UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 10, 2022 at 1:30 p.m.

1.	**22-20860-E-13** **RHS-1** **1 thru 2**	**ESTATE OF ROSE V MCNEILL** **Pro Se**	**ORDER TO SHOW CAUSE** **4-18-22 [13]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on April 18, 2022. The court computes that 22 days' notice has been provided.

The Order to Show Cause is xxxxxxx .

The Order to Show Cause was issued due to the failure of the following:

ORDER TO SHOW CAUSE

On April 6, 2022, Nathan Adams, identified as the "Special Administrator for the Estate of Rose V. McNeill," filed a Voluntary Petition for Individuals Filing for Bankruptcy in which the Debtor is identified as "Estate of Rose V. McNeill." Dckt. 1. The address where the Debtor "lives" is stated to be 6539 La Cienega Drive, North Highlands, California. In addition, the Petition further states that the Debtor's mailing address is 134 Maryal Dr., Sacramento, California. *Id.*

There is a signature provided on page 6 of the Voluntary Petition for Debtor or an authorized representative of Debtor, which is signed by "Nathan Adams, Special Administrator." *Id.* at 6. The "Special Administrator" is not represented by counsel, but has filed the bankruptcy case for the Estate of Rose V. McNeill in *pro se*. A person with a power of attorney, or who is a conservator, executor, or personal representative (for matters outside of the probate matter proceeding in which they are appointed),

and trustees who are not licensed attorneys cannot appear *pro se* (not represented by a licensed attorney) in judicial proceedings. *See Hansen v. Hansen*, 114 C.A.4th 618, 621 (2003); *Ziegler v. Nickel*, 64 C.A.4th 545 (1998); *Drake v. Superior Court* (1994) 21 C.A.4th 1826, 1830, 1831 (1994); *People v. Malone*, 232 C.A.2d 531, 537 (1965). The last page of the Petition states that Nathan Adams acknowledges that he is filing this case without an attorney. *Id*. at 8. [FN. 1.]

FN.1. The State Bar of California does not list a Nathan Adams as being or having been an attorney licensed to practice law in the State of California.

https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=nathan+adams&SoundsLike=false.

State Court Special Administrator Documents

No power of appointment documents or orders are attached to the Petition for Mr. Adams appointment as a special administrator for the Estate of Rose V. McNeill. It is not identified what counsel, if any, represents Mr. Adams in the State Court proceedings in which he was appointed. These documents and the information therein are necessary in connection with a person attempting to commence a bankruptcy case for the estate of a deceased person. The court orders Mr. Adams to provide copies of the following documents and information to be filed with the court prior to the hearing on this Order to Show Cause:

A. A file stamped copy of the petition or other pleading which commenced the State Court Action in which Nathan Adams was appointed as the special representative of the Estate of Rose V. McNeill.

B. A file stamped copy of the motion or application filed in such State Court Action and declarations filed in support thereof for the appointment of Nathan Adams as the special representative of the Estate of Rose V. McNeill.

C. A file stamped copy of the order appointing Nathan Adams as the special representative of the Estate of Rose V. McNeill.

D. The names and addresses of any attorneys who are representing Nathan Adams in the State Court Action, or with whom Nathan Adams has spoken with, consulted, or who has provided legal advice or directions for commencing the State Court Action, Nathan Adams as the special representative of the Estate of Rose V. McNeill, or filing the Bankruptcy Petition for the Estate of Rose V. McNeill and commencing this bankruptcy case.

Probate Estates Not Eligible to Be Debtors in Bankruptcy Cases

Congress provides in 11 U.S.C. § 109(b) that a "person" may be a Chapter 7 debtor, with railroads, and various domestic and foreign insurance and financial institutions excluded. The term person is defined in 11 U.S.C. § 101(41) as follows:

> (41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—
>
> (A) acquires an asset from a person—
>
> (I) as a result of the operation of a loan guarantee agreement; or
>
> (ii) as receiver or liquidating agent of a person;
>
> (B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or
>
> (C) is the legal or beneficial owner of an asset of—
>
> (I) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
>
> (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;
>
> shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

Though non-exclusive, a "Person" includes individuals and business entities. It has long been established that the administrator of a decedent's estate or a decedent's estate is not a "person" eligible to file bankruptcy. These cases include the following decisions:

> Based on these indicia, we conclude that the Code's definition of "person," and therefore its definition of "debtor," excludes insolvent decedents' estates. Other courts that have addressed this question have uniformly embraced this view. *See In re Estate of Whiteside*, 64 B.R. 99, 102 (Bankr.E.D.Cal.1986); *In re Estate of Patterson*, 64 B.R. 807, 808 (Bankr.W.D.Tex.1986); *In re Jarrett*, 19 B.R. 413, 414 (Bankr.M.D.N.C.1982); *In re 299 Jack-Hemp Assocs.*, 20 B.R. 412, 413 (Bankr.S.D.N.Y.1982); *In re Estate of Brown*, 16 B.R. 128, 128 (Bankr.D.D.C.1981). These courts generally have opined that Congress elected not to extend bankruptcy jurisdiction to insolvent decedents' estates because the individual states have developed, through their probate systems, a comprehensive and specialized machinery for the administration of such estates. *See Jarrett*, 19 B.R. at 414; 299 *Jack-Hemp Assocs.*, 20 B.R. at 413. Some of the courts have also noted that the policy of the Bankruptcy Code is to give individuals a "fresh start" through discharge of their debts, and that this policy is not furthered by bankruptcy administration of decedents' estates. *See Jarrett*, 19 B.R. at 414; cf. *In re Estate of Hiller*, 240 F. Supp. 504, 504 (N.D.Cal.1965) (interpreting 1898 Bankruptcy Act); *Adams v. Terrell*, 4 Wood. 337, 4 F. 796, 801 (W.D.Tex.1880) (in the case of an insolvent decedent's estate, "death has already discharged [the decedent] of all personal liability").

In re Goerg, 844 F.2d 1562, 1566 (11th Cir. 1988)

In 2006 the Supreme Court discussed this probate exception in less exclusive terms, making it clear that merely because the "p word" was involved the federal court could walk away from the matter.
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> Reversing the Ninth Circuit, which had ordered the case dismissed for want of federal subject-matter jurisdiction, this Court held that federal jurisdiction was properly invoked. The Court first stated:
>
> > "**It is true that a federal court has no jurisdiction to probate a will or administer an estate** . . . . But it has been established by a long series of decisions of this Court that **federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court**." 326 U.S., at 494, 66 S. Ct. 193, 90 L. Ed. 165 (quoting Waterman, 215 U.S., at 43, 30 S. Ct. 10, 54 L. Ed. 80).
>
> Next, the Court described a probate exception of distinctly limited scope:
>
> > "[W]hile a **federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court**, . . . it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." , 66 S. Ct. 193, 90 L. Ed. 165.
>
> The first of the above-quoted passages from *Markham* is not a model of clear statement. The Court observed that federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants against a decedent's estate, **"so long as the federal court does not *interfere with the probate proceedings*."** *Ibid.* (emphasis added). Lower federal courts have puzzled over the meaning of the words "interfere with the probate proceedings," and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate. *See, e.g., Mangieri v. Mangieri*, 226 F.3d 1, 2-3 (CA1 2000) (breach of fiduciary duty by executor); *Golden ex rel. Golden v. Golden*, 382 F.3d 348, 360-362 (CA3 2004) (same); *Lepard v. NBD Bank, Div. of Bank One*, 384 F.3d 232, 234-237 (CA6 2004) (breach of fiduciary duty by trustee); Storm v. Storm, 328 F.3d 941, 943-945 (CA7 2003) (probate exception bars claim that plaintiff's father tortiously interfered with plaintiff's inheritance by persuading trust grantor to amend irrevocable inter vivos trust); *Rienhardt v. Kelly*, 164 F.3d 1296, 1300-1301 (CA10 1999) (probate exception bars claim that defendants exerted undue influence on testator and thereby tortiously interfered with plaintiff's expected

inheritance).

> We read Markham's enigmatic words, in sync with the second above-quoted passage, to proscribe "disturb[ing] or affect[ing] the possession of property in the custody of a state court." 326 U.S., at 494, 66 S. Ct. 296, 90 L. Ed. 256. True, that reading renders the first-quoted passage in part redundant, but redundancy in this context, we do not doubt, is preferable to incoherence. In short, **we comprehend the "interference" language in *Markham* as essentially a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res***. *See, e.g., Penn General Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195-196, 55 S. Ct. 386, 79 L. Ed. 850 (1935); *Waterman*, 215 U.S., at 45-46, 30 S. Ct. 10, 54 L. Ed. 80. Thus, **the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate**; it also **precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court**. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.

Marshall v. Marshall 547 U.S. 293, 311-312 (2006).

Even with the admonition from the Supreme Court not to drop a proceeding merely because it would relate to a probate proceeding, including a probate estate as a "person" who may file bankruptcy would necessarily wrench from the state court the administration of the probate estate and property of the probate estate, sweeping it all into the bankruptcy estate 11 U.S.C. § 541, 28 U.S.C. § 1334 (e) (granting exclusive federal court jurisdiction over all property of the bankruptcy estate).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, and the case is dismissed.

2. 22-20860-E-13 ESTATE OF ROSE V MCNEILL MOTION TO DISMISS CASE
Pro Se 4-19-22 [15]

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

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 by the Clerk of Court on Special Administrator, Trustee, and Office of the United States Trustee on April 20, 2022. By the court's calculation, 20 days' notice was provided.

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).

The Motion to Dismiss is granted, and the case is dismissed.

Debtor, Estate of Rose V. McNeill ("Debtor"), seeks dismissal of the case as they are able to make arrangements to handle debt outside of bankruptcy.

DISCUSSION

11 U.S.C. § 1307(b) provides:

> On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

In keeping with the Congressional intent that a Chapter 13 case is completely voluntary, 1307(b) gives an absolute right for a petitioner to dismiss a Chapter 13 petition. 8 Collier on Bankruptcy P 1307.03 (16th 2021); *In re Nash*, 765 F.2d 1410, 1413 (9th Cir. 1985).

The Motion is granted, and the case is dismissed.

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

Debtor, Estate of Rose V. McNeill ("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 granted, and the case is dismissed.

3. **21-23539-E-13 DEREK WOLF**
DVW-1 Peter Macaluso
U.S. BANK, NATIONAL ASSOCIATION VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-19-21 [11]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. 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. The court continued the hearing, opposition and rely briefs were filed, and the final hearing set for December 14, 2021.

The Motion for Relief is xxxxxxxxxxxxxxxxxx

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted it's foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of $25,150.25 in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will

not automatically go into effect.

Trustee's Non-Opposition

Trustee has filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee reaffirms that the Debtor has failed to file the following documents:

a. Chapter 13 Plan
b. Form 122C-1 Statement of Monthly Income
c. Schedule A/B - Real and Personal Property
d. Schedule C - Exempt Property
e. Schedule D - Secured Creditors
f. Schedule E/F - Unsecured Claims
g. Schedule G - Executory Contracts
h. Schedule H - Codebtors
i. Schedule I - Current Income
j. Schedule J - Current Expend.
k. Statement of Financial Affairs
l. Summary of Assets and Liabilities

Furthermore, Trustee notes the Creditor's Motion for Notice of Sale was recorded against said property on September 15, 2021 to schedule a foreclosure sale for October 12, 2021. This was the same time in which the bankruptcy was filed, and the Debtor was still delinquent for 25 months for no less than $25,150.25 (Dckt. 11).

Review of File

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed. Dckt. 24. The Plan provides for monthly payments by Debtor of $1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id.*

The only claim provided for in the Plan is Movants, for which Debtor is to pay $500 a month toward the $29,254.55 arrearage and $1,016.32 for the post-petition monthly payment. These two payment total $1,516.32, which is slightly more than the $1,500 a month play payment.

However, the Debtor has not accounted for the Chapter 13 Trustee fees paid out of the $1,500 a month payment. The Trustee's fee is 10%, so from the $1,500 payment, there is deducted $150 for Trustee fees. This results in Debtor's monthly payment being $166 short each month.

Debtor does not list any other creditors on Schedules D or E/F. Dckt. 23.

On Schedule I, Debtor states that he has $1,650 a month in net income from his business, $358 in CALPERS Death Benefit, and $750 in rents, for total monthly income of $2,758. *Id.* At the end of Schedule I Debtor states that a possible increase in income can occur "If I receive claim from Social Security." He also states, "X Wife + Daughter recently received 5.5 Mil Judgment From RUCCI."

For expenses, on Schedule J Debtor lists $1,258 in total expenses, with nothing for self-

employment or income taxes. For Expenses, Debtor states having:

A. Food and housekeeping supplies.....($375)

1. Assuming ($50) for housekeeping supplies, that leaves ($325) for food, which in a 30 day months equals $3.61 cents per meal.

B. Debtor has no medical or dental expenses.

C. Debtor has no home repair or maintenance expenses.

Id.

At the end of Schedule J, in response to whether Debtor expects an increase or decrease in expenses, Debtor states:

> If Rushmore will finally be fair and recognize my Mod Package that they have on file.

Schedule A - Value of Property

On Schedule A/B Debtor lists the property that is the subject of the foreclosure sale as having a value of $310,000. *Id*. On Schedule D Debtor lists Creditor as having a claim of $145,985. *Id*. In the Motion, Movant states that as of the time of the foreclosure sale, the balance owed was $163,476.40, and that the buyer at the sale paid $276,000.00. Motion, ¶¶ 7, 8; Dckt. 11. Presumably there will be almost $100,000+/- in surplus sales proceeds to be disbursed to Debtor if the stay is annulled.

DISCUSSION

Annulment of Stay

At the first hearing on this Motion Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

Relief Pursuant to 11 U.S.C. § 362(d)(4)

Many of the factors identified above are asserted as grounds for relief pursuant to 11 U.S.C. § 362(d)(4), asserting that the multiple, ineffective bankruptcy filings demonstrate a scheme to hinder, delay, or defraud Movant with respect to its interests in the Property.

Relief Pursuant to 11 U.S.C. § 362(d)(1)

Movant also asserts that cause exists to modify the stay, whether or not it is annulled to allow Movant to enforce its rights in the Property.

Debtor's Opposition

On November 19, 2021, Debtor filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for $91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states that Debtor fails to:

> a. Address Movant's request to annul the automatic stay; or
>
> b. Provide any evidence that the Debtor provided any notice to Movant or its agents or representatives of his Bankruptcy filing prior to the foreclosure sale, or any ability to be a successful Debtor in this recent Chapter 13 case.

Additionally, Movant states the Debtor has had the opportunity in his three bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so. Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only $61,131.14, and NOT the entire $91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of $91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

The Court has now continued this hearing several times. As event have transpired, Debtor has confirmed a plan, and then defaulted on the plan.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent $1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

> 5. Debtor states that he received a $91,600.00 loan in approximately February 2018 from the

California Help to Homeowner's Program.

6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.

8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:

a. The sum of $61,131.14 was received and applied to Debtor's loan in 2018.

b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the $91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.

9a. In the Declaration the obligation under the loan and application of the $91,700 is stated as follows:

Principal Balance 1st Lien	($170,465.08)		($36,400.00)	Deferred Principal 2nd Lien
Application of March 20, 2018 $97,700				
Due Date June 2015		$7,292.61		
Due Date March 2016		$1,620.58		
Due Date May 2016		$1,639.91		
Due Date July 2016		$4,904.70		
Due Date January 2017		$4,904.70		
Due Date July 2017		$4,465.50		
Due Date December 2017		$4,465.50		
Due Date May 2018		$256.35		
Due Date May 2018		$1,019.00		
Due Date May 2018		$61,131.14		
Total Monies Applied		$91,699.99		

11. The $91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than $25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11. Because the Motion was brought to annul the stay for a foreclosure sale that occurred, an analysis of how the arrearage is computed was not provided.

As of the court's January 10, 2022 review of the Docket, a substitution of attorney for the Debtor, giving Debtor counsel rather than attempting to prosecute this case in *pro se*, had not been filed.

Debtor's Prosecution of This Case
Basis for Continuance

At the hearing, Peter Macaluso, Esq., an experienced consumer attorney, appeared and confirmed that he has been engaged by the Debtor and that Mr. Macaluso would be substituting in as counsel for Debtor. Additionally, that he would work diligently with Debtor to prosecute this case and for Debtor to advance his economic interests as permitted under the Bankruptcy Code in this case. In light of Debtor's repeated failures in prosecuting prior Chapter 13 cases, such clear guidance and legal advice from counsel is necessary. Debtor is now facing the highly likely granting of relief pursuant to 11 U.S.C. § 362(d)(4) and the dismissal of this case if he cannot prosecute it.

The court notes that based on Debtor's Schedules and Movant's statement of the amount of debt secured by Debtor's residence, Debtor would have approximately $116,000 in equity (after costs of sale) in the property. In looking at Zillow.com statement of value of the property, the equity would be approximately $156,000.

This is a substantial asset which Debtor almost recently lost, having filed bankruptcy the day of the foreclosure sale. Fortunately for Debtor, the buyer at the foreclosure sale backed out of the sale and Movant is no longer seeking an annulment of the stay, but prospective relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Debtor, in his *pro se* Opposition to the Motion for Relief, addresses some real life family events impacting his life. Dckt. 28. While retaining the home, if possible, would be a better result in Debtor's eyes, if that is financially impossible, losing $150,000+ in equity and not having that in structuring his life for the benefit of himself and his family would be a disaster.

The court made it clear to Debtor's counsel that Debtor needs to prosecute this case and show due diligence if there would be further continuances of the hearing on this Motion for Relief and the Trustee's Motion to Dismiss.

January 25, 2022 Hearing

Debtor's newly obtained counsel appeared at the hearing. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be $25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining $25,000+ of exempt proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

Debtor's Motion to Confirm Plan

Debtor, with guidance from their counsel, filed their Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75.

March 15, 2022 Hearing

At the hearing on the Motion to Confirm, the Trustee reported that Debtor had not provided all of the information. After an extensive discussion in connection with the Motion to Confirm, the court concluded that for this case Debtor was at the "put up or shut up phase." He has promised to make certain payments, he is curing the default (a cashier's check in Debtor's counsel's hand) and has provided to make the payments electronically. Debtor should be allowed to show he can perform the plan in this case and not have it dismissed out from under him. The court granted the Motion to Confirm the Chapter 13 Plan, as it was amended at that hearing.

However, it also appears, as requested by counsel and the creditor seeking relief from the stay, that his performance bears close watching. Additionally, Debtor may benefit from knowing that there is a motion to dismiss and a motion for relief from stay pending, which he is fending off by performing the Plan.

Therefore, the court continues the hearing on the Motion to Dismiss to allow Debtor the opportunity to show the "proof is in the pudding" of him performing the Plan.

Court Order Confirming Plan

The court issued an order confirming Debtor's First Amended Plan on April 8, 2022. *See* Dckt. 88.

Plan Status

The Trustee has not provided a status report as to whether Debtor is complying with the plan

April 26, 2022, Hearing

Though the Amended Plan, which addresses prior arrearages, has been confirmed, Debtor is now in default for the March and April 2022 monthly plan payments. Debtor's counsel stated that there is a TFS payment scheduled for April 27, 2022, and he will delivered to the Chapter 13 Trustee a cashier's check for $850, which will cure the March 2022 default.

Counsel for Movant noted that this hearing has been continued multiple times and Movant has allowed Debtor to prosecute the confirmation of the Amended Plan which was to address the pre and post-petition defaults. Unfortunately, new defaults have occurred. Movant's counsel directed the court to the history of multiple, non-successful Chapter 13 filing by Debtor in this court.

At the hearing Debtor was visibly distressed at the proceedings and his view that Movant is trying to take his property. He has previously argued that Movant will not enter into a loan modification with him. As the court noted, Debtor's counsel is effectively forcing a five year loan modification on Movant though the confirmed Amended Chapter 13 Plan. However, the Debtor must be able to perform the Chapter 13 Plan and make the modified loan payments.

As discussed above, it appears that Debtor has a exempt equity in the Property (with market prices at an all time high, but with interest rates now heading up from the historic lows of the past several years). The court expressed some concern over Debtor's apparent belief that he had the right to have the loan modified to his ability to make payments, even if that resulted in further defaults in payments to Movant. In doing so, and the unsuccessful filing and then dismissal of three prior Chapter 13 cases in the two years preceding the October 12, 2021 commencement of the current case. It appears that Debtor is not aware of or value the exempt equity that he is on the verge of losing through a foreclosure sale if he cannot successfully prosecute a plan (either to cure the default and make the current payments, or to sell the Property and take his homestead exemption cash).

In light of the Chapter 13 Trustee being able to make a distribution to Movant in the near future, the court again continues the hearing. This is to afford Debtor and Debtor's counsel to have the hard economic talk about what Debtor can fund, how it can be funded, and what Debtor may need to do to save his exempt equity value in the Property.

May 10, 2022 Hearing

On May 6, 2022, counsel for the Chapter 13 Trustee provided a Supplemental Declaration providing testimony concerning Debtor's performance under the confirmed Chapter 13 Plan. Dckt. 13. That testimony, identified by paragraph number in the Supplemental Declaration includes:

> 3. and 4. The Trustee received initial payments totaling $1,500 and then payments in March and April 2022 totaling $2,810.00, with a payment scheduled through TFS

in the amount of $1,100.00 which is anticipated to be received by May 11, 2022.

5. The Trustee computes Debtor to be delinquent $3,069.00 in plan payments, with an additional payment of $1,960.00 coming due on May 25, 2022.

The Trustee's counsel also notes that there is an objection to claim pending, with a hearing set for June 28, 2022.

Objection to Claim

On May 2, 2022, Debtor filed an Objection to Claim filed by Movant. Dckt. 95. In the Objection it is alleged that the Proof of Claim must be reduced by a $91,700.00 grant Debtor received and then adjusted for payments of $10,752.50, which thereby reduces the current arrearage to $0.00.

In a section titled "Non-Disputed Material Facts" Debtor provides a multi-year history of this loan, grants received and payments made. The court summarizes the information as follows:

Date	Event		
		Delinquent Payment Amount	Total Claim Amount
April 9, 2015	Debtor's Prior Case, 15-20683	($3,177.95)	($209,166.89)
April 9, 2015	Movant File Proof of Claim 2 in Case 15-20683 This Stated The Loan Modification Amount Owed	($3,177.95)	($209,166.89)
February 26, 2019	Keep Your Home California in a grant for Debtor Disbursed to Movant on the Modified Loan		$91,700.00
March 20, 2018	There was $97,700 also Disbursed to Movant		$97,700.00
November 21,2019	Debtor filed Bankruptcy Case 19-27237		
August 1, 2014 - July 1, 2019	Loan Modification	$522.66 P&I $275.14 Escrow Estimated Modified Loan Payment	

March 12, 2020	Debtor filed Bankruptcy Case 20-21485		
March 29, 2020	Movant Filed Proof of Claim 2 stating	($23,085.02)	($153,169.92)
	Trustee reports paying $0.00 to Movant in Case 20-21485		
August 1, 2021 - September 1, [clerical error in Motion]		Estimated Payments Due Were $707.80 P&I $275.14 Escrow	
	Debtor's Prior Case, 20-22852	$10,752.50 Paid Creditor	
August 12, 2021	Debtor Filed Bankruptcy Case 21-23529		
December 8, 2021	Movant filed Proof of Claim 2	($40,899.99)	($164,860.13)
April 8, 2022	Debtor Confirmed the Chapter 13 Plan		

Debtor concludes that the claim filed in the current bankruptcy case, 21-23529 in the amount of ($164,860.13) does not provide credit for the $91,700.00 Keep Your Home California grant that was paid to Movant.

Debtor states that from the January 30, 2015 filing of bankruptcy case 15-20683 through the October 1, 2021 filing of case 21-23549 there is $69,041.20 and $102,452.49 which "has been paid sine the disbursement of the Loan Modification and grant for $91,700.00." Motion, p. 7:17-20; Dckt. 95. That computation is not clear to the court.

The Debtor provides his Declaration in support of the Objection to Claim. Dckt. 97. His testimony is summarized as follows (identified by paragraph number in the Declaration):

> 2. In Case 20-22852 Debtor paid the Trustee "principle payments of $10,752.50" which the Trustee distributed.
>
> 3. On September 1, 2014, Debtor was granted a "Home Affordable Modification Agreement" which cured the arrearage and gave Debtor a permanent loan modification Debtor directs the court to Movant's Proof of Claim 2 filed in case 15-20683.
>
> 5. With the grant payment of $91,700.00, Debtor computes Movant having been

paid $102,452.49 during the period January 30, 2015 and September 1, 2021.

8. Debtor disputes as unauthorized of $11,457.44 for attorney's fees and costs, stating that they were "not authorized by this, or any other court."

With respect to Debtors' Plan in this case, **xxxxxxx**

Court's Summary Review of Secured Claim

The court's review of the Proofs of Claim filed by Creditor provides this summary information of the secured claim amount asserted and how it changed from year to year, case to case filed by Debtor.

CH 7 Case 11-22709	**Filed February 2, 2011**	**Discharge Entered May 23, 2011**		
CH 13 Case 12-34358 Filed fourteen months after CH 7 Discharge entered in prior case.	**Filed August 3, 2012** **Dismissed January 6, 2015**		Total Claim Amount (rounded to nearest whole dollar)	
	POC 1-1		($192,359.30)	
	Prepetition Arrearage	($9,693.42)		
Trustee Reported Disbursement to Creditor (TFR, Dckt. 132) One Post Petition Current Payment $0 For Prepetition Arrearage		$882.85		
CH 13 Case 15-20683 Filed same month as dismissal of prior case 12-34358	**Filed January 30, 2015** **Dismissed October 16, 2016**			(Increase)/Decrease in Secured Claim

	POC 2-1		($209,166.89)	($16,807.59)
	Prepetition Arrearage	($3,177.95)		
Trustee Reported Disbursement to Creditor (TFR, Dckt. 62)		$0.00		
CH 7 Case 19-27237 Filed three years after dismissal of prior CH 13 Case	**Filed November 21, 2019**	**Discharge Entered** **March 9, 2020**		
CH 13 Case 20-21485 Filed three days after Chapter 7 Discharge Granted	**Filed March 12, 2020** **Dismissed May 22, 2020**			(Increase)/Decrease in Secured Claim
	POC 2-1		($153,169.92)	$55,996.97
	Prepetition Arrearage	($23,085.02)		
Trustee Reported Disbursement to Creditor (TFR, Dckt. 54)		$0.00		
CH 13 Case 20-22852	**Filed June 1, 2020** **Dismissed August 27, 2021**			(Increase)/Decrease in Secured Claim
	POC 2-1		($159,190.30)	($6,020.38)
	Prepetition Arrearage	($29,254.55)		

Trustee Reported Disbursement to Creditor (TFR, Dckt. 54) All for Post Petition Current Payment $0 For Prepetition Arrearage		$10,752.00		
Current CH 13 Case 21-23539 Filed forty-five (45) days after dismissal of prior CH 13 Case	**Filed October 12, 2021**			(Increase)/Decrease in Secured Claim
	POC 2-1		($164,860.13)	($5,669.83)
	Prepetition Arrearage	($40,899.99)		

Creditor has filed Proof of Claim 2-1 in this case. In this Proof of Claim Creditor states the interest rate is currently 4.125%. In POC 1-1 filed in Case 12-34358, Creditor states the interest rate was 3.00%. In POC 2-1 filed in Case 20-21485 Creditor states the interest rate is 3.00%. The loan documents attached to Proof of Claim 2-1 in this case stated that the interest rate is adjustable.

Assuming an interest rate of 3.00%, compounding interest annually (not monthly or at the default rate of 6.00% stated in loan documents), a simple analysis computed from the August 3, 2012 filing of Case 12-34358 to the October 12, 2021 filing of the current case (rounded to nine (9) years of what the principal and interest loan balance would be as follows:

	Interest Rate of 3.00%	
	Interest Accrual on Starting Total 2012 Claim Amount	Total Claim Computed at End of Interest Period
August 2012 Secured Claim Starting Balance	Starting Balance	($192,359.30)
August 2012 through July 2013	($5,770.78)	($198,130.08)
August 2013 through July 2014	($5,943.90)	($204,073.98)
August 2014 through July 2015	($6,122.22)	($210,196.20)

August 2015 through July 2016	($6,305.89)	($216,502.09)
August 2016 through July 2017	($6,495.06)	($222,997.15)
August 2017 through July 2018	($6,689.91)	($229,687.06)
August 2018 through July 2019	($6,890.61)	($236,577.68)
August 2019 through July 2020	($7,097.33)	($243,675.01)
August 2020 through July 2021	($7,310.25)	($250,985.26)

The above does not include any costs, expenses, or attorney's fees which may be sought as part of the proofs of claims filed in the Debtor's bankruptcy cases over the past decade (Debtor disputing all or at least a portion of attorney's fees and costs).

In Proof of Claim 2-1 filed by Creditor in the Current Bankruptcy Case, 21-24539, Creditor asserts a claim in the amount of ($164,860.13). Of this, ($14,994.93) is for attorney's fees, foreclosure costs, bankruptcy fees and costs. There is another ($9,628.24) for escrow deficiency and shortage.

The difference between the rough 2012 to 2021 annual compounding of interest with a 3% interest rate for a claim of ($250,985.26) and the ($164,860.13) reflects a reduction in the claim over that period of time of $86,125.13. If the attorney's fees and costs, foreclosure and bankruptcy fees, and escrow deficiency of ($24,683.17), then the reduction from the August 2012 starting balance above would actually be $110,748.30.

In the Objection to Claim, Debtor asserts that the "credit" he should have for payments made to the secured debt should be $102,454.50. Objection, p. 5:17-18; Dckt. 95. This is slightly less than the $110,748.30 reduction estimated by the court above.

The court also notes that attached as Part 5 to Proof of Claim 2-1 filed in the Current Bankruptcy Case 21-23539 is a Loan payment history from May 1, 2018 consisting of five page, small font, table of charges, credits, and application of monies received. Fortunately, in the 21st Century these electronic documents case be viewed and enlarged on wide monitors and easily read.

The information provided by Creditor with Proof of Claim 2-1 states that:

1. No payments were received from May 1, 2018 through October 1, 2020;

2. From October 1, 2020 to December 31, 2020, $4,450.50 was received and applied to this secured debt; and

3. From January 1, 2021 to October 12, 2021, $6,451.50 was received and

applied to this secured debt.

With respect to the $91,700.00 California Help Program, Debtor testifies in his Declaration (Dckt. 97) that it was received in 2014 and applied to the secured debt. If in the Chart above making rough 3.00% per year interest accrual and compounding projection $91,700 is applied after the August 2013 through July 2014 computation, then the July 2021 balance for principal and interest would be ($134,180.41).

If one then adds the attorney's fees and costs, foreclosure and bankruptcy fees, and escrow deficiency of ($24,683.17) also sought by Creditor, that would yield a claim balance of ($158,863.58). That rough, "looking over the thumb," calculation is within ($5,996) of the ($164,860.13) secured claim stated by Creditor in Proof of Claim 2-1 filed in the Current Bankruptcy Case 21-23539.

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 for Relief from the Automatic Stay filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title 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 Motion for Relief from the Automatic Stay is xxxxxxxxxxxxxxxxxx

FINAL RULINGS

4. **22-20702-E-13** **MATEO GALVAN** **MOTION FOR RELIEF FROM**
SC-1 **Harry Roth** **AUTOMATIC STAY**
REDWOOD HOLDINGS, LLC VS. **4-12-22 [15]**

Final Ruling: No appearance at the May 10, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 12, 2022. By the court's calculation, 28 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.

Redwood Holdings, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1757 Lee Drive, Woodland, California ("Property"). The moving party has provided the Declaration of Olivia Reyes to introduce evidence as a basis for Movant's contention that Mateo Angulo Galvan ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition non-judicial foreclosure sale on October 18, 2021. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Yolo on November 24, 2021. Exhibit 2, Dckt. 20.

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition on April 15, 2022. Dckt. 23 Trustee states Debtor lists the

wrongful detainer but not foreclosure on their Petition. Dckt. 11.

DISCUSSION

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exhibit 1, Dckt. 20. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

Request for Prospective Injunctive Relief

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

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

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

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

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

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

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

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 Redwood Holdings, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and

successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1757 Lee Drive, Woodland, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

5. 22-20711-E-13 JHK-1 FORD MOTOR CREDIT COMPANY LLC VS.

TIMOTHY/SHERYL COSETTI
Mohammad Mokarram

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-11-22 [13]

Final Ruling: No appearance at the May 10, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 11, 2022. By the court's calculation, 29 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.

Ford Motor Credit Company LLC ("Movant") seeks relief seeks relief from the automatic stay with respect to an asset identified as a 2020 Ford F350, VIN ending in 2550 ("Vehicle"). The moving party has provided the Declaration of Glenn Veeder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Timothy Alan Cosetti and Sheryl Ann Cosetti ("Debtor").

Movant argues Debtor has not made 6.4 pre-petition payments, with a total of $11,607.04 pre-petition payments past due. Declaration, Dckt. 16. Movant also provides evidence that the Vehicle was voluntarily surrendered pre-petition on January 5, 2022 and is being held pending relief of stay. *Id*.

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition on April 20, 2022, requesting the court grant the relief. Dckt. 21.

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 $99,674.76 (Declaration, Dckt. 16), while the value of the Vehicle is determined to be $98,000.00, 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 David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 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 Ford Motor Credit Company LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Ford F350, VIN ending in 2550 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

6. **19-23558-E-7** **KENNETH SCAMMON** **CONTINUED MOTION FOR RELIEF**
JCW-1 **Mark Briden** **FROM AUTOMATIC STAY**
NATIONSTAR MORTGAGE LLC **9-21-21 [37]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 10, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, on September 21, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief is dismissed without prejudice.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Kenneth Kip Scammon's ("Debtor") real property commonly known as 22484 Lake Helen Pl, Cottonwood, California ("Property"). Movant has provided the Declaration of Mary Garcia 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 nine post-petition payments, with a total of $11,525.97 in post-petition payments past due and a total of $12,763.97 in post-petition delinquencies. Declaration, Dckt. 39. The additional costs include attorneys fees and th bankruptcy filing fee. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed an Response on October 12, 2021. Dckt. 43. Trustee asserts that Debtor is current under the confirmed plan. Movant is classified as a Class 1 creditor. Trustee has disbursed $25,368.78 towards the Debtor's ongoing mortgage and $8,181.38 in arrears. Additionally, Trustee confirms two payments of $1,284.87 to Movant for July and August payments.

Trustee asserts this would put Debtor only six payments behind instead of nine. However, only two payments would put Debtor seven payments behind, not six.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 14, 2021. Dckt. 46. Debtor asserts they had a six month forbearance, of which Debtor was not notified of until March 2021. Debtor further asserts that a loan modification request to move three missed post-petition payments to the end of the loan period, and Debtor claims they will file a declaration itemizing payments made to date.

DEBTOR'S DECLARATION

Debtor filed a Declaration on October 26, 2021. Debtor states they have made every Chapter 13 Plan Payment from July 2021 through October 2021. Nationstar sent Debtor a loan modification to place arrears at the end of the loan. Exhibit 2, Dckt. 50. Debtor disagrees they are six months delinquent. Debtor requests the court continue the Motion for Relief for an appropriate date to obtain Court Approval for a loan modification.

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 $178,796.76 (Declaration, Dckt. 39), while the value of the Property is determined to be $210,000.00 as stated in Schedules A/B and D filed by Debtor.

At the hearing, counsel for Debtor requested a 30 day continuance, with adequate protection payments made as a Class 1 Claim. Counsel for Movant concurred. This is to allow for the documentation of the loan modification.

DECEMBER 7, 2021 HEARING

At the hearing, counsel for the Debtor reported that the Loan Modification is in underwriting, but the terms have not been finalized. Movant agreed to a further continuance of about 45 days.

January 25, 2022 Hearing

On January 6, 2022, Debtor filed a Motion for Approval of a Trial Loan Modification (DCN: MWB-2, Dckt. 55). The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on February 15, 2022 (Specially Set Time), to be heard in conjunction with Debtor's Motion to Approve a Trial Loan Modification.

February 15, 2022 Hearing

At the hearing counsel for Creditor reported that the Parties agree to continue the hearing to 1:30 p.m to allow Debtor to complete the trial loan modification payments.

February 22, 2022
Voluntary Dismissal

On February 22, 2022, Creditor filed a voluntary dismissal of their Motion with the court. Dckt. 69. No prejudice to the responding party appearing by the dismissal of the Motion; Creditor 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; the dismissal being consistent with the opposition filed by Debtor and response filed by Trustee; the dismissal being consistent with what was heard at the hearings; the Ex Parte Motion is granted, Creditor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from Automatic Stay filed by Nationstar Mortgage LLC ("Creditor") having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 69, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief is dismissed without prejudice.