

Eastern District of California

Bankruptcy Judge
Sacramento, California

1. <u>23-24568</u> -E-13 <u>RDW</u> -2	SUNDREA GORDON-HACKLEY Carl Gustafson	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 3-12-24 [39]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 12, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay / Motion for Adequate Protection 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, Debtor stated opposition on the record.

Tuesday, July 2, 2024 at 1:30 p.m.
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July 2, 2024 Hearing

The court continued this Motion to allow Sundrea Danyelle Gordon-Hackley's ("Debtor") to complete the sale of her home and pay Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees ("Movant," "Creditor") in full. Nothing further has been filed with the court under this Docket Control Number, although Debtor has filed a Motion to Dismiss her own case on June 18, 2024.

The court has entered its order dismissing the Bankruptcy Case, rendering this Motion Moot. See, 11 U.S.C. § 362(c)(2)(B) which provides for statutory termination of the automatic stay upon dismissal of the bankruptcy case.

The Motion is denied without prejudice.

REVIEW OF THE MOTION

Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees ("Movant," "Creditor") seeks relief from the automatic stay, or, in the alternative, adequate protection payments, with respect to Sundrea Danyelle Gordon-Hackley's ("Debtor") real property commonly known as 948 Lake Canyon Avenue, Galt, California 95632 ("Property"). Movant has provided the Declarations of Reilly D. Wilkinson and Rich Mendoza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Dockets 41, 42.

Movant argues Debtor has not made three post-petition payments, with a total of \$12,558.33 in post-petition payments past due. Declaration, Dckt. 42 ¶ 9. Movant also provides evidence that there is a pre-petition arrearage of \$26,393.23. *Id.* The total amount now owed on the loan is \$487,986.46. *Id.* at ¶ 10.

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 \$486,737.46 (*Id.*; the amount of debt less asserted attorney's fees), while the value of the Property is determined to be \$624,900 as stated in Schedules A/B and D filed by Debtor. Schedule A/B, Docket 1 p. 10 line 1.1.

At the hearing, Debtor stated an opposition to the Motion, citing to a change in income and Debtor's recognition that this property must be sold, Debtor no longer being able to cure the defaults.

Initially, Debtor stated that she was soliciting only cash offers and seeking to have them close in the next week or two. These cash offers were stated to be in the \$525,000 range.

Movant argued that with a \$525,000 gross sales price and deducting 5% for commission and costs of sale, there was only a meager \$20,000 equity cushion and Movant was at grave risk.

As the court noted at the hearing, these quick sale cash offers were likely from bottom feeders who were looking at making a quick profit by selling the property in a commercially reasonable manner (not a quick close cash sale).

The court also pointed out that the Debtor is the fiduciary of the Bankruptcy Case and that she must dispose of property in a commercially reasonable manner, not just dumping it at a substantially lower price than fair market value.

In the Motion for Relief From the Stay, Movant stated grounds for relief from the automatic stay for cause (11 U.S.C. § 362(d)(1)) and did not assert a value of the Property securing Movant's claim. Movant's first ground is stated with "particularity" as a failure to make some payments, and then instructed the court to read the Declaration of Rich Mendoza to identify the payments that Movant would want to assert.

In the Declaration, testimony is provided that the obligation is based on a Note for which there were (\$26,393.23) in pre-petition defaults and (\$12,558.33) in post-petition arrearage. Dec., ¶ 9; Dckt. 42. The Declaration also correctly cites to, and provides as an exhibit, the Chapter 13 Trustee's post-petition payment history, showing no Plan payments having been made by Debtor in this Case.

On Schedule A/B Debtor states that the \$624,900 valuation is based on that shown on the Zillow.com website. Going to that website on March 27, 2024, it states a value of \$650,000.^{FN.1} The Zillow website (which the court does not take as evidence) states that this is a four bedroom, three bath house, which is 2,159 square feet in size. Additionally, it sits on a 6,534 square foot lot.

FN. 1. https://www.zillow.com/homes/948-Lake-Canyon-Avenue,-Galt,-California-_rb/25955387_zpid/

Based on the cash, quick sale offers, it appears that the value of this Property may be closer to \$625,000 if sold in a commercially reasonable, non-fire sale, manner. It appears that Movant have a substantial, almost six-figure equity cushion protecting it.

The Debtor recognizing the financial inability to keep the property and now stating that Debtor will proceed with a commercially reasonable prompt sale of the property, does state an opposition to the Motion. Debtor also will immediately proceed with an amended plan and motion to confirm that is build around the commercially reasonable prompt sale.

Additionally, as the court noted at the hearing, though the tentative ruling denied the Movant's request for waiving the fourteen day stay of enforcement of an order granting relief from the stay (if merely being added to the prayer for relief, with no grounds for such relief stated), when continuing a hearing like this for opposition, the court generally will waive the fourteen day stay of enforcement (without requiring an amendment to the Motion). Thus, any delay caused by the court considering the merits of the Motion and Opposition is greatly reduced for Movant.

As provided in Local Bankruptcy Rule 9014-1(f)(2), the court continues the hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on April 23, 2024.

Debtor shall file and serve Opposition pleadings on or before April 11, 2024, and Relies thereto, if any, shall be filed and served on or before April 18, 2024.

April 23, 2024 Hearing

This Hearing was continued in order for Debtor to file and serve Opposition pleadings on or before April 11, 2024, and Replies, if any, to be filed and served before April 18, 2024.

Debtor filed Opposition on April 11, 2024. Docket 68.

DEBTOR'S OPPOSITION

Debtor asserts:

1. The stay should remain in place because Debtor seeks to sell the real property located at 948 Lake Canyon Avenue, Galt, California 95632 in order to fund her plan. *Id.* at 2:17-19.
2. Debtor filed an Amended Plan on April 10, 2024, detailing the terms of sale. Docket 60.
3. Thus, the stay is necessary to effective reorganization. Opposition, Docket 68, 2:19-20.
4. Debtor has taken significant steps to sell the Property as set forth in Debtor's Motion to Sell Real Property (Docket 61) and expects the sale will proceed quickly. Furthermore, Debtor filed an ex parte Motion to Shorten Time on April 10, 2024, and expects to have her Motion to Sell Real Property heard on the same day of as the continued Motion for Relief from Stay (April 23, 2024). Opposition, Docket 68, 2:21-25.
5. The stay should remain in place because Debtor has taken steps to sell the Property, having entered into an agreement for the sale of the Property on April 8, 2024 (Exhibit, Docket 63, Exhibit A), contingent on the Court's approval. Opposition, Docket 68, 2:26-3:2.
6. Debtor has equity in the Property as evidenced by the Agreement. Exhibit, Docket 63, Exhibit A.
7. Movant has adequate protection based on the short terms of the sale agreement in the short time frame in the amended plan's additional provisions, and the equity of the property. Opposition, Docket 68, 3:4-5.

CREDITOR'S REPLY

Creditor filed a Reply on April 18, 2024, stating that the Motion for Relief should be granted because Debtor is not making any payments to Creditor pending the sale of the Property. Docket 78, p. 3:6-15.

An Order Shortening Time for Service (Docket 70) was entered on April 11, 2024. A hearing on the Motion to Sell Real Property is set for this same date, April 23, 2024 but at 2:00 PM. Any opposition to the granting of the relief sought in the Motion or the time allowed for services of the Motion, may be raised at the hearing. *Id.* at 2:6-8.

Continuance of Hearing

The court authorized on April 23, 2024, the sale of the Property that is the subject of this Motion. Movant's secured claim will be paid in full from the sales proceeds through escrow.

Movant requested that the court continue this hearing to keep it on calendar given that the proposed sale has not yet closed.

The hearing is continued to 1:30 p.m. on June 25, 2024.

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 Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees ("Movant," "Creditor"), having been presented to the court, the Motion having been filed and notice given pursuant to Local Bankruptcy Rule 9014-1(f)(2), the court granting a Motion for the Sale of the Property that is the subject of this Motion, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice, this Bankruptcy Case having been dismissed by prior order of the court.

**CALIFORNIA COMMUNITY CREDIT
UNION VS.**

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

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

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

Sufficient Notice 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 June 14, 2024. By the court's calculation, 18 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 granted.</p>

California Community Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Jeep Grand Cherokee, VIN ending in 9346 ("Vehicle"). The moving party has provided the Declaration of Marcy Cole-King to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sarah Catherine Mallery and Tobin Robert Mallery ("Debtor").

Movant argues Debtor has not made a number of post-petition payments, and has not made a payment to the Trustee since January of 2024. Declaration 2:11-12, Docket 45. Movant also provides evidence that there is no equity in the Vehicle. *Id.* at ¶¶ 5, 8.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power 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 \$32,826.05 (Declaration 2:11-12, Docket 45), while the value of the Vehicle is determined to be \$32,125, as stated on the J.D. Power Valuation Report. Ex. E, Docket 48.

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.

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, because the collateral is depreciating in value, 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 California Community Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the 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 2021 Jeep Grand Cherokee, VIN ending in 9346 (“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.

ERIC MELI VS.

CASE CONVERTED: 04/10/24

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Specifically, Eric Meli's ("Movant") counsel states it is the attorney for Debtor in its Notice of Hearing, which is not the case. Dckt. 64. Because the notice complies substantially with all requirements, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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 Automatic Stay is xxxxxxx.

July 2, 2024 Hearing

The court continued this Hearing because at the previous Hearing held on March 26, 2024, counsel for the Debtor reported that this property must be sold, there being an insufficient equity to refinance. The Parties in Interest at the hearing concurred with the further continuance of this matter for a sufficient period for the Debtor to diligently prosecute a sale and confirmation of a modified plan as necessary.

However, the case was converted to one under Chapter 7 on April 10, 2024. The Chapter 7 Trustee's June 14, 2024 Docket Entry Report states that the 341 Meeting has been concluded and the Trustee

has determined that this is an asset case. The Notice to File Proofs of Claim was issued by the Court on June 17, 2024, and served on Creditors. Dckts. 109, 110.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Eric Meli (“Movant” or “Creditor”) seeks relief from the automatic stay with respect to Amanda Hill’s (“Debtor”) real property commonly known as 2591 Tom Polk Ave., Chico, California (“Property”). Movant has provided the Declaration of Eric Meli 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 complied with a Superior Court judgment issued on December 9, 2021 by failing to timely refinance the Property, remove Creditor’s name from the deed, and to pay \$65,183.00 to Movant for his equal share of equity in the Property. Declaration, Dckt. 65. Movant further states Debtor did not appeal the judgment within the required 90 days, nor did she comply within the required time frame, instead opting to file this Chapter 13 bankruptcy on February 4, 2022. *Id.* As such, Movant argues Debtor has ignored the final judgment from the Superior Court and not given that judgment full faith and credit.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on September 12, 2023. Dckt. 69. Debtor asserts that:

- A. Movant presented no authority for his Motion for Relief from the Automatic Stay. The reasons provided in Creditor’s Declaration are not adequate examples of “cause[s]” as defined by 11 U.S.C. § 362(d)(1) and (2).
- B. The motion did not state with particularity the factual and legal grounds as required by the Local Rules of Bankruptcy Procedure. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Dckt. 69.

CREDITOR’S RESPONSE TO DEBTOR’S OPPOSITION

Movant filed a Response to Debtor’s Opposition on September 19, 2023. Dckt. 72. In Its Response, Movant states:

- A. The factual grounds for cause, pleaded with specificity, are that Debtor failed to comply with a lower court’s judgment that required the equalization payment.
- B. Creditor’s divorce attorney mailed a copy of the Judgment of Dissolution to Debtor. Dckt. 66.

- C. Debtor's contention that Debtor has no equity in the property is false. Creditor is fully vested and on title to the property where there is "substantial" equity.
- D. Specific legal and factual grounds regarding the provision of the Motion for Relief of the Automatic Stay include, "[i]t is fundamental that higher courts are supposed to give full faith and credit to the rulings and orders of lower courts unless the higher court finds some incredibly good reason no[sic] to..."
- E. The Supplemental Declaration was filed as evidentiary support to refute and declare as untrue allegations made by Debtor.

Dckt. 72.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an Opposition on September 19, 2023. Dckt. 76. Trustee asserts that

- A. The Plan was confirmed on July 17, 2022, and under U.S.C. § 1327, the Confirmed Plan binds Creditor and Debtor.
- B. Creditor is owed an equalization payment, which is dischargeable in a Chapter 13 case; however, while Creditor has standing to attempt to modify the Plan to reflect the owed amount, this Motion does not accomplish that.
- C. Debtor is current in plan payments.
- D. The Confirmed Plan provides general unsecured claims shall receive no less than 17.5%.
- E. Creditor's motion does not cite any specific reason under 11 U.S.C. § 362(d) why relief should be granted other than "to give full faith and credit" to the state court judgment.

Dckt. 76.

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 \$65,183.00 (Declaration, Dckt. 65), while the value of the Property is determined to be \$363,969.00, as stated in Schedules A/B and D filed by Debtor.

The State Court Dissolution Judgment is on the standard dissolution judgment form. Exhibit 1, Dckt. 66. The paragraph "4. m" box is checked, stating that a property division order is attached to the Dissolution Judgment. With respect to the Order, which is part of the State Court Dissolution Judgment, it states that Debtor "will receive,"

[t]he real property located at 2591 Tom Polk Ave., Chico, CA which will either be sold or refinanced by [Debtor] as set forth herein.

Exhibit 1, Property Order Attachment to Judgment, Dckt. 66 at 4. The “plain language” of the Order that is part of the Dissolution Judgment states that Debtor “will receive” the real property, but that the real property must be either sold or refinanced.

The Property Order states in Paragraph 6, as part of the State Court Dissolution Judgment, that:

Sale of property. The following property will be offered for sale and sold for the fair market value as soon as a willing buyer can be found, and the net proceeds from the sale will be [divided as follows]:

[Creditor] shall receive the first \$65,183.00 from the net proceeds. The balance shall be assigned to [Debtor]. If [Debtor] refuses to cooperate in the listing and/or sale of the real property described herein, the Clerk of the Court shall be appointed Elisor to act in Respondent’s place.

Id. at 5. The State Court Dissolution Judgment and Order further provides:

[Debtor] shall have 90 days from the date that Judgment in this matter is entered to refinance the current loan on the property located at 2591 Tom Polk Ave., Chico, CA to remove [Creditor’s] name as a liable party and pay to him the total sum of \$65,183.00. If [Debtor] does not do so, it will be listed for sale. The Clerk of the Court shall be appointed Elisor to act in [Debtor] place, if [Debtor] fails to cooperate in the listing and/or sale of the property identified herein.

Id., Paragraph 7.

Based on the undisputed State Court Dissolution Judgment and Order, it appears that the rights and interest of the Debtor and Creditor are not simply that Debtor owns the property (Schedule A/B, ¶ 1; Dckt. 1) and there is an unsecured obligation owed to Creditor (Schedule E/F *Id.* at 29; and POC 5-1).

The State Court Judgment states that Debtor “is granted full title to” receive the Property subject to the refinance or sale conditions, and payment of the specified dollar amount for Creditor’s interests in the Property.

Creditor seeks relief from the stay to enforce the rights in the Property, to have it sold and proceeds of the sale paid to Creditor, if Debtor fails to refinance the property, have Creditor removed from the property and pay Creditor for his interest in the Property.

The Chapter 13 Plan that has been confirmed in this case does not provide for the State Court Dissolution Judgment and Property Order, Debtor’s right that she “will receive” the Property, subject to the refinance or sale condition, and the rights and interests of Creditor in the Property pursuant to the State Court Dissolution Judgment and Order.

Conversely, Creditor has filed Proof of Claim 5-1 stating that his claim is unsecured. As one knows, a proof of claim is *prima facie* evidence of a claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623

(9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

However, a copy of the State Court Dissolution Judgment and Property Order is attached to Proof of Claim 5-1.

The court is presented with an “interesting” situation. There is a State Court Dissolution Judgment and Property Order providing when and how Debtor “will receive” the Property and Creditor’s rights to proceeds from the sale of the Property if Debtor has not refinance/removed Creditor from the loan and paid Creditor for his interest in the Property.

The Motion and Oppositions do not address the effect and enforceability of the final State Court Dissolution Judgment and Property Order, the extent to which a Chapter 13 plan may alter the property rights to be received and being divested.

The Motion presented to the court is one stating that Creditor is seeking “relief from the stay,” but does not state relief is sought for what purposes, proceedings, or exercise of rights. It does state at the end of paragraph 9:

Allowing the Superior Court to proceed with the sale of the property will allow Mr. Meli to be in a better position to try and purchase a home of his own sooner, free of this recorded mortgage debt. This will assure some respect for the judicial process, regardless of which Court the parties find themselves in, and basic equity.

Motion; Dckt. 63. While this could be considered the relief stated with particularity (Fed. R. Bankr. P. 9013), it is likely that the necessary relief (if it should properly be granted) would be more extensive.

Rather than the court undertaking the research of the effect of the State Court Dissolution Judgment and Property Order, the effect of it providing that Debtor “will receive” the Property, whether the conditions of refinance are conditions precedent or subsequent to Debtor receiving the Property, and whether Creditor has an interest in the Property, the court is confident that the respective bankruptcy and family law attorneys can provide the court with a well organized analysis of State law and how it applies to the present situation.

October 3, 2023 Hearing

At the hearing, the respective counsel addressed the issues concerning whether Movant has an interest in the Property and proceeds thereof. The attorneys request a continuance of this hearing so they can meet to address these issues and possible resolutions.

November 7, 2023 Hearing

As of the court’s review of the Docket on November 3, 2023, no further pleadings have been filed by the Parties. At the hearing, the Parties agreed to continue the hearing on the Motion to 1:30 p.m. on March 26, 2024. The Parties reported that they are working on a consensual refinance of the Property to resolve these matters without further litigation in either the Bankruptcy or the Family Law courts.

March 26, 2024 Hearing

The court continued this Hearing because the Parties reported that they are working on a consensual refinance of the Property to resolve issues surrounding the State Court Dissolution Judgment and Property Order without further litigation in either the Bankruptcy or the Family Law courts. A review of the Docket on March 20, 2024 reveals that no new documents have been filed with the court.

At the hearing, counsel for the Debtor reported that this property must be sold, there being an insufficient equity to refinance. The Parties in Interest at the hearing concurred with the further continuance of this matter for a sufficient period for the Debtor to diligently prosecute a sale and confirmation of a modified plan as necessary.

The hearing on the Motion for Relief from Automatic Stay was continued to 1:30 p.m. on July 2, 2024.

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 Eric Meli (“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 Automatic Stay is
XXXXXXX.

FLAGSTAR BANK, N.A. VS.

**THE COURT WILL CALL AT THE 1:30 P.M. CALENDAR THE
RELATED ITEMS 19 AND 20 FROM THE
2:00 P.M. CALENDAR, WHICH ARE FINAL RULINGS ON
THE OBJECTION TO CLAIM OF EXEMPTION (DPC-2) AND
OBJECTION TO CONFIRMATION (NLG-1)**

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, other parties in interest, and Office of the United States Trustee on May 23, 2024, with the Amended Notice of Hearing being served on May 28, 2024. By the court's calculation, 35 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.

REUSED DOCKET CONTROL NUMBER

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

THE MOTION

Flagstar Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Allen Dontony Gamble’s (“Debtor”) real property commonly known as 4901 Efthemia Way, Elk Grove, CA 95758 (“Property”). Movant has provided the Declaration of Annie Hayes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has been in default under the terms of the note secured by the Property since December of 2017 with a total arrearage in the amount of \$206,254.71. Declaration 3:7, Docket 47; *Id.* at 7:3. The outstanding total due under the note is \$567,055.24. *Id.* at 5:10. Debtor has avoided foreclosure efforts since the 2017 default with a string of eight bankruptcy cases between he and his wife. Movant explains, just before this most recent case was filed, Movant conducted a foreclosure sale on April 16, 2024 at 10:03 a.m. *Id.* at 5:14-15. Debtor filed this instant case on April 16, 2024 at 4:21 p.m. *Id.* at 5:17.

The automatic stay expired as to Debtor thirty days after filing the instant case pursuant to 11 U.S.C. § 362(c)(3). The court declined to extend the stay as to Debtor by Order issued on May 9, 2024. Docket 37. Movant argues it is not adequately protected, no equity exists in the Property and the Property is not effective for a reorganization, and so it is entitled to relief as well as annulment of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). Movant asserts that there is only \$54,000 in equity after including an 8% cost of sale. Mot. 9:2, Docket 45.

Movant also seeks relief pursuant to 11 U.S.C. § 364(d)(4), arguing that 1) that the debtor’s bankruptcy was filed as part of a scheme; 2) that the object of the scheme was to delay, hinder and defraud creditors; and 3) that the scheme involved unauthorized transfers of the property and/or multiple bankruptcies affecting the property.

Finally, Movant argues that even though it has not made any efforts to perfect its foreclosure sale that occurred on April 16, 2024, it seeks annulment of the stay in order to ensure that sale is viewed as valid and binding.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 6, 2024. Docket 60. Debtor acknowledges his extensive history in bankruptcy. Debtor then states that the Plan can work and that Debtor is current in plan payments. Debtor states that there is sufficient equity in the Property, \$113,000, and the Property is necessary for an effective reorganization because he and his family live in it. Opp’n 2:22-25.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick, the Chapter 13 Trustee (“Trustee”), filed a Response on June 18, 2024. Docket 64. Trustee informs the court Debtor has not complied with the Plan by failing to remit the \$70,000 insurance payment. Accordingly, Debtor is delinquent under the terms of the Proposed Plan in the amount \$61,900. Resp. 2:2, Docket 64. Trustee does not oppose the Motion.

DISCUSSION

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).

Here, even though there may be equity in the Property, Trustee informs the court that Debtor has not complied with the terms of the Plan by failing to remit the first payment of \$70,000. Either Debtor comes into court and makes this payment, demonstrating that he is prosecuting this case in good faith, or there is a substantial default in the Plan payments.

At the hearing, **XXXXXXX**

~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due as Debtor has not made a payment since 2017. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

Here, there is some contention over how much equity is in the Property, as well as how much of a cushion is enough. Movant cites to *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984) to support its contention that the Ninth Circuit requires 20% as a proper equity cushion. The court has reviewed that case and disagrees with Movant. It is true that the court in *Pistole* found 20% of an equity cushion was sufficient, but the court did not set 20% as a hard standard courts must abide. *Pistole*, 734 F.2d at 1401 (citing to cases showing that less than 20% equity was a sufficient cushion).

However, the court finds this matter is again decided by whether or not the Debtor can comply with his proposed Plan and remit the \$70,000 payment.

At the hearing, **XXXXXXX**

Amended Chapter 13 Plan

On June 26, 2024, Debtor filed an Amended Chapter 13 Plan with supporting evidence and a Motion to Confirm. Docket 76. The new Plan no longer calls for the lump sum payment of \$70,000. Debtor explains in his supporting Declaration that money has mostly been spent on various things, including the first two plan payments of \$8,100 each. Debtor states:

After both my wife and I have both lost our jobs, and I have utilized the insurance check to pay our bills which I have deposited in Banner Bank for \$70,000.00, in which I paid to the Plan in the last two months for the amount of \$16,200.00 and bought a truck with cash for \$8,000.00 to rebuild my business and obtain the ability to deliver furniture purchased through my business in order to make the proposed plan payments. I also paid my mother \$20,000.00 that I owed her a couple years back to start up my business but was quickly shut down. My mother in law passed away on Mother's day and had to pay for the funeral expenses which cost \$10,000.00 for cremation, service, and burial.

Decl. ¶ 3, Docket 74.

The court has concerns over this change in events. Debtor's previous Plan was to be funded with this \$70,000. However, it has now come to light Debtor has used this money elsewhere, likely during the time period the previous Plan came into formation, meaning Debtor misrepresented his intent to use the \$70,000 payment to fund the Plan.

While Debtor frames the situation in which he had to use the monies for the other purposes in order to service, Debtor testifies under penalty of perjury that \$20,000 was paid to his Mother, outside of the bankruptcy case, for a business loan and then \$10,000 for cremation and burial expenses of his Mother in Law.

Debtor's testimony, Dckt. 74, is that he knowingly and intentionally has transferred monies from the bankruptcy estate post-petition to his Mother, to pay a pre-petition debt, and to pay his Mother in Law's funeral expenses. This is in violation of the Debtor's fiduciary duties to the Bankruptcy Estate in his exercise of the powers of a trustee in administering property of the Bankruptcy Estate.

On Schedule A/B Debtor not only states under penalty of perjury that he had received \$70,000 in insurance proceeds but that these proceeds were for Banner Bank. (The court does not address applicable California law that allows the insured to use proceeds to repaid a damaged property in returning the value to property secured by a deed of trust.)

Debtor has documented that there are unauthorized transfers which must be recovered by the fiduciary of the bankruptcy estate. See, 11 U.S.C. § 549.

Amended Schedules I and J

Debtor's Amended Schedule I and J at Docket 71 contain drastic differences from the previously filed Schedules I and J at Docket 20. Debtor now reports virtually all of his income that he will use to fund the Plan comes from rental property or from operating a business. Schedule I 5, line 8a, Docket 71. However, on Debtor's original Schedule I, Debtor only reported receiving \$225 in income from rental property or from operating a business. Schedule I 34, line 8a, Docket 20. Debtor's NF-Spouse in the

original Schedules was reportedly bringing home \$5,020.42 per month (Schedule I 34, line 10, Docket 20), and in the Amended Schedules she is now reported as having 0\$ in income (Schedule I 5, line 7, Docket 71).

That said, the Amended Plan accounts for the full amount of Movant prepetition arrears in Class 1, and Debtor is current two payments under the proposed Amended Plan.

At the hearing, **XXXXXXX**

Annulment: Retroactive Relief

The Ninth Circuit recognizes the bankruptcy court's wide discretion in granting relief from the automatic stay, including granting "retroactive relief from the stay." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

~~Here, the court finds that annulment of the stay is warranted. Debtor has been filing a string of unsuccessful cases which begins to look like an attempt to unfairly manipulate the bankruptcy code, engaging in inequitable conduct that prejudices creditor. Creditor has been strung along since 2017 with eight bankruptcy filings preventing it from recovering under its note. Therefore, the stay is annulled through and up to April 16, 2024, when the foreclosure sale occurred.~~

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant would be unable to enforce its rights outside of bankruptcy with the co-debtor stay in place.

~~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.~~

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

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, the court finds

that there have been unnecessary delays by serial filings committed. Debtor has filed the following six cases under his name:

- A. Case No. 23-23859
 - 1. Date Filed: October 30, 2023
 - 2. Chapter: 13
 - 3. Date Dismissed: March 22, 2024
 - 4. Reason for Dismissal: this court sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments, not filing an Amended Plan, and not providing the Chapter 13 Trustee with social security number verification.

- B. Case No. 22-20668
 - 1. Date Filed: March 21, 2022
 - 2. Chapter: 13
 - 3. Date Dismissed: April 8, 2022
 - 4. Reason for Dismissal: incomplete filing, failing to file a Plan and Schedules.

- C. Case No. 21-24122
 - 1. Date Filed: December 9, 2021
 - 2. Chapter: 13
 - 3. Date Dismissed: January 3, 2022
 - 4. Reason for Dismissal: incomplete filing, failing to file a Plan and Schedules.

- D. Case No. 20-21676
 - 1. Date Filed: March 20, 2020
 - 2. Chapter: 13
 - 3. Date Dismissed: July 30, 2020
 - 4. Reason for Dismissal: Judge Klein sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments and failing to confirm a Plan resulting in unreasonable delay that is prejudicial to creditors.

- E. Case No. 19-22328
 - 1. Date Filed: April 15, 2019
 - 2. Chapter: 13
 - 3. Date Dismissed: November 26, 2019
 - 4. Reason for Dismissal: Judge Klein sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments and failing to confirm a Plan resulting in unreasonable delay that is prejudicial to creditors.

F. Case No. 18-26813

1. Date Filed: October 30, 2018
2. Chapter: 13
3. Date Dismissed: March 1, 2019
4. Reason for Dismissal: Judge Jaime dismissed the case for Debtor failing to pay the filing fee installment of \$77.

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. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

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. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of Debtor again failing to conform to the terms of his proposed Plan, resulting in another failed case.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

**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 that the court grant relief from the Rule as adopted by the United States Supreme Court because:

The Current Bankruptcy Action was solely filed to stop Movant from proceeding with its default rights on the Property as Debtor has failed to make a payment since 2017, the subject Property has marginal equity and interest and fees and costs continue to accrue on Movant's Loan, and Debtor has insignificant assets with which to reorganize or file a confirmable plan.

Mot. 13:20-24.

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 Flagstar Bank, N.A. (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated and annulled through April 16, 2024, 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 4901 Efthemia Way, Elk Grove, CA 95758 (“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 request to terminate the co-debtor stay of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).~~

~~————— **IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:~~

~~————— “If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”~~

~~————— **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.~~

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 Objection. 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) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Parties requesting special notice, and Office of the United States Trustee on May 8, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 offers opposition to the Objection, 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 Objection.

The Objection to Confirmation of Plan is XXXXXXX.

July 2, 2024 Hearing

At the hearing held on June 4, 2024, the Chapter 13 Trustee, David Cusick (“Trustee”) reported that Andrea Nicole Moore (“Debtor”) is now current on payments and requested the court continue the hearing to allow Debtor’s counsel additional time to “clean up” the Plan. The Trustee then filed a Supplemental Ex Parte Document on June 18, 2024 requesting the court dismiss his Objection, Debtor having now sufficiently addressed Trustee’s concerns.

On June 20, 2024, before the court having ruled on dismissing the Objection, LOANDEPOT.COM, LLC (“Creditor”) filed what it called a Brief in Support of Objection to Confirmation of Chapter 13 Plan. In its Brief, Creditor states that Debtor no longer owns or has any right to the property, pursuant to Cal. Civ. Pro. § 2924M(a)(1)(C)(i). Creditor, without submitting any evidence in support, states that a foreclosure sale of the property commonly known as 3836 Moonbeam Drive, Sacramento, Ca 95827

(“Property”) occurred on February 29, 2024. Brief 2:1, Docket 51. Debtor then filed bankruptcy on March 13, 2024, during the 15-day bidding procedure set up under the new California scheme. Creditor states that Cal. Civ. Pro. § 2924M(a)(1)(C)(i) does not allow mortgagor, Debtor here, to overbid on the Property during that 15-day window, meaning Debtor no longer has any right in the Property.

On June 25, 2024, Debtor filed a Response to Creditor’s Brief. Docket 53. Debtor states the Property is property of the bankruptcy estate as community property. *Id.* at ¶ 4. Debtor includes as Exhibit 1 a Spousal Property Order from the Sacramento Superior Court, showing the Property was passed to Debtor as community property.

Debtor does not challenge the new California foreclosure legislative scheme argument from Creditor.

At the hearing, **XXXXXXX**

REVIEW OF THE OBJECTION

The Chapter 13 Trustee, David Cusick (“Trustee”) opposes confirmation of the Plan on the basis that:

1. The Debtor is \$2,652.52 delinquent in Plan payments to the Trustee. The next scheduled payment of \$2,902.52 is due on May 25, 2024 and electronic payments are pending which may cure the delinquency if they clear.
2. The following Section 521 Documents have not been provided:
 - a. Pay advices. The Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), and the Order Re: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. Obj. 2:9-13, Docket 30.
 - b. Tax return. The Debtor has failed to provide the Trustee with her tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). A 2021 return was provided. Obj. 2:14-19, Docket 30.
 - c. Not all tax returns filed. 11 U.S.C. § 1325(a)(9) requires the Debtor to have filed all applicable tax returns for the four years prior to filing and provide the Trustee with a copy of the last filed federal tax return. The Debtor admitted at the First Meeting of Creditors, held on May 2, 2024, that she was required to file a tax return for 2023 and has not done so. The meeting has been continued to June

13, 2024, at 2:00 p.m. in order to give the Debtor sufficient time to file the required tax returns. Obj. 2:20-26, Docket 30.

3. Inaccurate Schedules: The Trustee cannot assess the feasibility of the plan. At the Meeting of the Creditors, the Debtors testified that she should be receiving retirement income from her deceased husband's retirement. The Trustee requested that Schedule A/B be amended to list this account. To date, no amendment has been filed. The debtor has failed to carry her burden of showing that the plan complies with 11 U.S.C. §1325(a)(6). Obj. 3:1-5, Docket 30.
4. Zero Monthly Payments for attorney's fees. Debtor may not be able to comply with the Plan without assistance from their attorney, 11 U.S.C. §1325(a)(6). Obj. 3:6-8, Docket 30.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 32.

DISCUSSION

Delinquency

Debtor is \$2,652.52 delinquent in plan payments, which represents approximately one month of the \$2,902.52 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Stubs

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2023 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Amendments

Debtor should comply with Trustee's requests in amending Schedules A & B to include retirement account proceeds from Debtor's deceased husband. Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3).

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay \$0 per month, the Plan violates this rule because it does not provide for payment of fees in equal monthly installments over the term of the most recently 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 Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is **XXXXXXX**.

SUSAN WELLS 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 (*pro se*), Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 18, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Objection to Certification of Debtor and 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 Objection to Certification of Debtor and Motion for Relief from the Automatic Stay is granted.

Susan K. Wells. Trustee of the Susan K. Wells Trust under Trust Agreement dated July 6, 2001 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 152 Alturas Court, Vacaville, Solano County, CA ("Property"). Movant also objects to the certification filed by Danette Blevins-Lacey ("Debtor") pursuant to 11 U.S.C. § 362(l)(3)(A), where Debtor certified that the \$10.00 she deposited with the bankruptcy court clerk represented all rent that would become due within the 30 days after the filing of her petition.

The moving party has provided the Declaration of Betty Chandler to introduce evidence as a basis for Movant's contention that Debtor does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Decl. 1:11-25, Docket 18.

Movant informs the court that rent for the Property is \$1,590 per month. Debtor did not pay approximately two months' worth of rent, and so Movant obtained a judgment for possession and monetary damages on June 5, 2024. *Id.* at 2:9-12. Debtor filed bankruptcy on June 13, 2024.

Pursuant to 11 U.S.C. §§ 362(b)(22) and (l), Debtor filed a Certification with the court testifying under penalty of perjury that:

- a) Under the state or other nonbankruptcy law that applies to the judgment for possession (eviction judgment), [Debtor has] the right to stay in [his] residence by paying [his] landlord the entire delinquent amount, and
- b) [Debtor has] given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after [he filed] the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101).

The lessor, Movant, has objected to this Certification. Docket 16.

Pursuant to 11 U.S.C. § 362(b)(22), the automatic stay of 11 U.S.C. § 362(a) does not go into effect:

[S]ubject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.

11 U.S.C. § 362(b)(22). However, 11 U.S.C. § 362(b)(22) is subject to § (l), which states:

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the

judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

Here, Debtor has deposited \$10 for the requirement that she deposit with the clerk of the court any rent that would become due during the 30-day period after the filing of the bankruptcy petition. Movant has presented evidence that rent for the Property is now \$1,590. Decl. 2:5, Docket 18. The court upholds the Objection of Movant, finding Debtor has failed to meet her burden by not tendering any rent that would come due in 30 days from filing the petition. Therefore, 11 U.S.C. § 362(b)(22) automatically goes into effect, and the automatic stay of 11 U.S.C. § 362(a) is not in effect, allowing Movant to pursue the unlawful detainer action in state court.

Movant commenced an unlawful detainer action in California Superior Court, County of Solano and received a judgment for possession on June 5, 2024. Exhibit C, Dckt. 19. Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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, due to Debtor having committed bad faith in not complying with her certification requirements, 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 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 Susan K. Wells. Trustee of the Susan K. Wells Trust under Trust Agreement dated July 6, 2001(“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 152 Alturas Court, Vacaville, Solano County, CA (“Property”).

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.

7 thru 9

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on June 14, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 20, 2024. Dckt. 112.

The court has set this matter for hearing on very short notice in light of the subject matter to allow Debtor and counsel to be promptly before the court. The court does not do this to "rush" the Debtor into a decision, but to get the Debtor and counsel before the court to see how this should proceed to a determination being made by the court.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

<p>The hearing on the Motion to Withdraw as Attorney is XXXXXXX.</p>
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July 2, 2024 Hearing

The court continued this hearing to afford Donald Fred DuPont, Jr. ("Debtor") an additional opportunity to appear, confirm his understanding that he will be prosecuting the Bankruptcy Case in *pro se* (without representation by an attorney).

On June 21, 2024, Debtor filed an Opposition to this Motion, responding directly to the court's summarized points under the "REVIEW OF THE MOTION" section of this ruling. Docket 115. Debtor states:

1. The Debtor is keenly aware this case requires qualified available legal Counsel.

2. Debtor hired Counsel following the 2:00 P.M. April 9, 2024 hearing to convert the Chapter 13 bankruptcy to a Chapter 7. If so, why did the Debtor pay Counsel \$ 3,000.00 ?
3. At no time did Debtor tell Counsel his legal representation for the Chapter 7 was unnecessary. If so, why did Debtor pay Counsel \$3,000.00 ?
4. At no time was there a discussion how the Bankruptcy Case should be prosecuted. The Debtor does not have knowledge to debate the process. If so, why would Debtor pay Counsel \$ 3,000.00 ?
5. After Counsel received cash payments totaling \$ 3,000.00, Counsel promised to provide Debtor documentation regarding receipt of payments as well a revision of the original verbal quote for service of \$ 9,000 to \$ 10,000 based on a rate of \$ 500.00 per hour, to a total fixed rate of \$ 12,000. A receipt, or engagement letter, or fee agreement was never delivered which is in violated of Business and Professional code section 6148 (a).
6. After Counsel received and reviewed with Debtor, all required Chapter 7 documents on May 9, 2024, he promised to deliver the documents electronically once transferred into his system. On May 28, 2024 Counsel called Debtor with an urgent message that there was a conference call interview with the Trustee in less than 2 hours, at 4:00 P.M. After a 40-minutes on hold the Trustee was not able to interview the Debtor without the documents and continued the matter to noon on June 12, 2024. With Counsel's promise the documents would be sent in advance of the new interview date for Trustee review. By afternoon June 10, 2024, after more than 30 days the documents were still not sent. On June 11, 2024 the Debtor hand carried the document to the Federal Court. The Clerk would only accept a small percentage of the documents with the common knowledge that most of the document were a duplicated effort based on the earlier Chapter 13 filing. This fact made the transfer requirement of the Counsel's office significantly less work than the 76 pages delivered. In addition, Counsel and Debtor invested two hours reviewing the documents on the delivery date to avoid any inaccuracies.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Eric John Schwab ("Movant," "Counsel"), counsel of record for Donald Fred DuPont, Jr. ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states, as summarized by the court the following:

- A. Debtor is actively working to prosecute this case personally, and not with the assistance of counsel.

- B. Debtor indicates that he does not believe that the assistance of counsel is necessary, and that Debtor can address these bankruptcy matters on his own. Debtor questions whether his resources would be effectively spent for such counsel in light of Debtor's ability to move this matter forward.
- C. There exists between counsel and Debtor about how this Bankruptcy Case should be prosecuted by Debtor. This results in the situation where an attorney's ability to serve the client is significantly reduced.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) where Counsel's mental or physical condition

renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(d) The client by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 1.16(b)(4).

DISCUSSION

Although Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice, Movant has made it clear Debtor does not wish to retain Counsel during this case. Debtor has expressed similar sentiments to the court in the past while Debtor was appearing in *pro se*.

At the hearing, the court address the grounds upon which the request is based. The Chapter 7 Trustee expressed concerns over the Debtor proceeding in *pro se*. The Debtor did not appear at the June 20, 2024 hearing.

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

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

The Motion to Withdraw as Attorney filed by Eric John Schwab ("Movant," "Counsel") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is **XXXXXXX**.

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)(3) 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, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 25, 2024. The court granted the Chapter 7 Trustee's Motion to Shorten Time, setting the Hearing on July 2, 2024. Order, Docket 139. 7 days' notice was provided.

The Objection to Claimed Exemption 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. At the hearing, -----
-----.

The Objection to Claimed Exemption is xxxxxxx

The Chapter 7 Trustee, Geoffrey Richards ("Trustee") objects to Donald Fred DuPont, Jr.'s ("Debtor") claimed exemptions under California law regarding real property commonly known as 3131 Delmar Ave, Loomis, Ca 95650 ("Property"). Debtor has explained in his most recently filed Amended Schedules that the Property is owned by Northwest Development, LLC ("Northwest"). Am. Schedule A/B 1, line 1.2, Docket 95. Debtor has two other business partners who own Northwest. Debtor is a partial owner of Northwest, owning 40% of that entity. *Id.* at 5:19. Debtor asserts the Property has a value of \$1,400,000. Am. Schedule A/B 1, line 1.2, Docket 95.

However, in Debtor's Amended Schedule C, he is trying to exempt his Northwest business partners' ownership of 60% of what he asserts the Property to be worth, in the amount of \$840,000. Am. Schedule C 11:2, Docket 95. Debtor cites to no California Code sections in attempting this exemption. This Exemption is stated as:

Part 1: Identify the Property You Claim as Exempt

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.

- ☐ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
☐ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. For any property you list on Schedule A/B that you claim as exempt, fill in the information below.

Brief description of the property and line on Schedule A/B that lists this property	Current value of the portion you own Copy the value from Schedule A/B	Amount of the exemption you claim Check only one box for each exemption.	Specific laws that allow exemption
Brief description: <u>3131 Delmar Ave</u> Line from Schedule A/B: <u>1.2</u>	<u>\$560,000.00</u>	<input checked="" type="checkbox"/> \$ <u>840,000.00</u> <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	Exemption is the partners portion or 60% of the total. Need to find a buyer for 40%

Schedule C; Dckt. 95 at 12. The owner of the Property is stated on Schedule A/B is North West Development, LLC, not the Debtor. Dckt. 95 at 1

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, “the objecting party has the burden of proving that the exemptions are not properly claimed.” FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

The Chapter 7 Trustee objects because the Property is not owned by Debtor, so he cannot claim an exemption in the Property. To the extent Debtor is attempting to exempt his interest in Northwest, Debtor has not cited any California Code sections permitting Debtor to exempt his business partners’ interest in Northwest. ~~The court agrees with the Chapter 7 Trustee. Debtor must cite to applicable California Code sections in claiming a particular exemption. Trustee’s Objection is sustained, and the claimed exemptions are disallowed.~~

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 Objection to Claimed Exemptions filed by the Chapter 7 Trustee, Geoffrey Richards (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemption for ~~“the partners portion or 60% of the total” in Northwest Development, LLC’s interest in 3131 Delmar Ave, Loomis, Ca 95650 for the amount of \$840,000 is disallowed in its entirety. See Am. Schedule C 11:2, Docket 95.~~

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)(3) 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, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 25, 2024. By the court’s calculation, 7 days’ notice was provided. The court set the hearing for July 2, 2024. Dckt. 138.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. At the hearing -----.

The Motion to Sell Property is XXXXXXX.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Debtor’s 40% interest in the business Northwest Development, LLC (“Business Interest”) to the other two business partners, David Chiappe and Christine Silver (“Buyers”). *See* Am. Schedule A/B 5:19, Docket 95. The proposed purchase price of the Business Interest is \$39,500.

Trustee explains that he arrived at this sales price after negotiating with Buyers. Northwest owns real property commonly known as 3131 Delmar Ave, Loomis, Ca 95650, (“Property”) which Debtor has valued at \$1,400,000. Am. Schedule A/B 1, line 1.2, Docket 95. Trustee argues \$39,500 is a fair and reasonable price because, after paying liens and costs of sale, the estate’s share of the sale proceeds will be significantly diminished, especially taking into consideration the contributions of the Buyers into Northwest in the purchase of the Property and the subsequent loan payments. Mr. Chiappe has contributed approximately \$222,118.00 and Mrs. Silver has contributed approximately \$246,040.00. Decl. 2:17-18, Docket 124.

Benjamin Anderson, attorney for Buyers, also explains in his Declaration that the sale should be expedited because the loan on the Property is from a hard money lender, Church Investors Fund Inc. (“Church Investors”), and the loan matures July 15, 2024. *Id.* at 2:19-23. Church Investors is under no obligation to extend that maturity date. The loan is interest-only. If this Motion is approved, Buyers can move forward with a sale of the Property. *See* Vacant Land Purchase Agreement, Ex. B, Docket 121.

Proposed Overbid Procedures

1. Any party overbidding must agree to purchase the estate's interest in the Company on the identical terms as the proposed Sale Agreement (aside from increased price);
2. The proposed overbidder must first qualify to bid by demonstrating to the satisfaction of the Court and Mr. Richards, that they have the financial ability to close the transaction according to the Sale Agreement - such demonstration should be made to Mr. Richards within 24 hours of the hearing on this Motion; and
3. The first overbid must be at least \$41,000.00 (\$1,500.00 more than the Purchase Amount), and successive bids must be in increments of at least \$1,000.00.

Mot. 4:5-12, Docket 117. The court finds these proposed overbid procedure to be reasonable under these circumstances and adopts them accordingly.

DISCUSSION

11 U.S.C. § 363(b)(1) states, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . .” The proponent of the sale must show that the sale is in the best interest of the Estate and there is a sound business purpose for the sale. *In re North Brand Partners, Ltd.*, 200 B.R. 653, 659 (9th Cir. BAP 1996).

Purported Urgency of Sale of Estate’s Interest

The basis of the urgency of the sale of the Estate’s interests is the note secured by the real property comes due in full on July 15, 2024, and the hard money lender cannot be compelled to not proceed with a nonjudicial foreclosure sale (which under California law would take at least 120 days to be conducted). Thus, it appears that a nonjudicial sale could not be conducted until four and one half months in the future.

Thus, on its face, there does not appear to be any urgency for the court to enter an order selling the Estate’s interest on six days notice.

At the hearing, **XXXXXXX**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Estate is able to recover funds in the amount of \$39,500, and that it is unlikely Trustee would be able to recover a sum greater than this value considering there will not be much equity left in the Property after paying all costs associated with the sale, including liens and ownership contributions.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell 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 because the purchase money loan secured by the Property matures in just a few short weeks on July 15, 2024, so the Buyers would appreciate getting the sale done quickly.

~~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 6004(h), and this part of the requested relief is granted.~~

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

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

The Motion to Sell Property filed by Geoffrey Richards, the Chapter 7 Trustee, ("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 ~~Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) David Chiappe and Christine Silver or nominee ("Buyers"), Donald Fred DuPont, Jr.'s ("Debtor") 40% interest in the business Northwest Development, LLC ("Business Interest"), on the following terms:~~

- ~~A. The Business Interest shall be sold to Buyer for \$39,500, on the terms and conditions set forth in the Purchase Agreement, Exhibit E, Dckt. 121, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.~~

FINAL RULINGS

10. [24-21531-E-13](#)
[JCW-1](#)

NAITIAN/LAI SAECHAO
Thomas Amberg

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-31-24 [\[18\]](#)

AMERICAN HONDA FINANCE
CORPORATION VS.

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 31, 2024. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

American Honda Finance Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2023 Honda Pilot, VIN ending in 2799 (“Vehicle”). The moving party has provided the Declaration of Montrel Marshall to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Naitian Saechao and Lai Wang Saechao (“Debtor”).

Movant argues Debtor intends to surrender the collateral, which constitutes cause for relief. Decl. 2:25-26, Docket 20.

Debtor filed a Nonopposition on May 31, 2024. Docket 25. Debtor asserts that they have already arranged a pickup of the Vehicle listed in Class 3 of their Plan.

DISCUSSION

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 Debtor’s intention to surrender the vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

[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. However, the court will grant this part of the relief as Debtor intends to surrender the Vehicle and has already arranged for its pick up.

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 American Honda Finance Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2023 Honda Pilot, VIN ending in 2799 (“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.

11. [24-21564](#)-E-13
[ALG-1](#)

DANIEL/RAINBOW WELLS
Thomas Amberg

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-21-24 [\[17\]](#)

BANK OZK VS.

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 21, 2024. 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). 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.

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

Bank OZK together with Debtor Daniel Richard Wells and Rainbow Shannon Wells (“Joint Movant”) seek relief from the automatic stay with respect to an asset identified as a 2018 SCARAB 195 ID Boat, VIN ending in G718 (“Boat”). The moving party has not provided a Declaration of in support.

However, as the Debtor and Bank OZK are bringing this Motion together, the court waives the defect of lack of supporting evidence.

Joint Movant asserts Debtor intends to surrender the collateral with a fair market value of \$31,000 and Bank OZK having a secured claim in the amount of \$32,411.23. Mot. 2:14-19, Docket 17.

DISCUSSION

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 Debtor’s intent to surrender the Boat. 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.

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. Joint Movant has stipulated that this Rule shall not apply in this case, so the court finds this part of the relief to be warranted.

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 Bank OZK together with Debtor Daniel Richard Wells and Rainbow Shannon Wells (“Joint 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 2018 SCARAB 195 ID Boat, VIN ending in G718 (“Boat”), 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.

12. [24-20395](#)-E-13
[SKI-1](#)

CHRYSTAL REYES
Carl Gustafson

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-30-24 [\[37\]](#)**

**MERCEDES-BENZ VEHICLE TRUST
VS.**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2024. By the court’s calculation, 33 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.

Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Mercedes-Benz GLE350W4, VIN ending in 2468 (“Vehicle”). The moving party has provided the Declarations of John Eng and Sofia Taylor to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Chrystal Jamille Reyes (“Debtor”). Debtor is in possession of the Vehicle under a lease.

Movant argues Debtor is delinquent currently \$4,787.11, which includes a partial payment of \$435.19 due for April of 2024 and four payments totaling \$4,351.93 due for May of 2024 that were deferred to the end of the lease. Declaration 2:22-24, Docket 42. Debtor’s Plan provides for the surrender of the Vehicle in Class 3. Am. Plan § 3.09, Docket 26.

Debtor and the Chapter 13 Trustee, David Cusick, filed a nonopposition. Dockets 45, 46.

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 \$41,759.61 (Declaration 2:20, Docket 42).

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, and that Debtor has chosen to surrender the Vehicle to Movant. 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.

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, as Debtor has surrendered the Vehicle, 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 Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust (“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 2021 Mercedes-Benz GLE350W4, VIN ending in 2468 (“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.