UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 12, 2025 at 10:00 a.m.

---

1. 22-90415-E-7 JOHN MENDOZA
DB-8 Peter Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
4-17-25 [506]

WVJP 2021-4, LP 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 and all creditors and parties in interest on April 17, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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.

The Motion for Relief from the Automatic Stay is xxxxxxx.

June 12, 2025 Hearing

The court continued the hearing on this Motion to afford the Chapter 7 Trustee an opportunity to weigh in on the matter and for the Parties to provide further briefing. Movant was ordered to file Supplemental Pleadings on or before May 29, 2025, and Reply Pleadings, if any, were to be filed and served on or before June 6, 2025. Order, Docket 521.

On May 29, 2025, Trustee and Creditor filed a Stipulation. Docket 522. The relevant portion of the Stipulation reads:

> Trustee Gary Farrar does not oppose the Motion for Relief From Stay filed by Creditor WVJP 2021-4, LP in this proceeding for the purpose of renewing the State Court Judgment because WV JP and the Trustee have executed the Case Administration Settlement Agreement, which sets out a case administration structure for the recovery and liquidation of property of the estate and for the distribution of the proceeds of the sale of all property of the estate.

Stip. 2:18-23.

Movant filed its Supplemental Brief on May 29, 2025. Docket 523. Movant states:

1. Movant notes that the federal authorities do not espouse a definitive position on the "renewal-enforcement" dichotomy that impacts the characterization of a judgment renewal as either "ministerial" or "substantive," respectively, and the subsequent effects on the automatic bankruptcy stay. *Id.* at 3:25-28.

2. *Rubin* is the superior authority on this issue and should be entitled to deference regarding state law actions. *Id.* at 5:9.

3. Movant reiterates the idea in *Rubin* that renewing a judgment is purely ministerial, citing *Rubin* as stating: "statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court; entry of the renewal of judgment does not constitute a new or separate judgment. No court order or new judgment is required. The court clerk simply enters the renewal of judgment in the court records." *Rubin*, 65 Cal.App.5th at 165 (quoting and discussing *Goldman v. Simpson*, 160 Cal. App. 4th 255, 262, (2008)).

The court disagrees with the analysis Movant puts forward in its Supplemental Brief. As an initial matter, the brief cites to case law that shows there is a distinction between renewal and enforcement of a judgment. Mot. 4:4-9. The court has never disagreed with this contention because there is obviously a difference between renewing and enforcing a judgment. The issue is whether renewing a judgment will violate the automatic stay.

In responding to this issue, Movant cites the court again to *Rubin* and explains the court should listen to the state court appellate judge because renewing a judgment is governed by state law. Mot. 5:10-15. This argument is not persuasive. Renewing a judgment may be governed by state law, but the actual question is whether a particular act violates the automatic stay. This question is squarely within the federal bankruptcy court's jurisdiction. 28 U.S.C. § 157(b).

Moreover, *Rubin* stands for the idea that renewing a judgment carries no implications beyond ministerial functions. That is simply not the case. As the court explained at the prior hearing, when a California judgment is renewed, the accrued interest on the California judgment is made part of the principal of the renewed judgment. The new principal balance then too accrues interest at 10% per annum, thereby

creating a compounding of the interest. Cal. C.C.P. § 683.150; 8 Witkin, Cal. Proc. 6th Enforcement of Judgments § 53(1)(a), (e), (f), (g). Such an act can hardly be said to be purely ministerial when the act obviously implicates assets of the bankruptcy estate. Movant acknowledges that at least one case out of a federal California bankruptcy court, who has been granted authority by Congress to rightly decide which acts violate the automatic stay, has found similarly. *See In re Lobherr*, 282 B.R. 912 (Bankr. C.D. Cal. 2002).

The definition of a ministerial act as adopted in the Ninth Circuit is as follows:

> Ministerial acts or automatic occurrences that entail no deliberation, discretion, or judicial involvement do not constitute continuations of such a proceeding.

In re Pettit, 217 F.3d 1072, 1080 (9th Cir. 2000). Renewing a judgment requires deliberation at the least, which would fall outside the definition of a ministerial act.

The Code clearly outlines which acts do no constitute a violation of the automatic stay and may be purely ministerial. 11 U.S.C. § 362(b). Renewing a judgment does not appear in 11 U.S.C. § 362(b). Movant makes no mention of the tolling statute provided 11 U.S.C. § 108(c). Congress clearly considered that renewing a judgment would violate the stay, so Congress added this provision to provide creditors with extra time to renew a judgment pending termination of an automatic stay.

Movant, in essence, makes the argument that the automatic stay does not apply to renewing a judgment, because *Rubin* says so, and so there is cause to grant relief from the stay. Aside form the fact that the court does not find *Rubin* persuasive, Movant is both asking the court to grant relief for cause and find that the automatic stay is not in effect. These are two separate requests for relief. *Compare* 11 U.S.C. § 362(c), *with* 11 U.S.C. § 362(d). The court declines to rule in line with *Rubin*.

The more compelling argument Movant could have made was that, assuming *arguendo* the automatic stay is violated by renewing, good cause exists for relief. For example, the Chapter 7 Trustee has provided a Stipulation agreeing to the requested relief as the Estate is likely a surplus Estate and creditors will not be affected by renewing the judgment. However, Movant does not make this argument. At the hearing, **xxxxxxx**

REVIEW OF MOTION

Plaintiff WVJP 2021-4, LP ("Movant") moves the court for an order granting relief from stay pursuant to 11 U.S.C. § 362(d)(1) in order to renew its state court judgment against Debtor-Defendant John Pierre Mendoza ("Debtor").

Cited State Court Cases
Relating to Automatic Stay Not Applying

In reviewing the Motion (Dckt. 506), the first sentence (Mtn. p 1:22-25), the legal standards cited Mtn. p. 3:2-6), the conclusion (Mtn. p. 4:5-4) , and the prayer (Mtn. p.5-11) all clearly state that the Movant is seeking relief from the automatic stay so that Movant may proceed with renewing a state court judgment.

However, in the Argument section of the Motion (Mtn. P. 3:7-26), Movant cited to a California Court of Appeal decision, first as being "instructive," and then apparently as the applicable law for decision on this Motion. The California state law cited is *Rubin v. Ross*, 65 Cal. App. 5th 153 (2021), which is first

cited for the proposition that submitting an application for renewal of a judgment does not conflict with the "purposes of the stay under the Bankruptcy Code." *Rubin v. Ross*, 65 Cal.App. 5th at 166. Thus, Movant provides the court with a State Court judge's view of the scope of the automatic stay. Interestingly, no federal court decisions are provided with respect to the scope of the automatic stay and whether renewal of a judgment conflicts with the automatic stay.

Movant does provide the court with Movant's conclusion that the Ninth Circuit Decision in *In re Swintek*, 906 F.3d 1101, 1105 (9th Cir. 2018), believes that it is a "fair point" that the renewal of a judgment is distinguishable from enforcing a judgment, but Movant does not provide any portion of the Ninth Circuit's Decision or how such "fair point" is relevant to the matter before this court.

Movant than provides the following closing quote from *Rubin* which appears to conflict with the relief requested in the Motion:

> We [the California Court of Appeal Justices] conclude the act of renewing a judgment, in and of itself, is expressly permitted under Code of Civil Procedure section 683.210, and that any stay imposed pursuant to title 11 United States Code section 362 operates only to prohibit subsequent acts intended to enforce a renewed judgment.

Motion, p. 3:23-26, quoting from *Rubin v. Ross*, 65 Cal. App.5th at 166; Dckt. 506.

It is unclear why Movant provides this quote, other than apparently arguing that the California Court of Appeal decision concerning Federal Law is binding on this Federal Court, and therefore the Motion should be denied as moot.

Notwithstanding this conflicting information, the court will, below, address this as a Motion for Relief From the Automatic Stay. The court has taken this opportunity to address this conflicting information to help counsel appreciate the need to provide good, clear federal law authority for positions asserted. While a state court analysis can be informational, it should not be asserted as controlling law for the Federal Court.

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).

Movant, in the Motion, states the following grounds with particularity (Fed. R. Bankr. 9013) upon which the requested relief from the automatic stay is based:

a. On April 3, 2015, a deficiency judgment was entered in a Michigan State Court Action against Debtor and in favor of Movant's predecessors in interest. That judgement has been assigned to Movant. Motion, p. 2:15-26; Dckt. 506.

b. On July 12, 2017 a sister state judgment (the "California Judgment") was entered by the California Superior Court for the County of Tuolumne based on the Michigan State Court Judgment (the "Michigan Judgment"). *Id*.; p. 2:19-22.

c. When Movant renews the California Judgment, such renewed judgment shall reflect the payments received from the sale of properties (Movant confirming that it will comply with State Law through the renewal process). *Id*.; p. 2:27-3:1.

No other grounds are stated in the Motion. In substance, the Motion appears to merely state that Movant wants to renew the Motion now and so the court should modify the Stay. There is no need or negative impact stated to exist if the court were to not grant the Motion.

The bankruptcy judge in this Case, having spent several decades representing the collection and creditor side of the economy, had significant experience in not only the debt enforcement laws, but in drafting both the debt enforcement and consumer protection laws relating to the enforcement of debts and judgments. As one knows, a California state court judgment accrues interest at the rate of 10% per annum, clearly a good rate of return when there are assets to pay the judgment. California Code of Civil Procedure § 685.010.

While not stated in the Motion, when a California judgment is renewed, the accrued interest on the California judgment is made part of the principal of the renewed judgment and then it too accrues interest at 10% per annum, thereby creating a compounding of the interest. Cal. C.C.P. § 683.150; 8 Witkin, Cal. Proc. 6th Enforcement of Judgments § 53(1)(a), (e), (f), (g) [Fn.1.]

FN. 1. In discussing the renewal of a judgment being a "mere" ministerial act, this Witkin section includes a discussion of a Notice of Renewal that must be served on the judgment debtor (here the Bankruptcy Trustee as well as the Debtor) and then the Trustee has only sixty (60) days to challenge the renewal. *See* Cal. C.C.P. § 683.160. Thus, the renewal of judgment would then impose deadlines for the Trustee to act or possible rights of the Bankruptcy Estate could be terminated. This would appear to be a "substantive effect" of a renewal and not a "mere ministerial act" that does not alter rights of the parties.

The California State Court Judgment was entered on July 12, 2017 in the amount of $1,449,209.43. Since the Michigan Judgement was entered on April 3, 2015 in the amount of $1,095,205.57 (Motion, p. 2:16-18; Dckt. 506), there was an additional $354,003.86 added to the Michigan Judgment by the time of the sister state California Judgment.

When Movant filed its Proof of Claim on April 6, 2023, the amount of the debt owed on the California Judgment had grown to $2,222,246.31. POC 2-1. Thus, an additional $773,036.77 has accrued on the California Judgment since it was entered.

Just based on the $1,448,209.43 California Judgment face amount, Movant has been accruing interest of $144,820 per year since July 12, 2017. If the California Judgment is renewed at $2,222,246.31,

then the annual post-judgment interest jumps to $222,224 a year, diverting more monies away from other creditors who do not have the benefit of 10% per annum interest.

What the California Appellate Court may not have appreciated is that Congress has protected creditors such as Movant and provided in 11 U.S.C. § 11 U.S.C. § 108(c):

> (c) Except as provided in section 524 of this title [effect of a bankruptcy discharge], if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

The opinion in *Rubin* goes through a nice analysis of constitutional law and preemption provisions. The court does not find this opinion particularly persuasive, especially as there is bankruptcy law in the circuit finding that renewing a judgment does violate the stay. *See In re Lobherr*, 282 B.R. 912 (Bankr. C.D. Cal. 2002). It is also evident that Congress contemplated that renewing a judgment would violate the stay because Congress included a tolling provision for renewing judgments in the Code. *See* 11 U.S.C. § 108(c).

This issue has been discussed (several times) by the Bankruptcy Appellate Panel for the Ninth Circuit in connection with *Smith v. Lachter (In re Smith)*, 352 B.R. 702 (B.A.P. 9th Cir. 2006), which is its third review of the issues in that string of appellate decisions. In *Smith* the Bankruptcy Appellate Panel concluded that:

> Section 108(c) applies to the renewal of state court judgments. *Smith II*, 293 B.R. at 223; *Spirtos v. Moreno (In re Spirtos)*, 221 F.3d 1079, 1080-81 (9th Cir. 2000). The time for renewing a state court judgment does not expire until the later of the applicable state law period or thirty days after the termination of the automatic stay. 11 U.S.C. § 108(c)(1) & (c)(2); *Smith II*, 293 B.R. at 224-25.

Smith v. Lachter (In re Smith), 352 B.R. at 705-706. This decision contains a somewhat detailed discussion of the interplay of State and Federal law, the application of 11 U.S.C. § 362(a), and the provisions of 11 U.S.C. § 108(c)(1), which addresses the non-bankruptcy law extensions of time, and (c)(2), the Bankruptcy Code extension. In *Smith*, the automatic stay terminated on November 12, 1996, resulting in the 11 U.S.C. § 362(c)(2) extension terminating on December 12, 1996. Because under Arizona Law the renewal of the judgment had to be done by March 6, 1997, then that was the latter date applicable provided under 11 U.S.C. § 108(c)(1). The creditors in *Smith* did not attempt to renew their state court judgment until November 7, 1997, after they obtained a non-dischargeability judgment from the bankruptcy court. This was

well after the period for renewal had expired under Arizona Law and any extension under 11 U.S.C. § 108(c). *Smith v. Lachter (In re Smith)*, 352 B.R. at 703-704, Fns. 6, 11,12, and 13.

Here, the ten year period to renew the California Judgment does not expire until July 11, 2027. The Motion does not identify whether Movant is seeking relief to renew only the California Judgment or the Michigan Judgment as well. Renewing now could very well have significant negative financial impact upon the Bankruptcy Estate and other creditors. The Motion does not provide counter balancing harm that Movant may face.

MAY 1, 2025 HEARING

At the hearing, counsel for Movant requested that the court allow supplemental briefing in light of the issues raised by the court. Counsel for Debtor did not oppose, so long as he has an opportunity to reply. This also afford the Chapter 7 Trustee an opportunity to weigh-in on this matter.

The Hearing on the Motion for Relief From the Automatic Stay is continued to 10:00 a.m. on June 12, 2025. The Hearing will be conducted in the **Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California**, with Telephonic Appearances permitted. Movant shall file Supplemental Pleadings on or before May 29, 2025, and Reply Pleadings, if any, filed and served on or before June 6, 2025.

As of June 1, 2025, there will no longer be any hearings, proceedings, or any other Bankruptcy Court matters conducted at what has been the Modesto Division Courthouse. That Courthouse has been permanently closed as of June 1, 2025, with all of the formerly Modesto Division Cases transferred to the Sacramento Division. All hearings and proceedings in the Bankruptcy Case and Adversary Proceedings after May 31, 2025, **will be conducted in the Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California**, with Telephonic Appearances permitted.

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 Plaintiff WVJP 2021-4, LP ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief From the Automatic Stay is **XXXXXXX**.

2. **24-90618-E-11 SAD-1** | **JEFFERY ARAMBEL** **Chris Kuhner** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **4-18-25 [123]**

U.S. BANK TRUST NATIONAL ASSOCIATION 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 all creditors and partes in interest on April 18, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

June 12, 2025 Hearing

The court continued the hearing on this Motion because the Debtor's family had arranged a $21,000.00 gift to the Bankruptcy Estate to fund an immediate payment of $21,000.00 to Movant to be applied to the delinquency in the adequate protect payments due Movant through June 2025. Nothing new has been filed under this Docket Control Number as of June 6, 2025.

The hearing on the U.S. Trustee's Motion to Dismiss this Chapter 11 Case was continued to 10:30 a.m. on June 12, 2025. No opposition to the Motion was filed and no parties, other than the Debtor in Possession, weighed in on whether the Case should be dismissed. The U.S. Trustee requested dismissal, unless the court thought conversion was better. The Debtor in Possession requested dismissal, stating he had no opposition thereto.

With the dismissal of this Bankruptcy Case, the need for the requested relief has been rendered moot by 11 U.S.C. § 362(c)(2) - the automatic stay terminates with the dismissal of the bankruptcy case.

At the hearing, xxxxxxx

REVIEW OF MOTION

Movant, U.S. Bank Trust National Association, As Trustee of the Igloo Series IV Trust, its successors and/or assigns ("Movant") seeks relief from the automatic stay with respect to Jeffery Edward Arambel's ("Debtor in Possession") real property commonly known as 49 Echo Court, Patterson, CA 95363 ("Property"). Movant has provided the Declaration of Jody Lee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 125.

Movant argues Debtor has not made five post-petition payments, with a total of $38,859.89 in post-petition payments past due. Declaration ¶ 14, Docket 125. Movant also provides evidence that there is one pre-petition payments in default, with a pre-petition arrearage of $7,864.54. *Id*. Therefore, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1).

Movant makes an argument that the case was presumptively filed under bad faith pursuant to 11 U.S.C. § 362(c)(3). Although Debtor in Possession's prior case was not dismissed, Movant argues the principle of filing the second case in bad faith remains unchanged. Mot. 6:20-21.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on May 8, 2025. Docket 144. Debtor in Possession states:

1. Movant is adequately protected. Even under Movant's valuation, there is a 19% equity cushion. Under Debtor in Possession's valuation, there is closer to a 50% equity cushion. *Id.* at 2:8-16.

2. Debtor in Possession is committed to curing any post-petition default which include principal and interest payments, so Debtor in Possession proposes to make monthly payments in the amount of $15,062 which represents a double payment on the regular monthly payment of $7,531. *Id.* at 2:12-16.

3. Debtor's previous bankruptcy case has not been dismissed, therefore, 11 U.S.C. Section 363(c)(3)(A) does not apply pursuant to the text of the statute. Nor is there any case law cited by U.S. Bank applying this code section to previous case that was not dismissed, but in fact is a case with a confirmed Chapter 11 plan of reorganization. *Id.* at 2:19-22.

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 $632,758.69 (Declaration ¶ 13, Docket 125), while the value of the Property is determined to be $1,290,000, as stated in Schedules A/B and D filed by Debtor. Am. Schedule A/B at 4, Docket 91. Movant filed a Zillow report in support of the Motion showing the valuation to be $876,700. Ex. 5, Docket 126. This is hearsay evidence, Movant telling the court to accept as true the valuation is what Zillow says it is. Fed. R. Evid. 801. The court does not find a Zillow valuation to be a market report relied on by the public (Fed. R. Evid. 803(17)) or any other exception to hearsay.

Moreover, the court disagrees that 11 U.S.C. § 362(c)(3) supports a presumption that this case was filed in bad faith. 11 U.S.C. § 362(c)(3) states:

> (c)Except as provided in subsections (d), (e), (f), and (h) of this section—
> . . .
>
> (3)if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b). . .

The plain language of the statute clearly only applies to a subsequently filed case when the earlier case was filed and dismissed within the 1-year period. There is no merit in Movant's argument supporting the assertion that the court should apply this language to the present case.

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).

In this case, Debtor in Possession admits he has missed the post-petition payments, but Debtor in Possession has offered a repayment schedule. Moreover, Movant is adequately protected, having close to a 50% equity cushion. Debtor in Possession suggests the court give Movant a conditional order, only granting relief if the increased post-petition payments are not made.

Though having defaulted in multiple monthly payments the Debtor in Possession now states that he can make double the normal monthly payment. Looking at the latest Monthly Operating Report filed, that being for April 2025 (Dckt 150), the Debtor in Possession reports having insignificant cash, only $159. Dckt. 150 at 2. In the attachment to the Monthly Operating Report (Dckt. 151) the Debtor in Possession shows the estate's bank account to have only a $159.13 balance. It is unclear how the Debtor in Possession will make double payments to Creditor after having defaulted for multiple months in making the regular payment.

At the hearing, counsel for the Debtor in Possession requested a short continuance because the Debtor's family has arranged a $21,000.00 gift to the Bankruptcy Estate to fund an immediate payment of $21,000.00 to Movant to be applied to the delinquency in the adequate protect payments due Movant through June 2025. This will only partially cure the default. This payment will be made within two weeks from May 22, 2025.

Commencing with the June 2025 payment, the Debtor in Possession will make a $15,000.00 monthly payment (double the regular amount) until the default in adequate protection payments is cured, and will then continue making the regular monthly payments as he works on getting a plan confirmed in this Bankruptcy Case. Debtor's family will continue to provide funds, in the form of a gift – the Debtor in Possession's counsel clearly stating on the record that these are not loans to the Bankruptcy Estate or something that the family members will be looking at getting repaid through this Bankruptcy Case – to assist the Debtor and Debtor in Possession in obtaining relief through this Bankruptcy Case.

Given the short deadlines, creditor agreed to a short continuance. Counsel for Creditor Movant will confirm the mailing address to be used in sending the adequate protection payments to the Creditor.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on June 12, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by U.S. Bank Trust National Association, As Trustee of the Igloo Series IV Trust, its successors and/or assigns ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is **xxxxxxx**.

3. 25-90126-E-7 DAMEION RENAULT
Pauldeep Bains

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-2-25 [14]

SCHOOLSFIRST FCU 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 7 Trustee, and Office of the United States Trustee on May 2, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

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.

NO DOCKET CONTROL NUMBER

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

THE MOTION

SchoolsFirst FCU ("Movant") seeks relief from the automatic stay with respect to Dameion Michael Renault's ("Debtor") real property commonly known as 13489 Yorkshire Road, Groveland, CA

95321 ("Property"). Movant has provided the Declaration of Leia Casey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 17.

Movant argues Debtor has not made five monthly payments each in the amount of $1,513.30, which includes three post-petition payments. Mot. 2:18-19. However, Movant provides no authenticated evidence of the default. The post-petition default is not mentioned in the Declaration at Docket 17, nor are there Exhibits filed in support of this Motion, although they are referenced in the Motion. At the hearing, **xxxxxxx**

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 $291,068.55 (Declaration ¶ 9, Docket 17), while the value of the Property is determined to be $287,000 as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 11, Docket 1.

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). The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property 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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by SchoolsFirst FCU ("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 granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 13489 Yorkshire Road, Groveland, CA 95321 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **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.

FINAL RULINGS

4. **21-21429-E-7** **JAMIE HOWELL** **MOTION FOR RELIEF FROM**
KMM-3 **Stacie Power** **AUTOMATIC STAY**
5-2-25 [360]

HARLEY-DAVIDSON VS.

Final Ruling: No appearance at the June 12, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on May 2, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Harley-Davidson ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2020 Harley-Davidson FLTRXS Road Glide Special, VIN ending in 0421 ("Vehicle"). The moving party has provided the Declaration of Jenifer Ford to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jamie Howell ("Debtor"). Decl., Docket 362.

Movant argues Debtor has not made four years' worth of monthly post-petition payments, each in the approximate amount of $797.52. Decl. 3:1-4.

The Chapter 7 Trustee, Stacey L. Power ("Trustee"), filed a Non-Opposition on May 12, 2025.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 363. 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 $41,360.10 (Declaration 4:3, Docket 362), while the value of the Vehicle is determined to be $18,615.00, as stated on the J.D. Power Valuation Report.

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.

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 Harley-Davidson("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 granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Harley-Davidson FLTRXS Road Glide Special, VIN ending in 0421 ("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.
>
> No other or additional relief is granted.