

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

May 16, 2023 at 1:30 p.m.

1. [23-20038-E-13](#)
[SDN-1](#)

JOANNE DAVIS
Peter Cianchetta

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-27-23 [70]**

**WHEELS FINANCIAL GROUP, LLC
VS.**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 27, 2023. By the court's calculation, 19 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, -----

The Motion for Relief from the Automatic Stay is granted.
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Wheels Financial Group, LLC, dba LoanMar (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Kia Rio, VIN ending in 2821 (“Vehicle”). The moving party has provided the Declaration of Kari Murray to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joanne Aspiras Davis (“Debtor”).

Movant argues the Note matured and Debtor is in arrears of 20 payments. Additionally, the Debtor does not list the Vehicle on their Schedules, the Vehicle is not insured, and there is no equity in the Vehicle.

Movant states the Vehicle was repossessed on or about December 22, 2022 and is currently in Movant’s possession. Movant has made numerous attempts to contact Debtor’s counsel to see if Debtor wants the Vehicle returned, but they have not confirmed. Movant has indicated, however, that they have spoke with Debtor directly asking if they would provide proof of insurance for the Vehicle, but Debtor stated they did not want the Vehicle returned.

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 \$12,376.17 (Declaration, Dckt. 74 ¶ 6), while the value of the Vehicle is determined to be \$11,530.00, as stated on Movant’s Carfax History-Based Value, which was properly authenticated to the court (Exhibit E, Dckt. 72).

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

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

11 U.S.C. § 362(d)(2)

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

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

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

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 Wheels Financial Group, LLC, dba LoanMar (“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 2017 Kia Rio, VIN ending in 2821 (“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 not waived for cause.

No other or additional relief is granted.

2. [21-23439](#)-E-13 JOLIE/MICHAEL BARKALOW MOTION FOR RELIEF FROM
[KMM](#)-1 Seth Hanson AUTOMATIC STAY
3-28-23 [[70](#)]

THE MONEY SOURCE INC. VS.

2 thru 3

The Motion filed as Docket Entry 70 has been replaced by the same Motion filed at Docket 75. The court removes this matter from the Calendar, the Motion filed at Docket 70 having been superceded by the Motion filed at Docket 75.

THE MONEY SOURCE INC. 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 28, 2023. By the court's calculation, 49 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.

The Motion for Relief from the Automatic Stay is XXXXXXXX.

The Money Source Inc. ("Movant") seeks relief from the automatic stay with respect to Jolie Ann Barkalow and Michael Allen Barkalow's ("Debtor") real property commonly known as 4421 Arbroath Way, Antelope, California ("Property"). Movant has provided the Declaration of Cindy Cowden 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 seventeen post-petition payments, with a total of \$30,562.00 in post-petition payments past due. Declaration, Dckt. 72. Movant also provides evidence that is a pre-petition default of \$27,666.13. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response to the first docketed Motion, Dckt. 70. Response, Dckt. 84. The court will address Trustee's Response in this Motion, Docket No. 75. requesting the Motion be denied, on May 1, 2023. Dckt. 84. Trustee asserts that the confirmed Plan provides the Plan will be funded through a one-time lump sum payment of all sale proceeds from the sale

of the Property. The terms of the Plan state the sale shall take place “in the next 3 to 6 months, after approval of the court by separately filed motion to approve such sale.” Plan, Dckt. 50. The Plan was filed June 6, 2022. Therefore, the Property should have been sold by December.

Trustee states they spoke with Debtor’s attorney regarding the status of the case. Debtor’s attorney stated there was delay in the probate court in getting permission to sell the house, however, they now are looking for a realtor and hope to have the house listed soon.

DISCUSSION

The court appreciates Movant’s frustration with not receiving seventeen post-petition payments. It is not clear to the court why it has been almost a year since proposing the Plan and Debtor has still not filed any motions that indicate progress with selling the Property to fund the Plan. Although probate court may be delaying the sale of the property, Debtor has not provided the court with testimony indicating the delay.

This is a case with a very sad series of event that led to the deaths of the two debtors, leaving their children orphans. As a matter of federal law, this court has determined that the administration of this bankruptcy case, and the sale of the real property that is subject to the jurisdiction of this court shall be sold as provided in the Confirmed Bankruptcy Plan.

There is a confirmed Chapter 13 Plan which provides for the administration of the Property under federal law.

It is unclear what “problems” there are in probate court which impacts the ability of the Successor Representative of the deceased debtor from performing the Chapter 13 Plan. What property rights remain for the heirs of the debtors is what is remains after the Chapter 13 Plan is performed.

At the hearing, **XXXXXXX**

~~_____ The Motion for Relief is **XXXXXXXXXX**~~

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

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

~~_____ The Motion for Relief from the Automatic Stay filed by The Money Source Inc. (“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 **XXXXXXXXXX**~~

Automatically Set – Pro Se
Attorney: Simran Singh Hundal [atty did not sign]

Duration of agreement not given
Interest rate set at 25.24%
Negative monthly income of \$-591.52

The Reaffirmation Agreement is XXXXXXXXXX

An agreement to reaffirm a debt owed to Lendmark Financial Services, LLC, which is secured by a 2015 Harley-Davidson having a value of \$16,790, was filed by Richard and Shannon Cobb (“Debtor”). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 25.24% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is (\$15,606) which has not been reduced from the pre-petition claim.

Debtor having income of \$4,189 and expenses of (\$4,780), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) arises in connection with this reaffirmation agreement. The proposed monthly payment is \$505.12 for an unstated number of months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

At the hearing, Debtors advised the court that they were not aware that as part of agreeing to a reaffirmation they could negotiate what is an appropriate interest rate. Debtors requested a continuance so they could contact the Creditor and seek an amended reaffirmation agreement.

May 16, 2023 Hearing

At the hearing, XXXXXXXXXXXX

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 Reaffirmation Agreement between the Debtors and Lendmark Financial Services, LLC 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 Reaffirmation Agreement is **xxxxxxx**

5. [20-20250-E-13](#) **RICHARD/JOHNNA HOWARD** **CONTINUED MOTION FOR RELIEF**
[APN-2](#) **Jeffrey Ogilvie** **FROM AUTOMATIC STAY**
12-12-22 [[60](#)]

THE MONEY SOURCE INC. 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.

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, and Office of the United States Trustee on December 12, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxx
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The Money Source Inc. ("Movant") seeks relief from the automatic stay with respect to Richard Lynn Howard and Johnna Faye Howard's ("Debtor") real property commonly known as 20545 Ontario Avenue., Burney, California ("Property"). Movant has provided the Declaration of Cindy Cowden 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 five post-petition payments, with a total of \$5,282.38 in post-petition payments past due. Declaration, Dckt. 62.

CHAPTER 13 TRUSTEE’S REPLY

David P. Cusick (“the Chapter 13 Trustee”) a Reply on December 29, 2022. Dckt. 66. Trustee does not oppose the Motion.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$138,995.59 (Declaration, Dckt. 62), while the value of the Property is determined to be \$156,000.00, 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.

Continuance of Hearing

At the January 10, 2023 Hearing, Movant requested the hearing be continued, reporting to the court that the Parties are exchanging financial information and working to get agreement on the amount of the debt.

The hearing is continued to 1:30 p.m. on March 7, 2023.

March 7, 2023 Hearing

At the hearing, the Parties requested that it be continued as they are working on confirming the arrearage and how to cure the shortcoming.

May 16, 2023 Hearing

At the hearing, **XXXXXXXXXXXX**

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 The Money Source Inc. (“Movant”) having been presented to the court, Movant requesting a continuance in light of the Parties exchanging information and confirming dollar amounts of the debt, 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
XXXXXX

GLOBAL FEDERAL CREDIT UNION
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.

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

Sufficient Notice Not 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 13, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

Additionally, Creditor has not served Carrington Mortgage Services, LLC, who requested special notice on all notices and pleadings. Dckt. 12. Service on those who request special notice is required under Local Bankruptcy Rule 9014-1(d)(3)(B)(iv). At the hearing, **XXXXXXXXXX**

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.

The Motion for Relief from the Automatic Stay is granted.
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Global Federal Credit Union f/k/a Alaska USA Federal Credit Union, its assignees and/or successors (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Chevrolet Corvette, VIN ending in 5489 (“Vehicle”). The moving party has provided the Declaration of Elizabeth Ackerman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Gerrit Wilwerding and Erin Kimberly Wilwerding (“Debtor”).

Pleading with Particularity

The Motion states the following grounds entitling Movant to relief from the stay:

Movant seeks relief pursuant to 11 U.S.C. §362(d)(1) for “cause” due to the failure of Debtors to make required payments as set forth in the attached Declaration. Debtor’s failure to make required payments provides “cause” for relief from the Automatic Stay in accordance with the ruling of the Bankruptcy Appellate Panel in *In re: Ellis*, 60 B.R. 432.

Motion, Dckt. 25 at 2:1-5. Movant is reminded, the Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. *FED. R. BANKR. P. 9013*. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Additionally, Local Bankruptcy Rule 9014-1(d)(3) incorporates the particularity rule, as it requires all motions to state with particularity factual and legal grounds entitling them to relief. Grounds need to be stated within the Motion with reasonable specification as to why Movant is entitled to the relief or order sought. The Motion should give facts and legal authority where, if the court were to take all facts as true, Movant would be entitled to the relief.

Here, Movant provides no information regarding the amount of arrearages and number of missed payments. Rather, Movant provides unsupported conclusions of law that they are entitled to relief due to Debtor’s failure to make required payments “as set forth” in a Declaration.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Declaration is “really” the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a declaration are separate documents. The court has not waived that Local Rule for Movant.

Further, upon review of the Declaration that Movant directs the court to review for factual grounds, Movant states the grounds include:

8. Debtors have failed to provide for Movant’s claim in their Chapter 13 plan, as well as failing to list the Vehicle in their schedules. The claim is listed as unsecured in Debtor’s schedule F, yet it is fully secured by the Vehicle.
9. Movant was informed by Debtor’s counsel that the Vehicle is not in Debtors’ possession but rather is in the possession of Debtor Erin Kimberly Wilwerding’s ex-husband.

10. As of March 15, 2023, the outstanding payoff amount is: . . . \$29,392.88.

. . .

14. The commercially reasonable value of the Vehicle is approximately \$32,050.00.

Declaration, Dckt. 27 at 3-4. There is no mention of any missed payments in the Declaration. Although the Motion states the grounds for relief are due to missed payments, the Declaration has no evidence to support any arrearages. It may be Movant believes the actual for-cause grounds are Movant's claim being omitted from the Plan, however, these are not the "grounds" stated in the Motion.

At the hearing, XXXXXXXXXXXX

Trustee's Response

Trustee filed a response on May 1, 2023. Dckt. 35. Trustee states Debtors are current under the confirmed Plan, however, Creditor is not listed on Debtor's Schedule A/B nor provided for in the confirmed Plan. Creditor is listed, however, as an unsecured claim for an "Automobile - \$30,000 past statute of limitations" that was last active April 19, 2021. Schedule E/F, Dckt. 1. Additionally, Trustee notes Movant's Declaration, which indicates the vehicle is in the possession of debtor Erin's ex-husband.

Discussion

Upon review of Schedule E/F, Debtor lists the debt owed to Movant in the amount of \$0.00, however, specifies that it is for an automobile, "\$30,000 past statute of limitation." It is not clear to the court what Debtor means when they state "\$30,00 past statute of limitation." It is possible Debtor believes that the statute of limitations has passed on the vehicle, and the obligation is no longer enforceable. However, that does not strip Movant's secured interest in the Vehicle.

Schedule E/F also states the debt was last active in April of 2021. If Debtor has not made payments since 2021, this has some indication of arrearages that could be for-cause grounds to terminate the stay.

Additionally, upon review of Movant's exhibits, even if Debtor's ex-spouse is in possession of the Vehicle, Debtor remains on the title of the Vehicle. Exhibit B, Dckt. 28. Therefore, the Vehicle is property of the bankruptcy estate. Movant's declaration states the payoff of the vehicle is \$29,392.88, while the value of the vehicle is \$32,050.00. Therefore, there is some equity in the vehicle that could benefit the estate.

Based on the evidence provided, the court has not been presented with adequate grounds to grant for cause relief from the stay. The Motion states the grounds are delinquency, however, Movant has not provided the court with factual assertions as to the amount of arrearages and number of missed payments.

At the hearing, XXXXXXXXXXXX

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 Global Federal Credit Union f/k/a Alaska USA Federal Credit Union (“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 Motion for Relief from the Automatic Stay is
XXXXXXXXXX

7. <u>21-22085</u> -E-13 <u>DPC-3</u>	SHARRON WINGHAM Bert Vega	CONTINUED MOTION TO DISMISS CASE 3-1-23 [80]
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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 on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice, and Office of the United States Trustee on March 1, 2023. By the court’s calculation, 35 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).

The Motion to Dismiss is XXXXXXXXXX

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

1. the debtor, Sharron Renee Wingham (“Debtor”), is delinquent on plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on March 20, 2023. Dckt. 84. Debtor states the delinquency will be cured by June 30 via an installment plan.

DISCUSSION

Delinquent

Debtor is \$3,750.00 delinquent in plan payments, which represents multiple months of the \$934.50 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 has made three TFS payments, but a default remains. The default was caused by an illness of the Debtor's mother. This illness caused a disruption in the performance of the Plan.

The Trustee concurred with the request for a continuance.

May 16, 2023 Hearing

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxx**

FINAL RULINGS

8. [21-21429-E-13](#)
[RAS-1](#)

JAMIE HOWELL
Stacie Power

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-7-23 [\[229\]](#)

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the May 16, 2023 hearing is required.

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

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 7, 2023. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The court notes, Debtor has served using Rule 5 and Rules 7005, 9036 Service. This means of service is effectuated when Rule 7004 is not required. The court notes, a Motion for Relief is a contested matter under Rule 9014. Therefore, the Motion should have been served in a manner provided for service of a summons and complaint by Rule 7004. Federal Rules of Bankruptcy Procedure 9014(b). As the EDC Form 7-005 states, Rule 7004 Service requires documents to be served in a seal envelope, via first class mail.

Here, Creditor served only the Debtor via first class mail. The other parties were served by electronic service on registered users of the court's electronic filing system. This is improper pursuant to Rule 7004.

Additionally, the following parties have requested special notice:

1. Synchrony Bank
c/o PRA Receivables Management, LLC
2. NewRez LLC
McCarthy & Holthus, LLP
3. NewRez LLC
4. Tri Counties Bank
Jacobs, Anderson, & Potter LLP
5. U.S. Bank Trust National Association
Robertson, Anschutz, Schneid & Crane LLP
6. U.S. Bank Trust National Association
Robertson, Anschutz, Schneid & Crane LLC

7. Loris Bakken
8. Tri Counties Bank
c/o Bruce L. Belton

From review of the Certificate of Service, it is not clear whether all those requesting special notice have received notice of this Motion. Rather, it appears Creditor has attached a copied and pasted list of registered users of the electronic filing system to indicate who was served electronically. These parties are not the same as those requesting special notice. Therefore, service appears insufficient.

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 hearing on the Motion for Relief from the Automatic Stay is continued to
May 23, 2023 at 2:00 p.m.**

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay with respect to Jamie Howell's ("Debtor") real property commonly known as 9 Charley Lynds Way, Forbestown, California ("Property"). Movant has provided the Declaration of Genevieve A. Jacobs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three post-petition payments, with a total of \$6,224.34 in post-petition payments past due. Declaration, Dckt. 231.

REUSED DOCKET CONTROL NUMBER

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

TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 28, 2023. Dckt. 241.

Trustee states the latest Plan calls for Creditor to be treated as a Class 3. No motion to confirm is pending. Trustee asks the Motion be denied or continued to allow service of either motions to sell and a motion to confirm or a motion to reconvert by the Trustee.

Additionally, Trustee notes possible service issues, which the court has addressed above.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 2, 2023. Dckt. 245. Debtor opposes the Motion on the grounds that the Property is to be sold and fund much of the Plan.

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 \$211,535.05 (Declaration, Dckt. 231), while the value of the Property is determined to be \$385,000.00, as stated in Amended Schedules A/B filed by Debtor.

Continuance of Hearing

On May 5, 2023, the court issued an order setting a Chapter 13 Status Conference regarding Debtor's failure to prosecute a Plan in this case. Given the Property is proposed to be sold and fund the Plan, the court continues the hearing on the Motion for Relief to be heard in conjunction with the Status Conference. The hearing on the Motion for Relief is continued to May 23, 2023 at 2:00 p.m.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank Trust National Association ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Relief from the Automatic Stay is continued to **May 23, 2023 at 2:00 p.m.**