UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 6, 2017, at 1:30 p.m.

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1. **17-22614-E-13** **MICHAEL/POLLY LANHAM** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RTD-1 **Mark Wolff** **5-22-17 [22]**

SCHOOLS FINANCIAL 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.

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 22, 2017. By the court's calculation, 15 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 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 denied without prejudice.

Michael Lanham and Polly Lanham ("Debtor") commenced this bankruptcy case on April 20, 2017. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an

asset identified as a 2015 Mazda ("Vehicle"). The Motion does not comply with Federal Rule of Bankruptcy Procedure 9013, however.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 25, 2017. Dckt. 32. The Trustee asserts that the first Meeting of Creditor has not been conducted yet (scheduled for June 1, 2017), and he has not had a chance to examine Debtor.

The Trustee notes that Debtor's proposed plan includes payments increasing over time from $200.00 for three months, $600.00 for nine months, $920.00 for forty-eight months, and includes a lump sum payment of $35,000.00 in month twenty-four from an unidentified source. The proposed plan also delays payments to Movant for twelve months and provides that the claim is not a purchase money security interest.

The Trustee also points out that there may be an error on Debtor's Statement of Financial Affairs. Debtor Michael Lanham listed gross income for 2015 of $1,469,619.00, and based upon the other filings, the Trustee is unsure whether Debtor received those funds or where they went.

The Trustee notes that Movant filed an amended secured claim (Claim No. 5-2) on May 17, 2017, for $14,430.21.

Review of Minimum Pleading Requirements for a Motion

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statement made by Movant is:

A. "Comes now Creditor Schools Financial Credit Union who moves for relief from the automatic stay as to the 2015 Mazda for cause and for lack of equity with no reasonable possibility of reorganization."

That "ground" is merely a conclusion of law by Movant. Presumably, Movant believed that the court would make these conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

A. The Notice of Hearing;
B. Memorandum of Points and Authorities;
C. Declarations;
D. Exhibits
E. Records and pleadings on file; and
F. Whatever else Movant presents prior to or at the hearing.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities 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 9004-1 and the Revised Guidelines for Preparation of Documents, a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

Neither Movant nor Movant's counsel are new to the court or to the even application of the rules to all parties. It appears that this may have been a clerical error in the preparation and processing of this Motion. Such error is not grounds for waiving the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for this one creditor, however. FN.1.

FN.1. In light of Movant's counsel's reputation and prior appearances, the court does not believe that the noncompliance with the Rules was part of an intentional scheme to misuse the law. Even the "innocent" can create the appearance of such "misdealings," however. The Motion merely cites several statutes and asks for "relief," but for no specific stated purpose. While it may be argued, "really judge, you can't figure out what we are intending with the Motion and just state it for us," that is not the role of an impartial judiciary.

Buried in the Declaration of Robin Boyce is an additional request for relief, that the court waive the fourteen-day stay of enforcement that is mandated by the Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3). While the Motion makes demand for nonspecific relief from the automatic stay, Federal Rule of Bankruptcy Procedure Rule 4001(a)(3) is not even mentioned in passing in the Motion.

This then causes one to wonder what other types of "relief" are sprinkled throughout the pleadings, with such relief not set forth in the motion itself as required by Federal Rule of Bankruptcy Procedure 9013.

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 Schools Financial 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 is denied without prejudice.

2. **17-22624-E-13 CCR-1** | **JOAN DAVIS AND DAVID BRYANT** **Pro Se** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **5-18-17 [19]**

WERKING, INC. VS.
DEBTORS DISMISSED:
05/19/2017

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

3.	**16-27855-E-13 APN-1**	**FARENZO HANNON AND DIAMOND JOHNSON-HANNON Justin Kuney**	**STATUS CONFERENCE RE: STIPULATION REGARDING POSITION OF SECURED CREDITOR, WELLS FARGO BANK, N.A. 4-20-17 [33]**

Debtors' Atty: Justin K. Kuney

Notes:
Status conference set by court order dated 5/22/17 [Dckt 39]; No telephonic appearances allowed

JUNE 6, 2017 STATUS CONFERENCE

As addressed below, the court issued an Order setting this Status Conference to address with the respective attorneys a proposed order lodged with the court and a purported "settlement" by which they sought to have this court issue a binding order fixing bankruptcy plan terms on Wells Fargo Bank, N.A. other than through a confirmed plan and without notice of any other party interest or hearing.

At the Status Conference counsel for Wells Fargo Bank, N.A. stated **xxxxxxxxxxxxxxxxxxxx**.

At the Status Conference counsel for Debtor states **xxxxxxxxxxxxxxxxxxxxxxxx**.

REVIEW OF SETTLEMENT AND PROPOSED ORDER LODGED WITH THE COURT

On January 19, 2017, Wells Fargo Bank, N.A. ("Creditor")filed an Objection to Confirmation of Debtor's Chapter 13 Plan. Dckt. 18. At the hearing on the Objection, Creditor and Debtor stated that they had resolved the Objection and that their stipulation was:

> "The Objection to Confirmation of Plan is resolved by stipulation. Stipulation regarding the value is set at $11,000.00 and the Debtor to increase plan payments to $200.00 a month for the first 10 months."

Civil Minutes, Dckt. 24. The Civil Minutes conclude with, "The Objection to claim filed by Wells Fargo Bank is resolved by stipulation. Counsel for Wells Fargo Bank is to file and serve the Stipulation and Order." *Id.*

On April 20, 2017 (sixty-four days after the February 14, 2017 hearing on the Objection to Confirmation), Creditor and Debtor filed their Stipulation. Dckt. 33. The terms of the written Stipulation are:

A. Creditor is "allowed" a secured claim in the amount of $11,000.00. Stipulation, p. 1:23–24; Dckt. 33.

B. The interest rate on the secured claim shall be 5.00% per annum. *Id.*, p. 1:25.

C. Creditor and Debtor agree that Creditor will receive adequate protection payments of $200.00 a month for 10 months and then $315.00 per month thereafter and pursuant to Debtor's Chapter 13 Plan. *Id.*, p. 2:3.5–7.

Review of Proposed Order Submitted by Parties

On May 17, 2017 (ninety-two days after the February 14, 2017 hearing on the Objection to confirmation) a proposed order was lodged by Creditor and Debtor with the court. The proposed Order is titled:

> "ORDER REGARDING POSITION OF SECURED CREDITOR, WELLS FARGO BANK, N.A., DBA WELLS FARGO DEALER SERVICES, UNDER CHAPTER13 PROCEEDING"

The court is unsure what is intended by Creditor and Debtor in presenting the court with an order that merely is "Regarding Position of" Creditor. Either the proposed order is specifying the terms as agreed by the parties, or it is not. It is not merely a status statement "regarding position" of a party.

Second, this court requires orders to state specific relief to be granted, not "rubber stamp" orders that merely state, "whatever the heck the parties have written in some other document applies—and everybody better worry because you will be held in contempt for whatever is written, hidden, or buried in that other document that was not written by the court."

> "**IT IS HEREBY ORDERED that the stipulation** entered into between Debtors, FARENZO JAJUAN HANNON and DIAMOND YVONNE JOHNSON-HANNON, and Secured Creditor, WELLS FARGO BANK, N.A., DBA WELLS FARGO DEALER SERVICES, filed April 20, 2017, Docket number 33 **is** hereby **approved and entered by the court**."

Proposed Order lodged with the court.

The court is unsure of the effect of an order merely stating "stipulation approved." There has not been a motion to approve compromise filed and served on all parties in interest as required by Federal Rule of Bankruptcy Procedure 9013.

The proposed order goes further, stating that the Stipulation is "entered." The court is unsure of the intention and legal effect of such terminology. Generally, when referencing something as being "entered," the term is used to designate when an order or judgment of the court itself is entered on the court's docket. This then sets the time from which deadlines to take various acts, such as filing notices of appeals or motions to amend, must be filed. It appears that Creditor and Debtor seek to elevate their "Stipulation"

to the status of an order or judgment, for which they will then seek to use the contempt power of the court if either Creditor or Debtor determines there has been a violation of the Stipulation entered on the Docket.

In the generic "Stipulation is approved" language, Creditor and Debtor have included another provision—Creditor's claim is "allowed" and appears to ensconce that "allowance" in their Stipulation that is made into an order. Allowance of a claim has a specific meaning as used in 11 U.S.C. § 502. A claim is merely "deemed allowed" when a proof of claim is filed (or listed as an undisputed claim in a Chapter 11 case), subject to an objection by the debtor or trustee (or other party in interest as permitted by the court). If an objection is filed, the claim may be allowed, and when the order is entered thereon it is binding on all other parties in interest in that bankruptcy case.

If the debtor or trustee (or other party in interest as permitted by the court) files the objection, then the court adjudicates the objection. The litigation of the objection process ensures that the objecting party fulfills its duties in objecting and the objection is not merely a canard to defraud the court and other parties in interest. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

If the objecting party and creditor seek to actually "stipulate" to the allowance of the claim and obtain a binding order thereon, then they would need to file a motion to approve a compromise of the rights of the estate and rights of the creditor. Notice of such a motion to approve compromise must be provided to all parties in interest as required by Federal Rule of Bankruptcy Procedure 9019.

In addressing this point, the court first makes something clear—the court is 100% confident that neither Creditor, Debtor, nor their respective counsel are intentionally attempting to mislead the court or "pull a fast one" on other parties in interest. It appears that the inclusion of the "allowed" term in the Stipulation and incorporated into the proposed Order is, like the title of the proposed Order, a clerical and drafting shortcoming.

On its face, the Stipulation that is made an order by reference and "entered" on the court's docket appears to adjudicate the rights of all other parties in interest without notice. It purports to "allow" Creditor's claim without any notice, objection, motion, or hearing. If the court's order were issued making the Stipulation, whatever it might say, the "order of the court," it most likely would be void due to the defect in notice of the "stipulation" to allow the claim.

Order for Status Conference

On May 22, 2017, the court issued its order for counsel for Debtor and counsel for Wells Fargo Bank, N.A. to appear in court to address the above issues—No Telephonic Appearances Permitted. Because the Chapter 13 Trustee had also signed off on Stipulation for the issuance of an order "confirming" plan terms outside of an actual plan and order confirming the plan, the court has ordered the Trustee's counsel to appear in person as well at the Status Conference.

4. **16-23669-E-13** **VAL/CHANDRA COLA** **MOTION FOR RELIEF FROM**
HRH-1 **Mohammad Mokarram** **AUTOMATIC STAY**
5-9-17 [24]

WELLS FARGO BANK, N.A. VS.

No 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 May 9, 2017. 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 xxxxx.

Val Cola and Chandra Cola ("Debtor") commenced this bankruptcy case on June 6, 2016. Wells Fargo Bank, National Association ("Movant") seeks relief from the automatic stay with respect to an asset identified as a Business Direct Credit Application, Agreement & Personal Guarantee ("Agreement"). The moving party has provided the Declaration of Sharon Zimmerman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Motion states with particularity the following grounds and relief requested (FED. R. BANKR. P. 9013):

A. Movant seeks relief from the automatic stay "to permit Movant and its successors and assigns, to exercise the rights granted under that certain Business Direct Credit Application, Agreement & Personal Guarantee and related documents affecting personal property of the Debtors." Motion, p. 1:25–27; Dckt. 24.

B. "Debtor VAL COLA executed a 'Business Direct Credit Application, Agreement & Personal Guarantee' (hereinafter the 'Application'), pursuant to which it sought the use

of Wells Fargo's credit facilities and the issuance of a secured credit card for use in his business operations." *Id.*, p. 2:6–9.

C. "Wells Fargo holds a security deposit in the amount of $2,500.00 pursuant to the Agreement." *Id.*, p. 2:17–18.

D. "The credit card is in default, and Wells Fargo seeks to set off the security deposit against the balances owing pursuant to said credit cards, which totals $2,563.84 as of the Petition date." *Id.*, p. 2:21–23.

E. "Cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) exists because the interests of Movant in the Subject credit card is not adequately protected.

1. Debtors defaulted in making payments, and

2. Movant is precluded from proceeding with its state 1aw remedies due to Debtors' filing of the instant case." *Id.*, p. 3:9–12 [the court creating the indented paragraphs 1 and 2 for sake of clarity in consideration of the grounds stated with particularity in the Motion].

F. "Movant has not been granted such other relief as will result in the realization of the indubitable equivalent of Movant's interest in the Subject credit card and associated security deposit." *Id.*, p. 3:12–14.

G. "Moreover, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(2) exists because the Debtors and the Estate do not have any equity in the Subject credit card and associated security deposit, and the Subject credit card and associated security deposit are not necessary to an effective reorganization." *Id.*, p. 3:15–18.

The prayer then requests that the court grant relief from the stay to allow Movant to exercise [apparently any and all] state court remedies. *Id.*, p. 3:20–22. Presumably, this could include allowing Movant to sue Debtor in state court, obtain liens against property of the bankruptcy estate, and allow the County Sheriff to conduct sales of property of the bankruptcy estate to pay Wells Fargo Bank, N.A. outside of this bankruptcy case.

The prayer does specifically request that in addition to the above-requested relief, that relief also be granted to allow Wells Fargo Bank, N.A. to setoff the security deposit against the obligation owed on the credit card. *Id.*, p. 3:23–24.

Federal Rule of Bankruptcy Procedure 9013 requires that the Motion itself state with particularity the grounds for the relief requested and the specific relief requested. Here, the Motion states with particularity that there is a credit card debt in the amount of $2,563.84, for which there is a security deposit of $2,500.00, and Debtor has defaulted in some unstated number of payments (possibly only one) on the secured obligation.

The Zimmerman Declaration provides testimony that Debtor is in default under the Agreement for a credit card, with a total of $2,563.84in pre-petition payments past due. The Declaration state that Movant holds a security deposit of $2,500.00 against the Agreement for the credit card, and Movant attempted to turn those funds over to the Chapter 13 Trustee, who returned them to Movant. *See* Exhibit 4, Dckt. 29.

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 $2,563.84, as stated in the Zimmerman Declaration, while the value of the security deposit is determined to be $2,500.00, as stated in the Zimmerman Declaration.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 31. The Trustee asserts that a plan was confirmed on July 24, 2016. Under that plan, Movant was not listed to receive monthly disbursements from the Trustee. In fact, the only documents listing Movant are Schedule A/B and Schedule C for the amount of $3,800.00 with a description of "bank account."

The Trustee notes that Movant filed a late proof of claim (Claim No. 19) on March 24, 2017, for a secured claim of $2,500.00. The claim bar date was October 5, 2016. The Trustee processed the claim as secured but unprovided for by the Plan.

DISCUSSION

Relief From Stay for Cause

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

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed

a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

The grounds stated are that Wells Fargo Bank, N.A. holds a $2,500.00 security deposit for a debt that is slightly larger. There is no evidence that the value of the security is diminishing or that there is any impairment of such value. Mere delay while the bankruptcy case is reasonably prosecuted is not "cause" for relief from the stay. *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

If the court were to stop at this point, Movant has clearly not established grounds for relief from the stay. However, the Trustee has weighed in on this issue as well. The Trustee brings to the court's attention that Debtor has confirmed a Chapter 13 Plan in this case. Trustee Response, Dckt. 31. The Trustee further notes that under the confirmed Plan no provision is made for paying Wells Fargo Bank, N.A. on its secured claim.

It appears that this may be in fact due to Wells Fargo Bank, N.A. not timely filing a proof of claim in this bankruptcy case. The claims bar date was October 15, 2016. Proof of Claim No. 19 was filed by Wells Fargo Bank, N.A. on March 24, 2017. Fortunately for creditors with secured claims, the non- or late-filing of a proof of claim does not result in the loss of such creditor's rights and interests in its collateral. *Dewsnup v. Timm*, 502 U.S. 410, 416 (1992); *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive bankruptcy"); *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim -- namely, an action against the debtor in personam -- while leaving intact another -- namely, an action against the debtor in rem"); and *Hoxworth v. Binder et al.*, 74 F3d. 205 (10th Cir. 1996), *cert. denied* 519 U.S. 816 (1996).

In looking at the Verification of Master Address List filed by Debtor, Wells Fargo Bank, N.A. is not listed, and it may well be that no timely notice of this bankruptcy case was given to Movant. Dckt. 3.

Failure to State Grounds, Wasted Time of Trustee

If the court were to treat the Trustee's Response as part of the grounds stated with particularity in the Motion, then cause would be shown for relief from the stay, at least as to offsetting the security deposit. But to do so would force the Chapter 13 Trustee to provide pro bona legal services for Wells Fargo Bank, N.A.—a large, sophisticated bank that has legions of attorneys representing it all across the nation.

The court estimates that the time in having to review the inadequate motion, drafting the response documents that stated what would have been grounds if Wells Fargo Bank, N.A. had stated such grounds, and then have to participate in the hearing at 1.5 hours. Using a severely discounted hourly rate for Chapter 13 Trustee's counsel of $250.00, Wells Fargo Bank, N.A.'s failure to comply with Federal Rule of Bankruptcy Procedure 9013 and state sufficient grounds in the Motion has caused the Chapter 13 Trustee to incur $375.00 in unnecessary attorney's fees expenses.

The court cannot in good conscience "reward" Wells Fargo Bank, N.A. for conscripting the Chapter 13 Trustee to provide pro bono legal services to underwrite the legal representation for Movant. At the hearing, Counsel for Wells Fargo Bank, N.A. proposed, in lieu of the court denying the Motion without prejudice, that **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

~~The court shall issue an order denying / modifying the automatic stay to allow Movant, and its agents, representatives and successors to offset the $2,500.00 security deposit against the $2,563.84 obligation that it secures.~~

~~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 Wells Fargo, 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** the Motion for Relief from automatic stay provisions of 11 U.S.C. § 362(a) is denied/granted, and the automatic stay is modified to allow Movant, and its agents, representatives, and successors to offset the $2,500.00 security deposit against the $2,563.84 obligation that it secures.~~

~~**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.~~