

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 22, 2018, at 1:30 p.m.

1.	<u>17-23911</u>-E-13 LBG-3	CRAIG MASON Lucas Garcia	CONTINUED MOTION TO CONFIRM PLAN 3-2-18 [73]
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**APPEARANCE OF CRAIG MASON, CHAPTER 13 DEBTOR,
AND LUCAS GARCIA, ATTORNEY OF RECORD,
REQUIRED AT THE MAY 22, 2018 HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2018. By the court's calculation, 53 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.
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Craig Mason (“Debtor”) seeks confirmation of the Amended Plan because he needed to prepare and deliver 2016 tax documents to David Cusick (“the Chapter 13 Trustee”). Dckt. 75. The Amended Plan proposes payments of \$5,750.00 for sixty months, with a 0.00% dividend for unsecured claims. Dckt. 77. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee filed an Opposition on April 9, 2018. Dckt. 91. The Chapter 13 Trustee argues that Debtor has failed to file all post-petition tax returns. Filing of tax returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee also objects because the Amended Plan relies upon the court sustaining Debtor’s objection to claim of CadleRock III, LLC, and without it being sustained, there will not be sufficient plan funds. Also, if the objection is sustained, the Chapter 13 Trustee notes that Debtor has not explained how it would impact his business income and operations to fund the Amended Plan.

A Notice of Mortgage Payment Change was filed on March 5, 2018. The Chapter 13 Trustee states that the plan payment must increase to \$5,931.87 to fund, and he believes that the increase is possible because of a moving calculation on Schedule I for average business income that had been skewed low because of no income being reported for December 2016.

APRIL 24, 2018 HEARING

At the hearing, Debtor’s counsel pleaded with the court to continue the matter rather than deny confirmation, asserting that he has informed Debtor, and Debtor understands, that he must prosecute this case diligently, including engaging the services of necessary professions to prepare and file 2016 tax returns.

The court continued the hearing to 1:30 p.m. on May 22, 2018, requiring in-person appearances for Debtor and Debtor’s counsel. Dckt. 95.

DEBTOR’S SUPPLEMENTAL JOINT DECLARATION

Debtor filed a Supplemental Joint Declaration with LaRay Chambers on May 15, 2018. Dckt. 104. They provide an overview of their business duties, discussing how they assist one another with workload, including managing financial records.

They state that earlier in 2018, their QuickBooks file was “overrun with data causing unbearable delays to all accounting items.” *Id.* at 2:10–11. They state that they removed all data from 2016 to one file and began a new file for 2017 onward.

The two parties state that their computer crashed in April 2018, resulting in multiple support phone calls to access their files off the crashed computer. Once that was sorted out, they state that their internet service went down for three days during the middle of April. After the court’s prior hearing, they state that they met with Debtor’s counsel about selecting a Certified Public Accountant and set an appointment with one on May 15, 2018.

In the meantime, Debtor and Ms. Chambers realized that the computer crash had resulted in losing records from before May 2016. They state that they contacted US Bank about recovering the older data and began filling out paperwork for retrieve the information. They state that the information was recovered by May 13–14.

Also, Debtor and Ms. Chambers state that they scheduled a “back up” appointment with a tax professional who had been recommended to them as being affordable. When they contacted that individual, they were informed that the professional had surgery recently and would not be available until late May.

Debtor and Ms. Chambers end with a plea to the court that their situation is trying and time-consuming. They relay how both of them are involved in separate custody proceedings, each multiple hours away, and how their businesses and daily lives consume their remaining time.

RULING

When the court continued the hearing from April 24, 2018, it made very clear to Debtor that he must demonstrate that this case is being prosecuted diligently, especially that he is moving toward filing his 2016 tax returns. While declaring to the court that he met with his counsel shortly after the prior hearing, he chose not to schedule an appointment with an accountant until May 15, 2018, coincidentally, also the day of the Supplemental Joint Declaration. Such a delay causes the court to wonder if Debtor chose to schedule the meeting and file the declaration at the same time so as to “buy more time” and not disclose to the court that he now realizes how infeasible of a Plan he has proposed.

The court made it clear that it would not be sufficient for Debtor to come back and tell the court, “I will, sometime in the future, hire a CPA to make sure my taxes are done, if and when I think it is important enough for me to do it.” Such is the substance of Debtor’s current testimony. Debtor appears to admit that Debtor’s records are a disaster and that the necessary information is not “available,” but being in the middle of a disaster, Debtor will just continue “business as usual.”

LaRay Chambers, not Debtor, testifies that she met with the accountant on May 15, 2018, and it is “likely” that the taxes will be prepared in the next 2–3 weeks, but the returns have not been prepared.

LaRay Chambers testifies that she is in a custody dispute, which is distracting her from the business. Second, she testifies that her purse was stolen, which had a lot of her personal money in it.

Further, Debtor says he too is embroiled in a custody battle, which is impairing his ability to work at his business and fulfill his obligations in this case.

Debtor further describes other non-civil legal issues that are impairing his ability to work and to fulfill his obligations in this case.

Debtor and LaRay Chambers demonstrate that they are so overwhelmed by their business, their family issues, and the non-civil legal issues that the “red-headed step-child” of book keeping, tax preparation, and maintaining financial records is what does not get done. Limping into a tax preparer’s office on May 15 is not indicative of good faith prosecution of this case.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

Debtor, LaRay Chambers, and Debtor's counsel can regroup, figure out how they can put together a credible record keeping, timely tax return preparation, having solid financial records that they can use in showing good faith prosecution for an amended plan.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Craig Mason ("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 Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

2.

[17-23911](#)-E-13
DPC-1

CRAIG MASON
Lucas Garcia

CONTINUED MOTION TO DISMISS
CASE
12-4-17 [[50](#)]

**APPEARANCE OF CRAIG MASON, CHAPTER 13 DEBTOR,
AND LUCAS GARCIA, ATTORNEY OF RECORD,
REQUIRED AT THE MAY 22, 2018 HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

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, and Office of the United States Trustee on December 4, 2017. By the court's calculation, 44 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 denied without prejudice.

David Cusick's ("the Chapter 13 Trustee") Motion argues that Craig Mason ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 17, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 8, 2017. Dckts. 54, 56. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 57. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 66. The Chapter 13 Trustee notes that an Amended Plan has been filed, and he informs the court that he has filed opposition to its confirmation.

JANUARY 17, 2018 HEARING

At the hearing, the court continued this matter to 10:00 a.m. on March 21, 2018, to allow time for Debtor to propose an amended plan on the correct plan form. Dckt. 68.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 84. Debtor argues that an Amended Plan has been filed and set for a confirmation hearing on April 24, 2018, that will resolve the grounds raised in the Motion to Dismiss.

CHAPTER 13 TRUSTEE'S REPLY

The Chapter 13 Trustee filed a Reply on March 9, 2018. Dckt. 86. The Chapter 13 Trustee notes that he intends to object to the proposed amended plan, and he requests that this Motion either be granted or that it be continued to April 24, 2018, to be heard in conjunction with the motion to confirm. He notes that Debtor is current with plan payments.

MARCH 21, 2018 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on April 24, 2018, to be heard in conjunction with Debtor's motion to confirm an amended plan. Dckt. 89, 90.

APRIL 24, 2018 HEARING

At the hearing, the court continue the matter to 1:30 p.m. on May 22, 2018. Dckt. 96. The court noted that prosecution of this case has been less-than-diligent, with Debtor taking advantage of excuses for so much delay.

RULING

As discussed in the court's May 22, 2018 minutes for the related motion to confirm amended plan, Debtor has failed to do as the court has instructed, and instead, he has provided further excuses for why this case is not proceeding as it should. This Motion was filed on December 4, 2017, and has been pending for more than five months now.

The court has denied confirmation of Debtor's amended plan.

While Debtor and his significant other need to work further to set up their business record keeping, timely tax return preparation, and maintaining timely and accurate financial records for the prosecution of this case, the court will afford Debtor the additional time. Debtor and his significant other are also dealing with personal matters that impair their ability to maintain timely and accurate business records.

However, such may be remedied. With the assistance of their counsel, Debtor and his significant other can identify what third-party services they can engage to maintain the records and compliance with the tax laws that Debtor and his significant other have demonstrated that they cannot.

Though cause exists to dismiss this case, the court affords Debtor another chance to get this case on track. The Motion is denied without prejudice.

The court shall issue a minute 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 David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

ELIZABETH MANZO 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2018. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is denied without prejudice.

Elizabeth Manzo ("Movant") seeks relief from the automatic stay to allow *Manzo v. Manzo*, Case No. 17FL06143 ("State Court Litigation") to be concluded. Movant has provided her Declaration to introduce evidence to authenticate the documents upon which she bases the claim and the obligation owed by Luis Manzo ("Debtor").

Movant states that there is a pending dissolution of marriage in Sacramento County Superior Court, filed on November 1, 2017. Dckt. 86. She requests that the court grant relief for the State Court Litigation to be concluded and to determine the respective rights of the parties in various items of property.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 8, 2018. Dckt. 92. The Chapter 13 Trustee asserts that Debtor's counsel was not served with notice of this Motion and that the Motion should be denied unless Debtor waives service.

Substantively, the Chapter 13 Trustee notes that any adjudication of community property assets and ownership may not resolve whether any real property transfers are subject to avoidance on behalf of creditors, which was a central issue in two objections to confirmation.

DISCUSSION

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

As the court has discussed in connection with the case, it appears that there is no dispute that the properties are in one or both of these cases. The court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e) over all property of the bankruptcy estate—including determining what is property of the bankruptcy estate. Further, it appears to be open to doubt when Movant, as the debtor in her case, and Debtor in this case can fulfill their fiduciary duties in enforcing their respective rights.

This court is not comfortable abstaining from exercising federal court jurisdiction over all of this property of one estate or the other, and leave it to the possible “outside the courtroom deal-making between these parties” in the family law court.

The Motion is denied without prejudice.

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

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

The Motion for Relief from the Automatic Stay filed by Elizabeth Manzo (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

ELIZABETH MANZO 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, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2018. 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Relief from the Automatic Stay is denied without prejudice.</p>
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Elizabeth Manzo ("Movant-Debtor") seeks relief from the automatic stay to allow *Manzo v. Manzo*, Case No. 17FL06143 ("State Court Litigation") to be concluded. Movant has provided her Declaration to introduce evidence to authenticate the documents upon which she bases the claim and the obligation owed by Luis Manzo.

Movant-Debtor states that there is a pending dissolution of marriage in Sacramento County Superior Court, filed on November 1, 2017. Dckt. 64. She requests that the court grant relief for the State Court Litigation to be concluded and to determine the respective rights of the parties in various items of property.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 8, 2018. Dckt. 68. The Chapter 13 Trustee asserts that Luis Manzo's counsel was not served with notice of a related motion for relief by Movant-Debtor and that this Motion should be denied unless Luis Manzo and his counsel waive service.

Substantively, the Chapter 13 Trustee notes that any adjudication of community property assets and ownership may not resolve whether any real property transfers are subject to avoidance on behalf of creditors, which was a central issue in two objections to confirmation.

DISCUSSION

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

As the court has discussed in connection with the Luis Manzo case, 18-20290, it appears that there is no dispute that the properties are in one or both of these cases. The court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e) over all property of the bankruptcy estate—including determining what is property of the bankruptcy estate. Further, it appears to be open to doubt when Movant, as the debtor in her case, and Debtor in this case can fulfill their fiduciary duties in enforcing their respective rights.

This court is not comfortable abstaining from exercising federal court jurisdiction over all of this property of one estate or the other, and leave it to the possible “outside the courtroom deal-making between these parties” in the family law court.

The Motion is denied without prejudice.

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

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

The Motion for Relief from the Automatic Stay filed by Elizabeth Manzo (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

5. [16-24891](#)-E-13 **MARIAN/MARIA PENA**
APN-1 **Gabriel Liberman**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-20-18 [\[20\]](#)**

**TOYOTA MOTOR CREDIT
CORPORATION VS.**

Final Ruling: No appearance at the May 22, 2018 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 20, 2018. By the court’s calculation, 32 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.

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2013 Toyota Camry, VIN ending in 4209 (“Vehicle”). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Marian Pena and Maria Pena (“Debtor”).

The Rahnae Spooner Declaration provides testimony that Debtor has not made three post-petition payments, with a total of \$3,240.00 in post-petition payments past due.

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 \$9,842.34, as stated in the Spooner Declaration, while the value of the Vehicle is determined to be \$13,578.61, as stated in Schedules B and D filed by Debtor.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 7, 2018. Dckt. 30. The Chapter 13 Trustee states that he does not oppose the Motion, noting in particular that Debtor is delinquent under the confirmed plan with a pending motion to dismiss set for May 30, 2018.

DISCUSSION

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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 a minute 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 Toyota Credit Corporation (“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 2013 Toyota Camry (“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.