

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**May 6, 2025 at 1:30 p.m.**

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1. <a href="#"><u>24-24603</u></a> -E-13	<b>BRADLEY CULLEN</b>	<b>CONTINUED MOTION TO DISMISS</b>
<a href="#"><u>DPC</u></a> -2	<b>Michael Hays</b>	<b>CASE</b>
		<b>3-13-25 [38]</b>

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">xxxxxxx</span>.</b>
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**May 6, 2025 Hearing**

The court continued the hearing as Debtor had informed the court the amount to cure the delinquency was in transit to the Trustee. A review of the Docket on May 2, 2025 reveals nothing new has been filed with the court. At the hearing, xxxxxxx

**REVIEW OF MOTION**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Bradley Allen Cullen ("Debtor"), is delinquent \$2,682.00 in plan payments. Debtor will need to have paid \$4,023.00 to become current by the hearing date. Mot. 1:19-22, Docket 38.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 40.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and supporting Declaration on April 2, 2025. Dockets 42, 43. Debtor states the delinquency will be cured prior to the hearing date.

The evidence filed in support of the Opposition is the Declaration of Debtor's counsel's office manager who testifies as to what she heard their client, the Debtor, tell her. Dckt. 43. No testimony is provided by the Debtor.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,682.00 delinquent in plan payments, which represents multiple months of the \$1,341.00 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).

Debtor states in the Opposition that the delinquency will be cured by April 7, 2025.

At the hearing, counsel for Trustee reported the Debtor is \$4,023 delinquent. Counsel for the Debtor reported that the \$4,023 has been delivered to counsel and is in the process of being paid to the Trustee.

Counsel for the Trustee agreed to a continuance of the hearing in light of the report of payment being in process.

The hearing on Motion to Dismiss is continued to 1:30 p.m. on May 6, 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 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**.

SEBASTIAN GARCIA 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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on March 10, 2025. By the court's calculation, 57 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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<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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#### PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Notice, Motion, and Declaration in support in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

#### 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).

## **NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR**

In the Notice of Hearing Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). Based upon, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

## **THE MOTION**

Sebastian Garcia (“Movant”) seeks relief from the automatic stay to allow *In Re Marriage of Maira Guillen and Sebastian Garcia*, case no. 22FL00158, Superior Court of California, County of Sacramento (the “State Court Litigation”) to be concluded. Movant has provided the Declaration of Sebastian Garcia to introduce evidence to authenticate the documents upon which it bases the claim affecting Maria Guadalupe Guillen (“Debtor”).

Movant argues that relief should be granted as the claims at issue arise under non-bankruptcy law and can be most expeditiously resolved in state court. Declaration 4:12-25, Dckt. 16.

The Chapter 13 Trustee filed a Non-Opposition on April 21, 2025. Docket 26.

## **DISCUSSION**

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

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~~The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been largely in the litigation process already. Therefore, judicial economy dictates~~

that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

~~————— The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.~~

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 Sebastian Garcia (“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 modified as applicable to Maria Guadalupe Guillen (“Debtor”) to allow Movant to proceed with the marriage dissolution proceeding in *In Re Marriage of Maira Guillen and Sebastian Garcia*, case no. 22FL00158, Superior Court of California, County of Sacramento, for the conclusion of obtaining a final judgment for dissolution of the marriage with Debtor, address custody and support issues, address other personal family issues as part of the dissolution proceedings, and make a property division order/judgment, which is subject to this court exercising exclusive jurisdiction (28 U.S.C. § 1334(e)) over all property of the Bankruptcy Estate and all property of the Debtor.~~

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to any property of the Bankruptcy Estate and property of the Debtor, for which this Bankruptcy Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e), or enforcement of any judgment against Debtor, David Cusick, the Chapter 13 Trustee, or property of the bankruptcy estate.

Any judgment or order for the division of property, determining whether property that is or could be property of the Bankruptcy Estate or the Debtor is separate or community property, the granting of property division, or other determination of property rights and interest, is not effective in determining whether property is property of the Debtor or the Bankruptcy Estate during the marriage and prior to the final decree of dissolution of the marriage. The property division judgment or other order determining community property, separate property, or division of assets will be considered by the Bankruptcy Court as to how property is to be disbursed upon completion or dismissal of the Bankruptcy Case, as well as the application of other legal principles such as marshaling of assets.

If the entry of an order or judgment for determination of the rights and interests in specific property prior to the completion of this Bankruptcy Case or dismissal of this Bankruptcy Case is requested, relief may be sought in a supplemental motion for further relief from the automatic stay and for this court to abstain from determining such ownership or property division issues. Such supplemental motion shall specifically identify the property that will be the subject of such state court proceedings.

No other or additional relief is granted.

3. [25-21706-E-13](#) **CAROL MCEACHERN** **MOTION TO CONFIRM TERMINATION**  
[FWP-1](#) **Pro Se** **OR ABSENCE OF STAY**  
**4-17-25 [9]**

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

**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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on April 18, 2025. By the court's calculation, 18 days' notice was provided. The court set the hearing for April 18. Dckt. 12.

The Motion to Confirm the Absence of Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 to Confirm the Absence of Stay is <span style="color: red;">XXXXXX</span>.</b>
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On April 10, 2025, Debtor Carol McEachern filed a Petition to commence this voluntary Chapter 13 Case (the "Current Case"). Dckt. 1 In it, Debtor states that she has had one prior bankruptcy case filed within this last 18 months, with that being filed in the Eastern District of California on December 12, 2025.

(The 2025 year reference appears to be a clerical error.) Petition, ¶ 9; Dckt. 1. No case number is given for this referenced prior case.

On April 17, 2025, Creditor Stephen Pezzullo (“Movant”) filed an *Ex Parte* Application for Order Confirming That No Stay is in Effect. Dckt. 9. Federal Rule of Bankruptcy Procedure 4001 provides the basic procedure for filing Motions seeking relief from the automatic stay. Such relief includes entering an order confirming that no automatic stay went into effect due to the provisions of 11 U.S.C. § 362(c)(4)(A). *See*, 11 U.S.C. § 362(c)(4)(A)(ii), as cited by the Movant.

On April 18, 2025, the court entered an order setting a hearing on this Motion for May 6, 2025. Order; Dckt. 12.

Congress provides in 11 U.S.C. § 362(c)(4)(A)(i) that if a debtor who is an individual files a bankruptcy case (the “latter case”), and that debtor had two prior bankruptcy cases that were pending and dismissed the year preceding the filing of the latter case, then no automatic stay pursuant to 11 U.S.C. § 362(a) goes into effect in the latter case.

In the *Ex Parte* Motion, Movant states that Debtor has had the following prior bankruptcy cases that were pending and dismissed within one year of the April 10, 2025 filing of the Current Case:

<b>Chapter 13 Case 24-25449</b>	Filed December 5, 2024	<b>Dismissed</b> <b>January 8, 2025</b>
<b>Chapter 13 Case 24-25500</b>	Filed December 5, 2024	<b>Dismissed</b> <b>February 4, 2025</b>
<b>Chapter 13 Case 25-20041</b>	Filed January 7, 2025	<b>Dismissed</b> <b>February 4, 2025</b>

In the Motion, Movant states that in the prior cases the bankruptcy court entered an order consolidating Cases 24-5499, 24-25500, and 25-2041. Motion, p. 2:3-4; Dckt. 9. The Motion further states that the consolidated cases were dismissed on February 4, 2025, the Debtor having failed to file any Schedules or Statement of Financial Affairs. *Id.*; p. 2:9-11.

#### **Review of Consolidation and Prior Cases**

As stated by Movant, on January 13, 2025, the Bankruptcy Judge in Case 24-25500 issued an “Order Consolidating Chapter 13 Cases.” 24-25500; Dckt. 14. That Order states:

It is hereby ordered:

1. the foregoing three cases [the Case Nos. 24-25500, 24-25449, and 25-20041 are listed in the caption] are hereby consolidated, Fed. R. Bankr. P. 1015(a);
2. case number 24-25500 shall be the lead case; and
3. all cases shall be assigned to Department A, Judge Clement

*Id.*, p. 2. The Order appears to have been issued *sui sponte*, with there being no motion to consolidate appearing on the Docket and no minutes or ruling relating to the Order consolidating the cases. The Consolidation Order is filed in Case 24-25499, but is not filed in Case 25-20041.

The Clerk of the Court entered an Order on January 8, 2025, stating that Case 24-25499 was dismissed due to the failure to file required documents. 24-25499; Dckt. 27. However, on January 13, 2025, the Bankruptcy Judge entered an order stating that Case 24-25499 was consolidated with Cases 24-2550 and 25-20041. *Id.*; Dckt. 29. Thus, notwithstanding the prior order entered by the Clerk of the Court, the Bankruptcy Judge consolidated Case 24-25449 with the other two Cases.

On February 4, 2025, the Clerk of the Court entered Orders Dismissing the consolidated cases due to the failure to file the required documents in Case 24-25500 (Dckt. 27) and 25-20041 (Dckt. 13).

### **Consolidation of Cases**

In the Order Consolidating Cases, the Bankruptcy Judge cites to Federal Rule of Bankruptcy Procedure 1015(a), which provides:

- (a) Consolidating Cases Involving the Same Debtor. The court may consolidate two or more cases that are regarding or brought by or against the same debtor and that are pending in its district.

Federal Rule of Bankruptcy Procedure 1015(b) further provides for “Jointly Administering Cases” between related entities.

Here, while the Debtor filed multiple prior cases, and failed to prosecute them, it is not clear from the record whether the Debtor had three prior cases that were pending and dismissed within one year of the filing of the Current Case, or just one “Consolidated Case” that was pending and dismissed.

On April 29, 2025, Movant filed a Supplemental Document. Docket 20. Movant states it is not clear that just because the cases were consolidated, cases were not eliminated for purposes of 11 U.S.C. § 362(c)(4). Movant cites to 11 U.S.C. § 301, stating that a case is “commenced” by the filing of a petition, and Federal Rule of Bankruptcy Procedure 1015, stating that the court may consolidate two or more cases.

What Movant does not address is when several cases are consolidated into one case and dismissed, is there just one case dismissed or multiple cases dismissed.

### **APPLICABLE LAW**

11 U.S.C. § 362(c)(4) states:



(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. . .

Collier's Treatise states regarding consolidation cases against the same debtor:

Federal Rule of Bankruptcy Procedure 1015(a) authorizes the court to consolidate separate cases by, regarding, or against the same debtor. The separate filings could occur because both voluntary and involuntary petitions were filed, because separate involuntary petitions were filed, or because a separate petition was filed in another court and transferred to a court in which a petition had already been filed. In some cases, a debtor may have filed a second voluntary petition while an earlier case is still pending. The use of the term "regarding" makes clear that petitions seeking recognition of a foreign proceeding under chapter 15 are included within the scope of the rule.

Use of the permissive "may" in Federal Rule of Bankruptcy Procedure 1015(a) indicates that the court is not required to consolidate the cases. In these situations, however, it is likely that the court will do so unless consolidation is inappropriate. Consolidation may be inappropriate in some cases in which two separate involuntary petitions have been filed against the same debtor. However, the court may generally protect against any problems posed by the consolidation of two involuntary cases by entering appropriate protective orders under Rule 1015(c).

9 COLLIER ON BANKRUPTCY ¶ 1015.02

The advisory notes to this Rule states:

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation

depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Creditor argues that 11 U.S.C. § 362(c)(4) is still in effect despite the consolidation. However, the language of 11 U.S.C. § 362(c)(4) requires the cases be pending and then dismissed. Prior to the individual cases being dismissed, they were consolidated, being joined together and in effect becoming one case.

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 Confirm Absence of the Automatic Stay filed by Creditor Stephen Pezzullo (“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 Motion is **XXXXXXX**.

**CHRISTOPHER SMITH 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 all creditors and parties in interest on April 22, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

Christopher John Smith ("Debtor") seeks relief from the automatic stay in his own case to allow the Petition for Dissolution in the Superior Court of California, County of El Dorado, as Case No. 23FL1223 (the "State Court Litigation") to be concluded. Debtor provided his own Declaration in support. Decl., Docket 27.

Debtor argues that relief is necessary for cause so that the State Court Litigation can be resolved. Debtor states the state court, by approving a marriage separation agreement ("MSA"), will not be ordering the sale of any property that is otherwise property of the bankruptcy estate, ordering payments of creditors included in the Current Case, or making any other orders that might impact the bankruptcy estate, other than to partition various assets between Debtor and Spouse according to their agreement in the MSA. Mot. 3:10-14.

**DISCUSSION**

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds.

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

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The state court is the appropriate forum to enter the order in the dissolution of marriage proceeding, this case having been brought in the state court on December 15, 2023. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Christopher John Smith (“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 automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Debtor to proceed with litigation in the Petition for Dissolution in the Superior Court of California, County of El Dorado, as Case No. 23FL1223, for the conclusion of obtaining a final judgment for dissolution of the marriage, address custody and support issues, address other personal family issues as part of the dissolution proceedings, and make a property division order/judgment, which is subject to this court exercising exclusive jurisdiction (28 U.S.C. § 1334(e)) over all property of the Bankruptcy Estate and all property of the Debtor.

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to any property of the Bankruptcy Estate and property of the Debtor, for which this Bankruptcy Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e), or enforcement of any judgment against Debtor, David Cusick, the Chapter 13 Trustee, or property of the bankruptcy estate.

Any judgment or order for the division of property, determining whether property that is or could be property of the Bankruptcy Estate or the Debtor is separate or community property, the granting of property division, or other determination of property rights and interest, is not effective in determining whether property is property of the Debtor or the Bankruptcy Estate during the marriage and prior to the final decree of dissolution of the marriage. The property division judgment or other order determining community property, separate property, or division of assets will be considered by the Bankruptcy Court as to how property is to be disbursed upon completion or dismissal of the Bankruptcy Case, as well as the application of other legal principles such as marshaling of assets.

If the entry of an order or judgment for determination of the rights and interests in specific property prior to the completion of this Bankruptcy Case or dismissal of this Bankruptcy Case is requested, relief may be sought in a supplemental motion for further relief from the automatic stay and for this court to abstain from determining such ownership or property division issues. Such supplemental motion shall specifically identify the property that will be the subject of such state court proceedings.

No other or additional relief is granted.

# FINAL RULINGS

5. [19-22305-E-13](#) ARMANDO/YOLANDA CONTINUED MOTION TO DISMISS  
[DPC-1](#) GONZALEZ CASE  
Steele Lanphier 11-22-24 [32]

**Final Ruling: No appearance at the May 6, 2025 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, and Office of the United States Trustee on November 22, 2024. By the court’s calculation, 61 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss 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). Therefore, the defaults of the respondent and other parties in interest are entered.

**The Motion to Dismiss is denied without prejudice.**

## REVIEW OF MOTION

### Important Matter to Address

Debtor’s counsel of record is no longer practicing law in the State of California. No new counsel has been substituted in place of the prior counsel.

The information provided by the Trustee states that the Debtor in “only” delinquent \$2,547.65, the payment of which is necessary to complete the Plan. This represents approximately four monthly payments. The Chapter 13 Plan provides for a 100% dividend for creditors holding general unsecured claims. Dckt. 3 at p. 5.

The court also notes that Resurgent Capital Services filed a Withdrawal of Proofs of Claims 3, 4, 5, and 6, the dollar amounts of which aggregate (\$7,552.44) in general unsecured claims. There is only (\$1,616.66) in other general unsecured claims. The only other creditor being paid through the Plan is Yolo County for its property tax claim.

Thus, while the Debtor may be on the edge of completing the Plan for a small dollar amount, it appears that Debtor may have dealt with the property tax claim outside of the Plan and has obviated the need for completing the Plan.

As stated at the March 5, 2025 Hearing, new counsel is substituting in to assist the Debtors in concluding this Case.

## **REVIEW OF MOTION**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Armando Gonzalez and Yolanda Gonzalez (“Debtor”), is delinquent \$2,547.65 in plan payments. Debtor will need to have paid \$2,547.65 to become current by the hearing date. Mot. 1:25-28, Docket 32. Debtor is in month 67 of a 60-month plan so no further payment is required prior to the hearing. Mot. 1:26-28, Docket 32.
2. According to the Trustee’s records, debtor owns \$359,925.00 in non-exempt equity. Mot. 2:3-4, Docket 32. Trustee states due to various factors, including the nature of the assets, this being Debtor’s first bankruptcy filing, the fact that Debtor is in month 67 of a 60-month plan and also that it does not appear the Debtor is acting in bad faith, the Trustee believes that conversion to Chapter 7 is not in the best interest of creditors. Mot. 2:5-9, Docket 32.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 34.

## **DEBTOR’S RESPONSE**

Debtor has not filed a Response as of January 13, 2025.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,547.65 delinquent in plan payments. As Debtor is in month 67, the amount to complete the Plan is the delinquent amount of \$2,547.65.

At the hearing, the Parties agreed to continue the hearing to afford Debtor, who has one plan payment remaining, an additional opportunity to complete the Chapter 13 Plan.

The hearing is continued to 9:00 a.m. on March 5, 2025.

## **March 5, 2025 Hearing**

The court continued the hearing on the Motion, this being a unique case where Debtor had one final payment to make to complete a Plan that would pay 100% to general unsecured creditors. A review of the Docket on February 27, 2025 reveals nothing new has been filed with the court.

New counsel for the Debtor appeared, reporting that he is substituting in so that the Debtors can complete the Plan. Both Debtors appeared and demonstrated that they are actively involved with getting this Plan completed.

The Parties agreed to a continuance of the hearing to allow new counsel to get the final payment wrapped up and the Plan completed.

The hearing on the Motion to Dismiss is continued 9:00 a.m. on April 16, 2025.

### **April 16, 2025 Hearing**

The court continued the hearing on this Motion as Debtors are represented by new counsel and had on final payment to make to complete the Plan. A review of the Docket on April 9, 2025 reveals nothing new has been filed with the court.

At the March 5, 2025 hearing, Attorney Peter Macaluso, Esq. appeared and indicated that he was taking on the representation so that the Debtor could make the final payment.

At the April 16, 2025 hearing, no appearance was made by Debtors. Mr. Macaluso, who has not substituted in as counsel, reported that he would drive to the debtor's home and meet with the Debtors. He requested the court continue the hearing.

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on May 6, 2025.

### **May 6, 2025 Hearing**

The hearing on this Motion was continued as Mr. Macaluso reported he was going to make contact with Debtor and prompt them to make the final plan payment. On April 29, 2025, Trustee filed a Status Report.

Trustee states Debtor is current having made the final payment to complete the Plan and wishes to drop the Motion. Status Report, Docket 54.

The Motion to Dismiss is denied without prejudice,

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 denied without prejudice.



**DEBTOR DISMISSED: 04/21/25  
FIFTH THIRD BANK, NATIONAL  
ASSOCIATION VS.**

**Final Ruling:** No appearance at the May 6, 2025 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 on March 27, 2025. By the court’s calculation, 40 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.**

Fifth Third Bank, National Association (“Movant”) seeks relief from the automatic stay with respect to Eric James Geiger’s (“Debtor”) real property commonly known as 1708 37th Street, Sacramento, CA 95816 (“Property”). Movant has provided the Declaration of Dawna West to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 27.

Movant argues Debtor has not made four post-petition payments, with a total of \$8,761.12 in post-petition payments past due. Declaration ¶ 11, Docket 27.

The Chapter 13 Trustee filed a Non-Opposition on April 22, 2025. Docket 41.

The court learned Debtor passed away on April 1, 2025. Notice of Death, Docket 32. The court dismissed this case on April 21, 2025, as this case was not being prosecuted. Order, Docket 39.

## **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 \$380,958.99 (Declaration ¶ 14, Docket 27), while the value of the Property is determined to be \$1,058,000.00, 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).

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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

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 Fifth Third Bank, 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 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 1708 37th Street, Sacramento, CA 95816 (“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.

No other or additional relief is granted.

7. [23-20188-E-13](#)      **PORTIA STEWART**      **CONTINUED MOTION TO DISMISS**  
[DPC-3](#)      **Peter Macaluso**      **CASE**  
3-6-25 [66]

**Final Ruling:** No appearance at the May 6, 2025 Hearing is required.

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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on April 29, 2025, Docket 74; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee 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 Portia Merie Stewart (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’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 to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee 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, Docket 74, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is denied without prejudice, and the bankruptcy case shall proceed in this court.