 2024 STATUS CONFERENCE**

Debtors George Pence and Dolores Pence commenced this voluntary joint Chapter 13 Case on August 28, 2020. Debtors confirmed their Chapter 13 Plan on January 7, 2021. Order; Dckt. 24. On December 20, 2023, the Chapter 13 Trustee filed a Motion to Dismiss this case on the grounds that the Debtors were delinquent in three months of Plan payments. Mtn; Dckt. 30.

On February 15, 2024, a Notice of Death was filed for Co-Debtor Dolores Pence. Dckt. 40. This unfortunate filing disclosed that Dolores Pence passed away on October 19, 2023. This Notice also requests that Debtor George Pence be appointed as the successor representative in this Case for the late Co-Debtor.

As reported in the Opposition to the Trustee’s Motion to Dismiss, with Co-Debtor Dolores Pence’s passing, the income to fund the Plan was substantially reduced. Civ. Minutes; Dckt. 43. The court continued the hearing on the Motion to Dismiss to February 21, 2024, and then to March 20, 2024. The

Trustee reports that the only disbursements remaining under the Plan are to creditors holding general unsecured claims.

At the March 20, 2024, hearing on the Motion to Dismiss, another issue was raised. It appears that due to health issues, it may be necessary for the Debtors' daughter to substitute in as the successor representative for both.

The Chapter 13 Trustee agreed to the denial of the Motion to Dismiss without prejudice, to allow counsel, Debtor George Pence, and the Debtors' daughter focus on getting this Case and Plan completed, without the added stress of a Motion to Dismiss hanging over their head. If necessary, the Chapter 13 Trustee made it clear that a new motion to dismiss could be filed.

To facilitate the prosecution of this Case, the court concluded that setting a Chapter 13 Status Conference is appropriate.

### **Notice of Death of a Debtor**

On March 29, 2024, the Notice of Suggestion of Death for the late Dolores Mary Pence, a joint-debtor in this case, was filed. Dckt. 51. In it there is also the request that Nicole Archuleta be substituted in as the successor representative for both the late joint-debtor and for the surviving debtor George Pence.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event debtors pass away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when debtors in Chapter 13 die. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

Federal Rules of Bankruptcy Procedure 7025 applies in contested matters, including motions, through Federal Rules of Bankruptcy Procedure 9014. Here, although Mr. Percival is filing a Motion under Federal Rules of Bankruptcy Procedure 9013, which would make applicable Federal Rules of Civil Procedure 25 as incorporated in Federal Rules of Bankruptcy Procedure 7025, the court does not find that substituting as Debtor qualifies as a "claim ... not extinguished." Therefore, for purposes of Federal Rules of Bankruptcy Procedure 7025 as incorporated into Federal Rules of Civil Procedure 25, the court does not find a ninety day deadline applicable.

At the Status Conference, **XXXXXXX**

3. [24-20060-E-13](#)  
[RDW-2](#)

MARKO MIKOVIC  
Michael Hays

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
3-19-24 [46]**

**DWYNE ANDERSON 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, parties requesting special notice, and Office of the United States Trustee on March 19, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay / for Adequate Protection 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, **XXXXXXX**

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

Dwyne Anderson, Trustee of the Dwyne L. Anderson Revocable Trust and Dwyne L. Anderson and Darlene Anderson, Husband and Wife, as Tenants in Common ("Movant") seeks relief from the automatic stay or for adequate protection with respect to Marko Mikovic's ("Debtor") real property commonly known as 356 Mountain Spring Road, Lewiston, California 96052 ("Property"). Movant has provided the Declaration of Reilly Wilkinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 50. Movant, Dwyne L. Anderson, also submits a Deceleration to support the Motion. Decl., Docket 48.



Debtor has not made any payments and has not proposed to make any payments to Movant while Debtor tries to sell the Property. Motion, Docket 46, p. 2:15-22. Movant also provides evidence that the total amount owed on both the senior lien and junior lien and property taxes on the Property is \$457,354.46. *Id.* The Property is worth \$511,700.00, so it does not appear that there is enough of an equity cushion. *Id.*

## DISCUSSION

### 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.

In this case, the Debtor has not made any payments to the Movant, and does not propose to make any plan payments to the Movant. On March 14, 2024, this court issued an order sustaining Movant’s Objection to Confirmation of the Plan, and Debtor has not filed a new Plan. Order, Docket 44. At the hearing, **XXXXXXX**

### 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).

In this case, Debtor’s Schedule A/B states that the current value of the Property is \$511,700.00. Schedule, Docket 15. The Movant is owed approximately \$457,354.46. Motion, Docket 46, p. 3:1-5. Therefore, when taking into account costs of sale of the property, it is unclear how there will be enough equity remaining. Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

At the hearing, **XXXXXXX**



## **Request for Attorneys' Fees**

Movant has requested attorney's fees be granted as part of its Motion, stating the Note and Deed of Trust permit recovery. Movant has not cited to any provision of the Note or Deed of Trust, and Movant has not given the court any amount it requests in attorney's 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.

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

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

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

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 Dwyne Anderson, Trustee of the Dwyne L. Anderson Revocable Trust and Dwyne L. Anderson and Darlene Anderson, Husband and Wife, as Tenants in Common ("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 356 Mountain Spring Road, Lewiston, California 96052 ("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.

NEWREZ 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.

**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, and Office of the United States Trustee on March 19, 2024. By the court's calculation, 21 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, **XXXXXXXXXX**.

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

#### **No Docket Control Number**

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

#### **No Official Certificate of Service Sheet Used**

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with

the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

### **Notice As a Motion Under LBR 9014–1(f)(1) or (f)(2) Is Unclear**

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

### **No Separate Form EDC 3-468**

Local Bankruptcy Rule 4001-1(a)(3) states “[w]ith all motions for relief from stay, the movant shall file and serve as a separate document completed Form EDC 3-468, Relief from Stay Summary Sheet.” Movant has not complied with this rule because Movant attached the form to the Exhibits, not filing it as a separate document. This is cause to deny the Motion.

### **The Motion**

NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 (“Movant”) seeks relief from the automatic stay with respect to Tammy Marie Andrews’s (“Debtor”) real property commonly known as 230 N 14th Street, Montague, California 96064 (“Property”). Movant has provided the Declaration of Kateryna Halfwassen 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 three post-petition payments, with a total of \$1,872.17 in post-petition payments past due. Declaration, Dckt. 3:20-22. Before the hearing, an additional payment will come due on March 1, 2024, and payments will continue to come due on the 1<sup>st</sup> day of each month until the Loan is paid in full.

### **CHAPTER 13 TRUSTEE’S NONOPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed a Nonopposition on March 20, 2024. Dckt. 40. Trustee asserts that this case was filed on 10/24/2023 and is not confirmed, that the proposed plan payments are \$1,567.34 for 60 months and Debtor has made \$3,020.00 payments to date where the first payment was due 11/25/2023, that Debtor provides for Movant on Schedule A/B and on Schedule D as a secured claim, and that Movant has filed a proof of claim in the amount of \$109,835.03, with \$2,718.14 in arrears. *Id.* at 1:23-2:2.

Trustee requests that the motion be granted.

### **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 \$112,017.47 (Declaration, Dckt. 29, p. 3:17), while the value of the Property is determined to be \$81,804.00, as stated in Schedules A/B and D filed by Debtor.

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

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

### **11 U.S.C. § 362(d)(2)**

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

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 NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



(“Property”). The moving party has provided the Declaration of Rebecca Elli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rakesh Kumar Bains and Baljit Kaur Bains (“Debtor”).

Movant argues Debtor breached the terms of their Agreement regarding the Property on or about November 14, 2023. Pursuant to the terms of the Agreement, Movant accelerated the balance due thereunder. The truck was repossessed pre-petition. Declaration, Dckt. 33, p. 2:24-3:3:7.

## **DEBTOR’S NONOPPOSITION**

Debtor filed a Nonopposition on March 27, 2024. Dckt. 43. Debtor asserts that they do not oppose the Motion for Relief from Automatic Stay as it relates to the Property, nor the Relief requested by Creditor.

## **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 \$118,889.47 (Declaration, Dckt. 31, p. 3:7), while Debtor Scheduled the Property at \$0. Schedule A/B, Docket 16 p. 3 line 3.8.

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

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

### **11 U.S.C. § 362(d)(2)**

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

in the Property for either Debtor or the Estate, and the Property is not necessary for any effective rehabilitation in this Chapter 13 case. 11 U.S.C. § 362(d)(2).

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues that cause exists in light of Debtors' and the Estate's lack of title to the Property, Debtor's failure to pay therefor and their intent to surrender the Property. Motion, Dckt 31, 3:26-4:2.

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 Crossroads Equipment Lease and Finance, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2022 Kenworth T680 tractor truck, VIN 1XKYD49XXNIJ492444 ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

**IT IS FURTHER ORDERED** that 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.



**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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The Motion was filed on April 1, 2024. 8 days' notice was provided. This court ordered an expedited hearing on the matter on April 2, 2024 at Docket 62.

**The Motion to Dismiss is XXXXXXX**

Kenneth Koch ("Debtor") seeks to dismiss his own Chapter 13 case. A debtor may typically dismiss his or her own case at any time, so long as the case has not yet been converted to one under Chapter 7, Chapter 11, or Chapter 12. 11 U.S.C. § 1307(b). However, Fed. R. Bankr. Pro. 1017(a) provides: "a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002." Therefore, a hearing on the Motion is required.

In Debtor's Motion, Debtor states as the reason for requested dismissal: "I am requesting that my chapter 13 bankruptcy case filed 1/23/2024 be voluntarily dismissed. I do not have counsel and no longer wish to pursue this filing." Docket 61.

At the hearing, XXXXXXX

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 Kenneth Koch ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

# FINAL RULINGS

7. [24-20355](#)-E-13  
[GTB-2](#)

PATRICIA LOWE  
George Burke

FINAL HEARING RE: MOTION TO  
VACATE DISMISSAL OF CASE  
3-7-24 [\[23\]](#)

DEBTOR DISMISSED: 02/28/24  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 9, 2024 Hearing is required.  
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Patricia Lowe (“Debtor”) having filed a Notice of Dismissal, Dckt. 32, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Vacate Dismissal was dismissed without prejudice, and the matter is removed from the calendar.**

PHH MORTGAGE CORPORATION VS.

**Final Ruling:** No appearance at the April 9, 2024 Hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 4, 2024. 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). 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.**

PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust (“Movant”) seeks relief from the automatic stay with respect to Susan Elizabeth Lytle’s (“Debtor”) real property commonly known as 5816 Our Way Citrus Heights, California 95610, California (“Property”). Movant has provided the Declaration of Daniel Delpesche to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has failed to maintain property taxes on the property. Declaration, Dckt. 41, p. 2:1-3. These taxes are in the amount of \$25,264.86. Motion, Dckt. 38, p. 4:1. Payment of property taxes are required as a part of Debtor’s Deed of Trust. Exhibit “A,” Docket 42, ¶2.

**CHAPTER 13 TRUSTEE’S NONOPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed a Nonopposition on March 20, 2024. Dckt. 44. Trustee asserts that Debtor is delinquent \$1,190.00 for January and February payments, and the next payment of \$595.00 will come due on 3/25/2024. *Id.* at 1:26-28. Debtor provides for Movant in their proposed Plan and Schedule D, and the Proof of Claim filed by PHH Mortgage Compu-Link Corpo (claim

#8-1) relates the property located on the Deed of Trust. *Id.* at 2:4-6. The claim indicates the amount necessary to cure any default as of the date of the petition is \$17,442.18. *Id.* at 1:4-5. Debtor budgeted for property taxes in the amount of \$333.00 per month. Declaration, Dckt. 45, p. 2:8-9.

## 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 \$368,933.63 (Declaration, Dckt. 41, ¶8), while the value of the Property is determined to be \$328,880.00, as stated in Schedules A/B and D filed by Debtor. Schedule A, Docket 11.

### 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 failure to maintain property taxes 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 to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

### Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues that their interest in the property is not adequately protected as a result of Debtor’s failure to make

payments of property taxes due on the Subject Property. Once the stay is terminated, the Debtor will have minimal motivation to insure, preserve, or protect the collateral.

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.

### **Request for Attorney's Fees**

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion alleges that the Debtor and Movant were bound the Note, more specifically Section 7(C). This Note contains language that if the Lender requires immediate payment in full, debt enforced through the sale may include attorney's fees. Exhibit A, Exhibit, Docket 42.

Movant seeks \$1,049.00 in attorney's fees and costs incurred in preparing this Motion, including a \$199.00 filing fee. Movant argues that the rest of the fees and costs can be attributed to the amount incurred by Movant's attorneys in preparing the Motion with supporting documents and exhibits.

Movant has provided reasonable and accurate grounds for compensation, and is awarded attorney's fees and costs in the amount of \$1,049.00.

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 PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I 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** 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 5816 Our Way Citrus Heights, California 95610, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

**IT IS FURTHER ORDERED** that Movant is awarded \$1,049.00 in attorney's fees and costs.

No other or additional relief is granted.