

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 8, 2021 at 1:30 p.m.

1. [21-21767](#)-E-13 **WAYNE CREEL AND JACKIE** **MOTION FOR RELIEF FROM**
[VVF-1](#) **JAYNES-CREEL** **AUTOMATIC STAY**
 Mikalah Liviakis **5-20-21 [12]**
MECHANICS BANK AUTO FINANCE
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, and Office of the United States Trustee on May 20, 2021. 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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Mechanics Bank Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Mini Cooper Countryman, VIN ending in 2133 ("Vehicle"). The moving

June 8, 2021 at 1:30 p.m.

- Page 1 of 26 -

party has provided the Declaration of Vincent V. Frounjian to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Wayne Martin Creel and Jackie De Lynn Jaynes-Creel ("Debtor").

Movant argues Debtor has not made any post-petition payments. Declaration, Dckt. 14. Movant also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of \$702.78. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

TRUSTEE'S NON-OPPOSITION

Trustee filed a Non-Opposition on May 26, 2021 noting for the court that Debtor has a pending Plan which accounts for Movant as a Class 3 claim. Dckt. 22. Trustee also notes that the Meeting of Creditors is set to be held on June 17, 2021 and the first plan payment will come due on June 25, 2021. *Id.*

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 \$16,170.94 (Declaration, Dckt. 14). Debtor valued the Vehicle at \$10,029.00, as stated in Schedules A/B and D filed by Debtor, where Movant's valuation report values the Vehicle at \$17,675.00.

Debtor's proposed Plan provides for the surrender of the Vehicle.

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

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

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Mechanics Bank Auto Finance (“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 2015 Mini Cooper Countryman, VIN ending in 2133 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

SANTANDER CONSUMER USA 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.

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, Chapter 13 Trustee, and Office of the United States Trustee on May 27, 2021. By the court's calculation, 12 days' notice was provided. 14 days' notice is required.

Movant failed to provide sufficient notice of this Amended Motion. At the hearing

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~~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.

Santander Consumer USA, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Ford Fiesta, VIN ending in 2548 ("Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jami Lynn Kear ("Debtor").

Movant argues Debtor has not made 19.41 post-petition payments, with a total of \$7,823.34 in post-petition payments past due. Declaration, Dckt. 109.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

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 \$8,625.34 (Declaration, Dckt. 109). Debtor values the Vehicle at \$6,000.00, as stated in Schedules A/B and D filed by Debtor. Movant's NADA Valuation Report values the Vehicle at \$6,950.00.

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 reorganization. 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). 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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA, 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 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 Ford Fiesta, VIN ending in 2548 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

NATIONSTAR MORTGAGE 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.

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 7, 2021. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is denied.

Nationstar Mortgage LLC dba Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to David Leroy Keller and Connie Jane Keller's ("Debtor") real property commonly known as 8164 Otium Court, Antelope, California ("Property"). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five post-petition payments, with a total of \$6,921.75 in post-petition payments past due. Declaration, Dckt. 110.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 24, 2021. Dckt. 113. Trustee asserts the following:

1. Debtor are delinquent under the confirmed plan in the amount of \$1,920.00 (less than one plan payment) and have paid \$103,671.52 in plan payments to the Trustee to date with the last payment of \$3,000.00 posted on May 3, 2021;

2. Creditor is included in Debtor's confirmed plan as a Class 1 creditor. The filed Proof of Claim 4-1 in the secured amount of \$230,057.51 with \$41,951.22 arrears. The Trustee has disbursed \$51,054.31 towards Debtor's post-petition ongoing claim and \$23,095.87 to the arrears portion of the claim to creditor Mr. Cooper, to date.
3. Trustee's records show that payments have been disbursed for the months of January, March, and May; and thus, based on the Trustee's records, the mortgage will only be post-petition delinquent two payments, representing December 2020 and February 2021.

The court notes that Trustee filed the same Response twice. The second one being filed on May 25, 2021 as Dckt. 118.

DEBTOR'S REPLY

Debtor filed a Reply on May 24, 2021 requesting the motion be denied on the basis that Movant has been paid \$51,054.31 for Class 1 ongoing mortgage payments, \$23,095.87 for Class 1 mortgage arrears, and \$17.66 for Class 1 post-petition mortgage arrears through the Plan. Debtor recognize they are delinquent but that they will be current before the hearing and once the default is cured Trustee will have the funds to make the applicable payments to Movant.

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 \$177,772.05 (Declaration, Dckt. 110), while the value of the Property is determined to be \$300,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1)

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 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).

On May 31, 2021 Debtor filed a Supplemental Declaration testifying that they are proposing a new plan that will cure the additional on-going mortgage payments and explaining they have been affected by COVID-19 and have encountered other medical issues. Dckt. 128. A review of the docket shows that Debtor filed a new plan and Motion to Confirm which has been set for hearing on July 20, 2021 at 2:00 p.m. Dckts. 123, 121.

There being equity in the property, Debtor addressing the default by proposing a new plan, 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 Nationstar Mortgage LLC dba Mr. Cooper ("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.

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 March 30, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted, with the court entering an order determining that the stay has been modified under the terms of the confirmed Chapter 13 Plan, and that a purchaser of the property may obtain possession of the Property.

The Money Source Inc. ("Movant") seeks relief from the automatic stay with respect to Eric Ali'i Fueva and Rosalia Theresa Inez Fueva's ("Debtor") real property commonly known as 2938 Nicolet Lane, Redding, California ("Property"). Movant has provided the Declaration of Ashley Reza 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 (3) post-petition payments, with a total of \$6,775.74 in post-petition payments past due. Declaration, Dckt. 63.

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed a Response on April 26, 2021. Dckt. 67. Trustee asserts that Debtor is delinquent one plan payment in the amount of \$3,582.30 and that Movant is included under the confirmed plan as a Class 4 claim. Trustee has not disbursed any payments to Movant.

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 \$332,581.84 (Declaration, Dckt. 63), while the value of the Property is determined to be \$357,000, as stated in Schedules A/B and D filed by Debtor.

As noted by the Trustee in his response, Movant's Secured Claim is provided for the confirmed Chapter 13 Plan as a Class 4 Claim. Class 4 Claim treatment requires that the payments on the claim be made directly by Debtor, and that the automatic stay is terminated for that creditor:

3.11. Bankruptcy stays.

(a) **Upon confirmation** of the plan, the **automatic stay of 11 U.S.C. § 362(a)** and the **co-debtor stay of 11 U.S.C. § 1301 (a)** are . . . ; (2) **modified** to allow the holder of a **Class 4 secured claim to exercise its rights against its collateral** and any nondebtor in the event of a default under applicable law or contract; . . .

Confirmed First Amended Plan, ¶ 3.11; Dckt. 31 (emphasis added).

Though Movant has had the stay modified by confirmation of the Plan, the court appreciates that an order confirming such relief having been granted may need to have that documented when the collateral is real property. Additionally, Movant may desire obtaining such relief to allow for a possible conversion of the case and the Chapter 13 Plan no longer being in effect.

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).

June 8, 2021 Hearing

The court continued the original hearing date at the request of the parties. As of the court's preparation of this pre-hearing disposition, no other documents have been filed with the court.

The automatic stay in this case has already been terminated by the confirmed Chapter 13 Plan. The court shall enter an order confirming that the stay has been terminated under the confirmed plan.

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., Creditor, 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 court confirms that the Automatic Stay in this case has been modified under the terms of the Confirmation Chapter 13 Plan, which provide for Creditor's secured claim, for which the collateral is the real property commonly known as 2938 Nicolet Ln., Redding, California, as follows:

- 3.10. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Class 4 Creditor's Name/Collateral Description	Monthly Contract Installment	Person Making Payment
The Money Source / 2938 Nicolet Ln. Redding, CA 96001 Shasta County Debtor's Residence	2,214.95	Debtor

3.11. Bankruptcy stays

(a) **Upon confirmation** of the plan, **the automatic stay of 11 U.S.C. § 362(a)** and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; **(2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract;** and

Chapter 13 Plan, ¶¶ 3.10, 3.11; Dckt. 4 (emphasis added). This is consistent with relief that would be granted on the Motion if the Plan was not confirmed.

IT IS FURTHER ORDERED that in the event Debtor prosecutes a modified plan or the case is converted to one under Chapter 7, Debtor may file a motion in this contested matter, using this docket control number, for a modification of this order to grant relief from the stay.

ROMEO VALLAR 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 Christopher Collins, Esq. on May 6, 2021. By the court's calculation, 33 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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Romeo Barbieto Vallar ("Movant") seeks relief from the automatic stay to allow the Petition for Dissolution of Marriage in El Dorado County Superior Court PFL-2007-0651 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Romeo Barbieto Vallar to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Romeo Barbieto Vallar ("Debtor").

Movant argues that the relief is necessary so that the dissolution of his marriage proceeding pending at the El Dorado County Superior Court may move forward to allow for the resolve of division of community property, spousal support, reimbursements, credits and his marital status. Declaration, Dckt. 22.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on May 25, 2021. Dckt. 32. Trustee does not oppose the relief requested but informs the court that the litigation was not disclosed on the Statement of Financial Affairs.

DISCUSSION

This is an interesting Motion, in that Debtor has filed a motion against himself so that he can now prosecute a Petition for Dissolution filed on August 9, 2007. Debtor seeks to conclude the division of community assets, support obligations, and dissolving the marriage.

Congress provides in 11 U.S.C. § 362(b)(2) that the automatic stay does not apply to much of the state court dissolution proceeding:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

...

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

These appear to cover everything, except the division of property. The community property to be divided is not identified. The property of Debtor that his separated spouse claims is her separate property is not identified. The claims for which the community property are liable is not identified.

On Schedule A/B Debtor identifies only one asset being community property - 501 Finders Way, El Dorado Hills, California. Dckt. 1 at 12. This property is stated to have a value of \$545,000. On Schedule D Bank of America is listed as a creditor having a (\$375,000) claim secured by that property. *Id.* at 20. Debtor also lists Chase having a second mortgage on this property to secure its claim of (\$122,000). *Id.* at 21. The Schedules state that Debtor's separated spouse makes the payments on the obligations secured by this property.

Granting modification of the automatic stay to have division of community property and possibly adjudicate disputes of what may be community or separate property can be a situation fraught with possible abuse. While not believing that such is a situation here, what the parties want to have the stay modified to be determined, and what community property may be encumbered by community property liability, the property for which the stay is modified should be identified.

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 discussed above, as a matter of federal law there is no automatic stay for which relief can be granted. The court will expressly state those exceptions in the order for the benefit of Debtor and the State Superior Court judge.

The court finds that the nature of the State Court Litigation warrants relief from stay for cause to adjudicate the division of the following community property:

XXXXXXX

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Romeo Barbieto Vallar (“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 as provided in the following provisions of 11 U.S.C. § 362(b)(c) the automatic stay does not apply to the following dissolution and domestic relations proceedings:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

...

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Romeo Barbieto Vallar ("Debtor") to allow Movant, his agents, representatives, and successors, to allow the state court division of the community property commonly known as 501 Finders Way, El Dorado Hills, California in the Petition for Dissolution of Marriage in El Dorado County Superior Court PFL-2007-0651.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

ALLY BANK 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, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 26 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, -----.

<p>The Motion for Relief from the Automatic Stay is denied.</p>
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Ally Bank ("Creditor" or "Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota Highlander, VIN ending in 3740 ("Vehicle"). The moving party has provided the Declaration of Lauren Joslin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Eduardo Alfredo Monterrosa ("Debtor").

Creditor argues Debtor has not made six post-petition payments, with a total of \$4,759.67 in post-petition payments past due. Declaration, Dckt. 83.

Creditor has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

According to the Motion, Creditor is in possession of the Vehicle.

Stipulation for Adequate Protection

On May 20, 2021, Creditor filed a Stipulation for Adequate Protection, with both Creditor and Debtor stipulating to the following:

- A. Debtor Eduardo Alfredo Monterrosa, shall maintain continuous and timely payments to Creditor in the amount of \$799.42 each, commencing with the June 9, 2021, payment and continuing each month thereafter. Said payments are due on the 9th of each month and are to be tendered to Creditor.
- B. Debtor shall tender additional (12) monthly payments in the amount of \$463.26 each, commencing June 9, 2021, and continuing through May 9, 2022, or until such earlier time, as all of the Debtor's defaults under the Contract in the amount of \$5,559.09 are completely cured. Said payments are due on the 9th day of each month and must be tendered to Creditor.
- C. In the event of a default in any of the above provisions, Creditor's counsel shall send, via first class mail, written notification ("Notice") of such default(s) to the Debtor and Debtor's counsel.
- D. Debtor shall have ten (10) days from the date of such Notice, plus 3 additional days for mailing of the Notice, to cure any and all defaults, and in the event Debtor fails to cure said default within the ten plus three (10 + 3) day period, on the fourteenth (14th) day Creditor shall be entitled to submit to the Court and serve upon Debtor and Debtor's counsel an Order Terminating Stay and a supporting Declaration Re: Non Cure of Breach requesting immediate relief from the automatic stay, without further order of this Court, or notice to Debtor or Debtor's counsel, to take possession of and dispose of the Vehicle in accordance with applicable non-bankruptcy law.
- E. Debtor shall only be entitled to receive the benefit of the ten (10) day "Notice" contained in this Stipulation three (3) times during the pendency of this Chapter 13 case. Upon the occurrence of the Debtor's fourth (4th) default under the terms of this Stipulation, Creditor shall have immediate relief from the automatic stay, without further order of the court, or notice to Debtor or Debtor's counsel, to take possession of and dispose of the Vehicle in accordance with applicable non-bankruptcy law.
- F. The parties agree and acknowledge that the terms of this stipulation will not survive the dismissal or conversion of Debtor's bankruptcy case.

Dckt. 95.

TRUSTEE'S RESPONSE

Trustee filed a Response on May 25, 2021. Dckt. 98. Trustee does not oppose the relief requested; however, Trustee notes that Creditor is provided for as a Class 4 claim in Debtor's Amended Plan. Trustee has not disbursed any funds to Creditor. Trustee further notes that although Creditor has possession of the Vehicle, the Stipulation calls for 12 monthly payments to Creditor and Debtor's modified plan filed on May 13, 2021 does not propose to increase payments after 12 months.

Trustee believes relief should be granted on the basis that Debtor failed to disclose this claim until recently and the Plan proposes to treat the vehicle claim as Class 4 rather than disclosing a default exists and seeking to cure the default under 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 \$36,447.74 (Declaration, Dckt. 83). Debtor did not list the Vehicle in their Schedules. Creditor's NADA valuation report values the Vehicle at \$29,050.

Creditor originally requested relief based on 11 U.S.C. § 362(d)(1) for cause and 11 U.S.C. § 362(d)(2) for lack of equity, and requested waiver of the fourteen-day stay of enforcement. But has filed a Stipulation where Debtor has agreed to adequate protection payments.

This Stipulation raises some serious issues for the court. In the Trustee's response, he cites the court to Debtor's proposed Amended Plan (Dckt. 98) and in that Plan Debtor states (subject to the certifications arising under Fed. R. Bankr. P. 9011) that there are no defaults on Creditor's claim and that Debtor will pay Creditor directly as a Class 4 Claim holder under the Plan. Class 4 Claims are expressly stated in Debtor's proposed amended plan as:

- 3.10. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Class 4 Creditor's Name/Collateral Description	Monthly Contract Installment	Person Making Payment
Ally Financial - 2013 Toyota Highlander	799.42	Debtor

As is clearly stated, and is admitted by both Creditor and Debtor, in the Stipulation (Dckt. 95) about this claim of Creditor:

3. Debtor shall tender additional (12) monthly payments in the amount of \$463.26 each, commencing June 9, 2021, and continuing through May 9, 2022, or until such earlier time, as all of the **Debtor's defaults under the Contract in the amount of \$5,559.09 are completely cured.**

Said payments are due on the 9th day of each month and must be tendered to Movant at the aforementioned address.

Stipulation, ¶ 3; Dckt. 95.

It appears that Creditor, Debtor, and their respective attorneys have actively attempted to circumvent the mandatory Chapter 13 Plan in this case, misrepresent in that proposed Amended Plan that Creditor's claim has no default, and that what Debtor is proposing complies with the Bankruptcy Code. That is false.

The "Stipulation" appears to merely be a disguised Chapter 13 Plan to provide for the default cure payments to be made "around the Trustee," outside the Plan, and serve as a "one specially treated creditor plan" for which doesn't have to be confirmed by the court.

If Creditor and Debtor had brought to the court a loan modification motion, Creditor just tacked the defaulted payments on the end of the loan, extending the term for 12 additional months, and modified the loan to cure the default, then it could have been a modified loan for which there were no defaults. Given the sophistication of Creditor's Counsel and Creditor, the court concludes that such circumvention of the plan confirmation process is intentional and not a "mere clerical error."

Review of Plan and Schedules

On Supplemental Schedule I Debtor states under penalty of perjury having gross monthly income of \$12,880.00. Dckt. 91. After deductions, the monthly projected take home income is computed to be \$3,550.00. Dckt. 90.

On Supplemental Schedule J Debtor lists the reasonable and necessary expenses for their family of 4 persons – two adults and two teenagers – of (\$5,992.00). Dckt. 90. These expenses do not include a mortgage, property taxes, or insurance. It does include a (\$799.00) a month vehicle payments and a (\$400.00) "Catch-up payments [which the court reads as a creative way to state pre-petition default cure] on 2017 Toyota Highlander [sic]" of \$400 a month. *Id.* In response to Question 24 asking whether Debtor expects an increase or decrease in expenses, Debtor states under penalty of perjury, "Catch-up [default arrearage cure] payments of \$399.50 on 2017 Toyota Highlander will end 05/2022."

Creditor has filed Proof of Claim 4-1 for this secured claim for which "catch-up" payments are to be made by Debtor as a Class 4 Claim. Proof of Claim 4-1 states that the amount of the claim is (\$39,217.13). The pre-petition default is stated to be (\$78.17) and the interest rate is 10.70%.

On Attachment 1 to Proof of Claim 4-1 Creditor states that the actual arrearage is (\$396.81).

Attachment 2 to Proof of Claim 4-1 is a copy of the contract upon which Proof of Claim 4-1 is based. Debtor purchased the used 2017 Highlander in November 2018, with the first payment due December 9, 2018. The Contract provides for 71 payments of 799.42. With the first payment due December 9, 2018, the final payment 70 months later would be paid in October 2024.

Debtor's proposed Modified Chapter 13 Plan is not for a term of 84 months. That would make the last month if this proposed Modified Plan to be August 2026. This claim does not extend beyond the term of the Plan, but based on the contract, is paid in full during the Plan term. To qualify as

a Class 4 Claim, the plain language of the plan request that such Class 4 claim must “mature after completion of the Plan.

Because Debtor purchased this vehicle in November 2018 and then filed bankruptcy in August 2019, this purchase money obligation cannot be revalued as provided in 11 U.S.C. § 506 to the actual value of the vehicle, but Creditor is entitled to the full amount of the debtor as a secured claim. 11 U.S.C. § 1325(a)(9) hanging paragraph.

However, it appears that Debtor and Creditor have worked out a “most favored creditor” status for Creditor, paying it 10.70% interest, while providing a 0.00% dividend to Debtor’s creditors with (\$221,723.00). As Debtor’s counsel and Creditor’s counsel are well aware, these types of high interest rate loans are provided for in Class 2 of the Plan and the debtor lowers the interest rate to around 4%.

Using the Microsoft Loan Calculator Program and the (\$36,447.74) amount of the claim as stated in the Motion, amortizing that debt over five years at 4% interest, the monthly payments would be (\$652.82). If Debtor stayed with just the regular, reasonable, month car payment amount of \$799.00, the repayment period is reduced to four years.

With the four years payment period, the total interest paid is reduced to (\$2,970.33). With the 10.70% interest and paying the \$35,447.74 over the balance of the contract repayment period, there would be 42 months of payment, with Debtor paying approximately (\$7,206.90) in interest to pay the Secured Claim off even faster. By the Stipulation, Debtor seeks to pay Creditor 143% more interest than if providing for the secured claim in Class 2 at a reasonable Chapter 13 Plan interest rate.

In the Motion to Confirm the Modified Plan, Debtor states that Debtor defaulting in \$22,384.23 in payments occurred because the non-debtor spouse lost her job in March 2020 due to COVID-19. The unemployment benefits were not as large as her wages. (Debtor does not state whether this include Stimulus payments, if any, received by Debtor and the non-debtor spouse.) The Motion also states that Debtor was out of work in November 2020 due to COVID, but that his employer provided compensation that was a fraction (not specifying the amount of the “fraction”) of Debtor’s normal earnings. Dckt. 87.

While saying that their income was reduced due to COVID-19, Debtor does not state what portion was lost and how much of the payment that was not “lost” has been set aside and not spent on non-necessaries.

Possibly, Debtor may argue that complying with the Chapter 13 Plan and Local Bankruptcy Rules relating to Chapter 13 plans is just too burdensome because the Debtor would have to pay required Chapter 13 trustee fees. Unfortunately, debtors are required to pay such fees. Every debtor could make that assertion, and if valid, then no debtors would pay any of the required fees.

Given the legal gymnastics of Creditor, Debtor, and their respective counsel, the court concludes that the present Motion and purported Stipulation have not been filed and presented to the court in good faith. If Debtor needs to cure defaults, Debtor and Debtor’s counsel may be able to as permitted by the Bankruptcy Code and the Chapter 13 Plan in this case. That Debtor and Creditor would attempt to circumvent the law raises doubt not only with respect to other information provided by Debtor

(such as income and expenses) but whether Debtor filed and is prosecuting this case (or any case) in good faith.

Additionally, Debtor and Creditor have clearly admitted that Debtor has the ability to cure the defaults and provide for Creditor's claim through a good faith Chapter 13 Plan. Further, Debtor and Creditor effectively admit through the Stipulation that the vehicle is necessary for an effective reorganization. No cause exists to grant relief from the stay for this vehicle necessary for an effective reorganization if the Debtor, in prosecuting this case in good faith, provides for Creditor's Claim in a proper Chapter 13 Plan.

The Motion is Denied.

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 Ally Bank ("Creditor") 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.

WELLS FARGO BANK, N.A.
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 March 30, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief from the Automatic Stay is XXXXXXX</p>

Wells Fargo Bank N.A. ("Movant") seeks relief from the automatic stay with respect to Anne M. Harper's ("Debtor") real property commonly known as 179 East Tennys Drive, Benicia, California ("Property"). Movant has provided the Declaration of Rodney O'Neil Coaxum-Richardson 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 one (1) post-petition payment, with a total of \$3,583.62 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there are ten pre-petition payments in default, with a pre-petition arrearage of \$35,327.99. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 26, 2021. Dckt. 26. Trustee asserts that Debtor is current in plan payments and that Trustee has disbursed the post-petition mortgage payments and as such Trustee does not believe that Debtor is post-petition delinquent as asserted by Movant.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 27, 2021. Dckt. 29. Debtor asserts that given the history of payments as discussed below, the Motion should be denied recognizing that Debtor has actively prosecuted her cases, made plan payments, and continued to address any defaults despite the challenges faced because of the pandemic.

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 \$413,736.91 (Declaration, Dckt. 18), while the value of the Property is determined to be \$691,000, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, Movant argues that a series of bankruptcy filings starting in 2015 affecting the Property shows Debtor's scheme to delay, hinder, or defraud Movant.

- A. Case No. 15-26661
 - 1. Filed: August 24, 2015
 - 2. Chapter 13
 - 3. Dismissal Date: January 22, 2018
 - 4. Reason for Dismissal: Delinquency
- B. Case No. 18-20627
 - 1. Filed: February 5, 2018
 - 2. Chapter 13
 - 3. Dismissal Date: December 23, 2020
 - 4. Reason for Dismissal: Delinquency and failure to file a new plan
- C. Case No. 21-20582
 - 1. Filed: February 20, 2021
 - 2. Chapter 13
 - 3. Dismissal Date: Instant Case

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

Here, the it is not clear that the case was filed with an intent to hinder or delay Movant from asserting its rights. Since 2015, Debtor has attempted to continue making payments to Movant. Even when her case would get dismissed, Debtor would again try to address her finances and confirm a plan and make payments. The pattern of the cases does not show that Debtor simply wants to live in the Property for free and stop a foreclosure. Debtor has continuously made payments even if at times she has a missed a few. Moreover, Debtor has also tried to address the arrearage by requesting a loan modification which Movant granted.

Further, the evidence presented shows that from February 5, 2018 through December 23, 2020, Debtor paid a sum totaling \$220,097.78 into Case No. 18-20627, of which Movant received a sum totaling \$28,367.79 toward the pre-petition arrearage claim of \$38,460.98, and a sum totaling \$101,408.22 in ongoing mortgage payments. In that case, Debtor defaulted in plan payments after being affected by the COVID-19 pandemic. Debtor in turn filed the instant case so that she could continue saving her home and pay Movant. Trustee has stated that she is current in plan payments and in post-petition mortgage payments.

In reviewing the prior cases, the court notes under the proposed Chapter 13 Plan Movant is to receive regular monthly post-petition payments of \$1,124.99 and a pre-petition arrearage cure of \$275.86. Proposed Plan, ¶ 3.07(c); Dckt. 3.

However, as the court addressed in ruling on the Movant's Objection to Confirmation, an issue exists whether Debtor has any reasonable financial ability to perform the plan, or whether the filing of bankruptcy cases is a long process where the Debtor "invests" (loses) hundreds of thousands of dollars in trying to save a property Debtor cannot afford.

At the hearing, with the agreement of the Parties motion was continued. Debtor reports that she will being filing amended or supplemental schedules and file a new plan.

June 8, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no further documents have been filed.

At the hearing **xxxxxxx**