UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 12, 2018, at 10:00 a.m.

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1. **18-90219-E-7** **MICHAEL/SERENA BIXLER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
APN-1 **Brian Haddix** **5-30-18 [14]**

FORD MOTOR CREDIT COMPANY
VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 30, 2018. By the court's calculation, 43 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.

Ford Motor Credit Company ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Fusion, VIN ending in 6892 ("Vehicle"). The moving party has provided the Declaration of Jacklyn Larson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Bixler and Serena Bixler ("Debtor").

The Larson Declaration provides testimony that Debtor has not made two post-petition payments, with a total of $912.06 in post-petition payments past due. The Declaration also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of $1,824.12.

The Larson Declaration also seeks to introduce evidence establishing the Vehicle's value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated.

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Jacklyn Larson to be that she obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 $19,641.30, as stated in the Larson Declaration, while the value of the Vehicle is determined to be $15,124.00, as stated in the Kelley Blue Book Valuation Report, which is more than the $13,500.00 listed by Debtor on Schedule B.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on June 28, 2018. Dckt. 22. Debtor states that they do not oppose the requested relief from the automatic stay and that they "hereby waive [Federal Rule of Bankruptcy Procedure] 4001(a)(3)." As discussed below, the fourteen-day stay of enforcement in the bankruptcy rules is imposed automatically, *unless the court orders otherwise*. Debtor can consent or stipulation to waiver of that provision as it applies to Debtor.

DISCUSSION

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court.

While not stating grounds, Debtor has filed a consent to the waiver of the fourteen-day stay as it applies to Debtor.

Unfortunately for Movant, though, the Chapter 7 Trustee has not consented to a waiver of the provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) as enacted by the United States Supreme Court.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Ford Motor Credit Company ("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 2016 Ford Fusion ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JCW-1 **Reno Fernandez** **6-4-18 [381]**

WELLS FARGO BANK, N.A. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 4, 2018. By the court's calculation, 38 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 set for an evidentiary hearing on xxxx, 2018.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Jeffery Arambel's ("Debtor") real property commonly known as 49 Echo Court, Patterson, California ("Property"). Movant has provided the Declaration of George Plowden, Jr., to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds upon which the particularly stated relief is based:

A. Debtor executed a promissory note that secured by a mortgage or deed of trust (it not being specified which legal document it is in the Motion).

B. The promissory note is either made payable to Movant or has been duly endorsed (Movant apparently not being able to state whether it is the named payee on the note or is asserting rights as the holder of an endorsed note).

C. Movant is either the original mortgagee or beneficiary (apparently unable to identify if the security interest is a mortgage or deed of trust) or an assignee (apparently unable to state if it is the original beneficiary or an assignee) of the mortgage or deed of trust.

D. Movant values the Property securing the claim at $450,000 (providing what is stated to be a "Broker's Price Opinion" as evidentiary support).

E. After payment of Movant's secured claim and 8% for costs of sale, Movant computes there to be a negative equity for the Estate in the Property of ($370,000).

F. Debtor in Possession (Motion states "Debtor," but presumably Movant is referring to Debtor in Possession as the fiduciary of the bankruptcy estate in which all of Debtor's assets are now located) has not made four post-petition payments on the obligation.

G. Relief Requested: Based on the above grounds, Movant requests relief from the automatic stay to conduct a non-judicial foreclosure sale under the Deed of Trust, to apply the proceeds to the secured debt, and for the purchaser to obtain possession of the Property.

Motion, Dckt. 381. Movant also requests in the prayer attorneys' fees in an unspecified amount, with no grounds for such fees stated in the Motion. (Though the Federal Rules of Bankruptcy Procedure do not require a request for attorneys' fees be stated as a separate claim in the Motion and such fees may be allowed by post-judgment/order motion, if clearly stated in the Motion the court may be able to award such fees as part of the order granting relief, especially when no opposition is filed.)

In Movant's properly pleaded separate Points and Authorities, the legal basis for the relief is stated to arise pursuant to 11 U.S.C. § 362(c)(d)(2)—lack of equity for the Estate and not necessary for an effective reorganization. As provided in 11 U.S.C. § 362(g), Movant has the burden of proof on the equity issue, and Debtor in Possession has the burden of proof on the necessary for effective reorganization point.

Steve Ziettlow has provided his Declaration in Support of the Motion as the appraiser providing an expert opinion as to the value of the Property. Dckt. 385. His opinion is that the Property has a value of $450,000.00. Declaration ¶ 4, *Id.*

Though stated in the Motion and the Index to the Exhibits as a Broker's Price Opinion, both the above Declaration and Exhibit 3 filed in support of the Motion make it clear that it is an Appraisal, with the testimony being provided by a licensed real estate appraiser. Declaration ¶ 2, *Id.*

The Appraisal Report states that it is a "Desktop Appraisal" and is a "Restricted Appraisal Report." Exhibit C, Dckt. 383 starting at 38. On page 2 of the Desktop Appraisal, the following definitions and qualifications are provided:

> "PURPOSE:
> The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on a sales comparison analysis solely for the use by the client identified in the report."

The identified client is Wells Fargo Bank, N.A.

> "INTENDED USE:
>
> The Intended use of this appraisal report is for internal asset review and/or loan servicing (Including default) by the client. The report is not intended for any other use."
>
> "INTENDED USER:
>
> The intended user of this report is limited solely to the identified client. This is a Restricted Appraisal Report and the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile."

In reaching his opinion as to value, Mr. Ziettlow identified six comparable properties that he used for this Desktop Appraisal. These all are stated to be built in the same time period, are of similar construction and condition (though condition appears to be assumed because this is a "Desktop Appraisal"), and are not REO or shortsale properties.

Mr. Ziettlow provides a map of the comparables and the Property at issue, showing their physical proximity. *Id.* at 42. One difference between the Property and the comparables is that the size of the Property lot is two times that of the comparables: 19,131 square fee compared to 6,750–9,393 square feet.

The living area for the Property is 3,829 square feet (5 bedroom, 4 bath), while the comparables ranged from 2814 (4 bedroom 2 ½ bath) to 3825 (5 bedroom, 3 ½ bath) square feet.

For the comparable properties, five have sales closing dates range from July 7, 2017 through March 18, 2018 (with only one sale being in 2018). The closing for the sale of the sixth comparable has not closed, with a listing price of $440,000 shown for a 3,835 square foot home (5 bedrooms, 3 ½ bath) on a 6,750 square foot lot (approximately 35% the size of the lot for the property at issue).

The sales prices for the five comparables for which escrow has closed are (in order of comparable identification number): $451,000 (3,777 sq. ft. home), $450,000 (2,939 sq. ft. home), $439,000 (2,884 sq. ft. home), $438,000 (2,885 sq. ft. home), and $419,000 (2,814 sq. ft. home).

For the sixth comparable property, the listing price is $440,000 (3,835 sq. ft., with an "inferior view").

Using the five actual sales, it appears that the value per square foot of the home is $150.00. For the Property, with a 3,829 square foot home, that would equal $574,350.

In looking at the Desktop Appraisal the court could not find where Mr. Ziettlow made adjustments for differences in the value for things such as "inferior views" or "superior garages" or of the property lot being almost three times size of the comparables.

Thus, it appears from looking just at Movant's expert testimony, the value of the Property would be in excess of $600,000 (which is 133% of the value opined by Movant's expert).

Other than the Property being larger than the comparables and the house generally larger, the only identified difference appears to be that for two of the sales Mr. Ziettlow found that those two homes had "superior" garages.

Movant also provides the Plowden Declaration, which states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of $25,192.60 in post-petition payments past due. The Declaration also provides evidence that there are pre-petition defaults, with a pre-petition arrearage of $2,405.49.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 28, 2018. Dckt. 447. Debtor in Possession asserts that it has obtained its own broker's price opinion reflecting that the Property has a value of at least $925,000.00. Debtor in Possession argues that this matter should be set for an evidentiary hearing to determine the Property's value and whether there is sufficient equity to afford Movant adequate protection and whether the Property is necessary for an effective reorganization.

Debtor in Possession provides the Declaration of George MacMaster, a licensed real estate broker, to provide his opinion as to the value of the Property. Dckt. 448. While testifying that he is licensed real estate broker, he purports to have "appraised" the Property and concluded that it is worth $925,000. *Id.*, ¶ 4. He then continues to state that his "Residential Broker Price Opinion" is filed as Exhibits A in opposition to the Motion. *Id.*, ¶ 5. Presumably, his use of the "appraisal" work was a slip of the tongue and not intended to represent that he is a licensed appraiser, as is Movant's expert.

Mr. MacMaster's Broker Price Opinion is filed as Exhibit A, Dckt. 449, starting at 3. He too identifies six comparables, with the homes ranging from 3,215 square feet to 4,045 square feet. *Id.* at 3–4.

For lot size, he identifies the Property as being 0.4392 acres, with the comparables ranging from 0.23 to 0.5168 acres.

Most of the comparables used by Mr. MacMaster have a pool, which the Property at issue does not.

The sales dates for Mr. MacMaster's comparables range from June 1, 2018 to 22, 2018, for which only three sales are provided. The other three comparables only provide the listing price. Though Mr. Ziettlow identified additional actual sales within the past year, Mr. MacMaster only provided three.

For the three actual sales, the prices per square foot of the residence range from $224 to $3,282. For the last one, Comparable 3, with a $3,282 per square foot allocation of the sales price, it appears to be a gross outlier and not a reliable comparable. The court also notes that this home was built in 1992, a decade prior to the Property at issue and the other comparables, and may be a substantially different type of property.

For the three comparables that have not sold, the listing prices range from $797,000 to $1,395.000.

From the two comparables sales, for which the properties appear to be similar to the Property at issue, based on the testimony of Mr. MacMaster, a per square foot price of $210 could be found. That would equate to a value around $800,000.

Debtor in Possession then argues that the Property does have sufficient equity above Movant's lien and that it is necessary for an effective reorganization because it will be retained as Debtor's home.

DISCUSSION

Movant has not presented any evidence about the current amount owed to it; Movant filed Proof of Claim 4-1 with a claimed secured amount of $763,332.74. Additionally, there is a dispute about the Property's value.

With a secured claim in the amount of $763,000, there could possibly be some (modest) equity for the Estate or for Debtor at the end of the day. It appears that the only claim secured by the Property is Movant's.

On the point of necessary to an effective reorganization, Debtor in Possession argues that it is his intention to retain his home, with the plan being funded through a refinance of his debt and the sale of other properties (for which the court has already approved some sales). He contends that in light of there being some equity and that it is homestead, it is "reasonably necessary" for him to use it as part of his restructured, post-plan completion, fresher financial start.

Evidentiary Hearing

What has been presented to the court is that this Motion hinges upon what value the court interprets as being the Property's value. Movant's assertion of value ($450,000) supports its argument that there is no equity in the Property, but Debtor in Possession's assertion of value ($925,000) does support a finding of sufficient equity.

Further, there appears to be a dispute as to: (a) the necessity of this property for an effective reorganization and (b) whether an effective reorganization appears likely or probable.

There is a material dispute factual issue about value and reorganization, and the court sets an Evidentiary Hearing—sufficiently far out for the parties to conduct full appraisals of the Property to present to the court. LOCAL BANKR. R. 9014-1(g).

The court shall issue its Evidentiary Hearing Scheduling Order.

A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

B. The Witnesses and Evidence presented for Movant's Case in Chief for the Motion are:
1. **xxxxxxxxxxxxxxx**

C. The Witnesses and Evidence presented for Debtor in Possession for its Opposition are:
1. **xxxxxxxxxxxxxxx**

D. Discovery, including the hearing of discovery motions, shall close on xxxx, 2018.

E. Movant, shall lodge with the court and serve its Testimony Statements and Exhibits on or before **xxxxx, 2018**.

F. Debtor in Possession, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **----------, 2018**.

G. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **----------, 2018**.

H. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **----------, 2018**.

I. The Evidentiary Hearing shall be conducted at **-------.m. on ----------, 2018**.

3. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO APPROVE STIPULATION**
MF-27 **Reno Fernandez** **FOR RELIEF FROM THE AUTOMATIC STAY**
6-28-18 [473]

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Stipulation Granting Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Approval of Stipulation Granting Relief from the Automatic Stay is granted.

Jeffery Arambel ("Movant" or "Debtor in Possession") seeks approval of a stipulation granting relief from the automatic stay in favor of American AgCredit, FLCA ("Creditor") with respect to his real property commonly known as the Zacharias Ranch—6,187 acres of agricultural land located in Stanislaus County—and stock of $1,000 in Creditor ("Property").

Debtor in Possession argues that the automatic stay will be lifted immediately for Creditor to pursue nonjudicial foreclosure proceedings against the Property in exchange for no sale or possession occurring before October 1, 2018. *See* Exhibit A, Dckt. 475 at 6:8–18. The Stipulation provides further that on October 1, 2018, the automatic stay will be lifted completely for Creditor to obtain possession. *See id.* at 6:19–7:5.

Additionally, the proposed stipulation provides that after October 1, 2018, Creditor may elect to seek an order from court confirming that the automatic stay has been terminated; that the fourteen-day stay of enforcement under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived; that Movant shall maintain insurance on the Property; that any proposed plan may not impair Creditor's secured claim; and that any subsequently appointed trustee, if applicable, shall be bound by the stipulation terms.

Debtor in Possession argues that he can resolve Creditor's claim before October 1, 2018, and this Motion appears to the court to be a compromise between the parties that will provide Creditor with fixed measures and deadlines for it to begin acting and within which for Debtor in Possession to resolve Creditor's claim or relinquish the Property.

The compromise between the parties appears to be in the best interest of creditors; either Debtor in Possession will be able to generate funds from sales of property to pay Creditor's claim, or Creditor will be able to seize the property, sell it at a foreclosure auction, and satisfy its claim.

The court shall issue an order approving the stipulation and modifying the automatic stay to allow Creditor, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to commence nonjudicial foreclosure proceedings pursuant to applicable nonbankruptcy law and contractual rights, but not to conduct a nonjudicial foreclosure sale to obtain possession of the Property prior to October 1, 2018.

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 part of the stipulated grounds with Creditor 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 Approval of Stipulation Granting Relief from the Automatic Stay filed by Jeffery Arambel ("Movant" or "Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the proposed stipulation filed as Exhibit A (Dckt. 475) is approved, and the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow American AgCredit, FLCA ("Creditor"), 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 the Zacharias Ranch—6,187 acres of agricultural land located in Stanislaus County—and stock of $1,000 in Creditor ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to commence nonjudicial foreclosure proceedings, but not for Creditor to conduct a nonjudicial foreclosure sale to obtain possession of the Property prior to October 1, 2018.

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.

4. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION FOR RELIEF**
NAR-1 **Reno Fernandez** **FROM AUTOMATIC STAY**
5-7-18 [279]

IRRIGATION DESIGN &
CONSTRUCTION, INC. VS.

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

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 9, 2018. By the court's calculation, 43 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 set for an evidentiary hearing on xxxx, 2018.

Irrigation Design & Construction, Inc., ("Movant") seeks relief from the automatic stay with respect to Jeffery Arambel's ("Debtor in Possession") real property located at Highway 5, Patterson, California, APNs 021-021-001 and 021-010-006 ("Property"). Movant has provided the Declaration of Michael Conrad to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Conrad Declaration states that the current default as of May 7, 2018, is $277,860.25. Movant has also provided the Declaration of Gregory Nunes to introduce Mr. Nunes's broker's price opinion that the Property has a value of $1,569,757.62. FN.1.

FN.1. Movant filed the Nunes Declaration and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R.

9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 7, 2018. Dckt. 398. Debtor in Possession asserts that by Movant's own admission, there is at least $62,515.37 in equity in the Property, and the value of the Property is key to resolving this Motion. Debtor in Possession argues that he has acquired his own appraiser to value the Property and requests that the court continue this matter until the appraisal is complete, which Debtor in Possession believes will show a property value closer to $3,200,000.00.

On a procedural ground, Debtor in Possession argues that the Motion should be denied without prejudice because he was not served, in violation of Federal Rule of Bankruptcy Procedure 7004(b)(1) & (g).

ORDER CONTINUING HEARING

On June 14, 2018, Movant filed an Ex Parte Application to continue the hearing. Dckt. 416. The court granted that request and continued the hearing to 10:00 a.m. on July 12, 2018. Dckt. 418.

At the June 21, 2018 hearing, the court noted that the hearing on this Motion had been continued by prior order. Dckt. 439.

MOVANT'S REPLY

Movant filed a Reply on July 6, 2018. Dckt. 488. Movant maintains that on multiple documents Debtor in Possession has asserted a value for the Property of no more than $800,000.00—on Schedule A, Schedule D, and the List of Creditors with the Twenty Largest Unsecured Claims. Movant argues that the court should not pay attention to the alleged appraisal value Debtor in Possession has presented.

DISCUSSION

Movant filed Proof of Claim 15-1 with a claimed secured amount of $277,860.25, which corresponds to the amount that Movant claims is in default. Additionally, there is a dispute about the Property's value, although based only on Movant's broker's price opinion and Debtor in Possession's appraisal from September 2013, which the court treats as less influential than actual, current appraisals.

What has been presented to the court, however, is that this Motion hinges upon what value the court interprets as being the Property's value. Movant's assertion of value ($1,569,757.62) supports its argument that there is no equity in the Property, but Debtor in Possession's assertion of value ($3,200,000.00) does support a finding of sufficient equity.

There is a material dispute factual issue about value. With the sole dispute being about property value, which can be resolved by the parties easily enough, the court sets an Evidentiary Hearing—sufficiently far out for the parties to conduct full appraisals of the Property to present to the court. LOCAL BANKR. R. 9014-1(g).

The court shall issue its Evidentiary Hearing Scheduling Order.

A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

B. The Witnesses and Evidence presented for Movant's Case in Chief for the Motion are:
   1. **xxxxxxxxxxxxxxx**

C. The Witnesses and Evidence presented for Debtor in Possession for its Opposition are:
   1. **xxxxxxxxxxxxxxx**

D. Discovery, including the hearing of discovery motions, shall close on xxxx, 2018.

E. Movant, shall lodge with the court and serve its Testimony Statements and Exhibits on or before **xxxxx, 2018**.

F. Debtor in Possession, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **----------, 2018**.

G. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **----------, 2018**.

H. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **----------, 2018**.

I. The Evidentiary Hearing shall be conducted at **-------.m. on ----------, 2018**.

5. **18-90242-E-7** **JEFFERY/SHANTELL HEGGEN** **MOTION FOR RELIEF FROM**
JCW-1 **Hank Walth** **AUTOMATIC STAY**
5-31-18 [27]

SELECT PORTFOLIO SERVICING, INC. VS.

Final Ruling: No appearance at the July 12, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on May 31, 2018. 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.

The Motion for Relief from the Automatic Stay is granted.

HSBC Bank USA, National Association, as Trustee on behalf of the Certificate Holders of the HSI Asset Loan Obligation Trust 2007-AR1, Mortgage Loan Pass Through Certificates, Series 2007-AR1 in interest, as serviced by Select Portfolio Servicing, Inc. ("Movant") seeks relief from the automatic stay with respect to Jeffery Heggen and Shantell Heggen's ("Debtor") real property commonly known as 10510 Milton Road, Valley Springs, California ("Property"). Movant has provided the Declaration of Lizette Torres to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Torres Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of $2,259.16 in post-petition payments past due. The Declaration also provides evidence that there are twenty-six pre-petition payments in default, with a pre-petition arrearage of $50,850.98.

The Motion also argues that Debtor has elected to surrender the Property. A review of Debtor's Statement of Intention shows that Debtor does in fact intend to surrender the "Residence" securing Select

Portfolio Servicing, Inc.'s claim. Dckt. 17. Debtor's residence on the petition is listed as the Property. Dckt. 1 at 2.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $923,925.45 (including $748,925.45 secured by Movant's first deed of trust), as stated in the Torres Declaration and Schedule D. The value of the Property is determined to be $425,000.00, as stated in Schedules A and D. Dckt. 24.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

What will save Movant, however, is that Debtor has elected to surrender the Property, and Movant has indicated that point in the Motion. Surrender of the Property is a sufficient ground to waive the stay of enforcement, but Movant has not specifically argued that surrender is a ground for waiving the stay.

Despite the lack of argument in the Motion, the court waives the fourteen-day stay of enforcement because Debtor has elected to surrender the Property. *See* Dckt. 17. FN.1.

FN.1. Counsel for Movant should not bank on the court doing counsel's work in the future, even for something as simple as complying with the basic pleading requirements. If counsel and counsel's clients want relief, they need to state the grounds with particularity (Federal Rule of Bankruptcy Procedure 9013)

and not merely try to "sneak it in" the prayer. Such wholesale violation of the Rules adopted by the United States Supreme Court may result in the imposition of sanctions as provided by Federal Rule of Bankruptcy Procedure 9011.

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 HSBC Bank USA, National Association, as Trustee on behalf of the Certificate Holders of the HSI Asset Loan Obligation Trust 2007-AR1, Mortgage Loan Pass Through Certificates, Series 2007-AR1 in interest, as serviced by Select Portfolio Servicing, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow HSBC Bank USA, National Association, as Trustee on behalf of the Certificate Holders of the HSI Asset Loan Obligation Trust 2007-AR1, Mortgage Loan Pass Through Certificates, Series 2007-AR1 in interest, as serviced by Select Portfolio Servicing, Inc., 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 10510 Milton Road, Valley Springs, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

6. **18-90258-E-7** **ANDREAS ABRAMSON** **MOTION FOR RELIEF FROM**
JCW-1 **Iain Macdonald** **AUTOMATIC STAY**
5-29-18 [36]

SELECT PORTFOLIO SERVICING, INC. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and parties requesting special notice on May 25, 2018. By the court's calculation, 48 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.

Deutsche Bank National Trust Company, as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR13 in interest, serviced by Select Portfolio Servicing, Inc. ("Movant") seeks relief from the automatic stay with respect to Andreas Abramson's ("Debtor") real property commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property"). Movant has provided the Declaration of Trent Roesbery to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Roesbery Declaration states that there are fifty-seven pre-petition payments in default, with a pre-petition arrearage of $207,666.06. Movant also asserts that there are eleven other liens against the Property totaling with Movant's claim for liens of $1,209,078.00 against a property value of $1,160,027.00. Movant alleges that after costs of sale, there would be equity of ($504,076.99).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 29, 2018. Dckt. 62. Debtor asserts that there is an equity cushion of $233,000.00 presently, and once the period for parties to object to claimed exemptions passes,

then Debtor intends to move to avoid all of the judicial liens in this case, and Debtor expects the holder of the second deed of trust (Debtor's father) to agree to subordination.

If the judicial liens are avoided, Debtor intends to secure a private equity loan to cure interest and costs totaling $155,713.47. Given Debtor's plans, Debtor argues that the Motion should be denied or should be continued for sixty days.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $2,185,588.36 (including $771,953.53 secured by Movant's first deed of trust), as stated in the Roesbery Declaration and Schedule D. The value of the Property is determined to be $1,160,027.00, as stated in Schedules A and D.

Movant's contention that mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that a debtor has no equity in the estate is not sufficient standing alone to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass'n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981). Moving party has not adequately pleaded or provided an evidentiary basis for granting relief for "cause."

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Opposition Based on Possible Future Refinance by Debtor

Debtor is five years in default on the obligation owed to Movant. This bankruptcy case was filed on April 13, 2018. The deadline for the filing of objections to exemptions was thirty days after the conclusion of the meeting of creditors. Notice, Dckt. 7 at Section 9. The First Meeting of Creditors set for hearing on May 23, 2018, could not be concluded because Debtor and Debtor's counsel did not appear. May 23, 2018 Trustee Docket Entry Report. The meeting was continued to June 5, 2018. The Chapter 7 Trustee reports that the meeting was concluded on June 5, 2018, and the Chapter 7 Trustee determined that there are no assets in this case for distribution to creditors. June 11, 2018 Trustee Docket Entry Report.

However, Debtor chose to file an Amended Schedule C on July 5, 2018. Dckt. 71. The thirty-day period to object to the exemptions now runs from thirty days of July 5, 2018. FED. R. BANKR. P. 4003(b)(1). That thirty-day period expires on August 6, 2018 (the thirtieth day falling on Saturday August 4, 2018, and being extended to the next regular court day of August 6, 2018).

On May 29, 2018, the present Motion for Relief was filed.

The "evidence" of the potential loan to cure Movant's default is provided as Exhibit A to Debtor's Declaration. Dckt. 65. In this letter, it is stated that a loan of up to $300,000 will be made upon several conditions being satisfied, including the avoidance of judgment liens against the Property. Additionally, the loan "commitment" expires sixty days from June 26—which would be August 25, 2018. The First Meeting of Creditors not having been concluded until June 5, 2018, that thirty-day objection period expired on July 5, 2018.

For Debtor, there are August 2 and August 23 law and hearing dates for any motions to avoid liens. It appears that the August 23 date would be too late for the court to conduct the necessary hearing, issue a ruling, and order to have the loan close before the Saturday, August 25, 2018 deadline.

That then leaves an August 2 hearing date. However, the thirty-day period to file an objection to claim of exemption does not expire until August 6, 2018. Even if Debtor files his motions to avoid judgment liens on August 7, 2018, it appears that he cannot meet the deadline for expiration of the loan "commitment."

Debtor is $207,666.06 in default just pre-petition, which stretches over five years. Debtor offers no explanation as to how, even if he "cures" the default, he is going to make the regular monthly payments. The Declaration of Trent Roesbery in support of the Motion states that the current monthly mortgage payments are $4,869.07. Declaration, Dckt. 38 at 4:12.5–13.5.

Additional Factors

Though Debtor in his Opposition and his Declaration provides scant facts in opposition, other than somehow he will obtain a loan, the court has looked further into the file. On Schedule B, Debtor lists as an asset unknown amounts that may be due him from an Ex-Spouse in a pending dissolution proceeding (Cal. Superior Court, Tuolumne County, No. FL8992). The court recognizes that a dissolution can throw a person's finances cattywampus for a limited period of time, but it necessarily must be a limited time, otherwise it is merely "normal" finances for that person.

With respect to the Property at issue, on Schedule D, Debtor lists the following various secured claims:

Property	**83 Sanguinetti Ct.**
Value of Collateral	$1,160,027.00
Creditors	**Amount of Secured Claim**
Calaveras County Tax, Statutory Lien	($715.00)
Calaveras County Tax, Statutory Lien	($5,830.00)

Calaveras County Tax, Statutory Lien - Disputed	($575.00)
Gross & Goss Deed of Trust	($16,000.00)
Michael Abramson "Agreement"	($265,411.00)
SPS Mortgage (First DOT)	($925,557.00)
Value For Debtor's Homestead Exemption	($54,061.00)
Homestead Exemption Dollar Amount Claimed on Amended Schedule C (Dckt. 33 at 2)	($75,000.00)
Possible Value in Excess of Liens and Homestead Exemption	($129,061.00)
Judgment Liens	
Amex	($9,533.83)
Capital One	($6,904.00)
Guy Martin	($1,157.00)
Investment Receivers	($189,000.00)
Helen McAbee	($770,000.00)
Peninsula Estates Assoc	($1,450.00)
Pentch Funding, LLC	($11,415.00)
Persolve, LLC (Garnishment)	($120,000.00)
Portfolio Recovery Assoc	($15,642.81)

On Schedule I, Debtor states under penalty of perjury that his monthly gross income is $3,718.05. Dckt. 1 at 55. Debtor states that he is employed as a "Senior Loan Officer" at JAC Financial. *Id.*

On Schedule I, Debtor states under penalty of perjury that he has no withholding from his gross wages for federal taxes, state taxes, Social Security, or Medicare. *Id.* at 56. Debtor states further that he receives $156 per month in CalFresh Benefits, with his total gross monthly income being $3,874.05. *Id.*

Moving to Schedule J, Debtor states that he has monthly expenses of ($4,757.00). *Id.* at 58. Of this, Debtor states having a monthly mortgage payment of ($3,400). *Id.* at 57. This is less than the ($4,869.07) stated by Movant on its secured claim alone.

On Schedule J, Debtor does not list any federal taxes, state taxes, self-employment taxes, and unemployment taxes for the monthly income he generates (if he is an independent contractor). Debtor effectively states under penalty of perjury that he is exempt from all federal and state tax laws.

Debtor lists other "questionable" expense amounts on Schedule J. Those include:

1. Food and Housekeeping Supplies.....($0.00)

2. Clothing, Laundry, Dry Cleaning.....($25.00)

3. Medical and Dental Expense.....($15.00)

4. Transportation.....($0.00)

The court notes on that on Schedule B Debtor lists owning a 2001 Mercedes Benz, a golf cart, and a Supra Comp Boat. *Id.* at 12–13.

5. Vehicle Insurance.....($37.00)

6. Home Maintenance for Second Property.....(100.00)

Debtor offers no explanation on his Schedules for those expenses, how he does not have to pay state and federal taxes, and how he spends $0.00 on food and housekeeping supplies for his purported million-dollar home.

On his Statement of Financial Affairs, Debtor states under penalty of perjury that his income has been for:

2018 Wages from January to April Filing.....$1,709 ($569/month for 3 months)

2017 Wages.....$54,646 ($4,553/month)

2016 Wages.....$40,286 ($3,357/month)

It appears that Debtor has a longstanding inability to pay this secured debt. It appears that there is no equity in the property for Debtor. It appears that there could be some value for Debtor's father on his secured claim, but such is Debtor's father's asset and his responsibility to deal with the senior secured debt.

It also appears that Debtor will not be able to obtain the loan presented as it does not appear that Debtor can obtain orders avoiding the liens in time before the loan "commitment" expires.

At the hearing, Counsel for Debtor explained **xxxxxxxxxx**

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.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR13 in interest, serviced by Select Portfolio Servicing, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Deutsche Bank National Trust Company, as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR13 in interest, serviced by Select Portfolio Servicing, Inc., 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 83 Sanguinetti Court, Copperopolis, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

7. **18-90258-E-7** **ANDREAS ABRAMSON** **MOTION FOR RELIEF FROM**
RBG-1 **Iain Macdonald** **AUTOMATIC STAY**
6-27-18 [57]

HELEN MCABEE VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 7 Trustee, and parties requesting special notice on June 27, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 for Relief from the Automatic Stay is ~~denied without prejudice~~.

Helen McAbee ("Movant") seeks relief from the automatic stay with respect to Andreas Abramson's ("Debtor") real property commonly known as 841 Calais Drive, Hollister, California ("Property"). Movant has not provided any testimony by declaration to authenticate any of the documentary evidence in support of the Motion.

The Motion states the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) as the basis upon which the relief is requested:

A. Movant is a judgment creditor of Debtor and Debtor's Former Spouse, with the judgment being in the current amount of $741,533.13.

B. Movant recorded an abstract of the Judgment in San Benito County.

C. Movant asserts that the judgment lien was recorded in June 2013 that attached to real property commonly known as 841 Calais Drive, Hollister, California.

D. The Calais Drive Property is not listed on Schedule A, therefore Movant concludes that it is not property of the bankruptcy estate.

E. Movant further alleges that on June 25, 2014, Debtor and Debtor's Former Spouse executed and recorded an Interspousal Transfer Grant Deed transferring that property from Debtor and Former Spouse jointly to the Former Spouse as her separate property. A copy of the identified Interspousal Transfer Grant Deed is filed as Exhibit B.

F. It is asserted that the Calais Drive Property has a value of $514,000.00, which is less than the asserted judgment.

G. Thus, it is asserted that there is no equity in the Property for the Estate, that it is not necessary for an effective reorganization, and that cause exists for termination of any stay that exists.

H. Movant also notes that the Motion is being filed out of an abundance of caution, making it clear to the Chapter 7 Trustee and parties in interest that Movant is proceeding against property believing that it is not property of this bankruptcy estate.

Motion, Dckt. 57.

Exhibit B, is an unauthenticated copy of what is stated to be the recorded Interspousal Transfer Grant Deed with a recorded stamped date of June 25, 2014, and states that the Former Spouse is a "single woman" and the transfer is being made as part of a property settlement in the dissolution of a marriage. However, on the Statement of Financial Affairs, Debtor identifies the pending dissolution proceeding having a case number of 17FL42860.

Movant argues that the Property is not property of the bankruptcy estate and that Debtor claims no interest in the Property. Movant claims that Debtor is a co-judgment debtor on a judgment that Movant seeks to enforce against the Property.

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).

Movant has only pleaded arguments that satisfy the first element of 11 U.S.C. § 362(d)(2), contending that there is no equity because the bankruptcy estate and Debtor do not have any interest in the Property. On the second point, Movant does not expressly allege that the Property is necessary for an effective reorganization. However, Movant does allege that this is a Chapter 7 case, which is an oblique reference to it not being a reorganization under Chapters 11, 12, or 13. For purposes of this Motion, and this Motion only, the court will find that oblique allegation adequate. Counsel should not expect such liberal application of the basic federal court pleading requirements to be applied in the future.

Movant's contention that mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1), is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that a debtor has no equity in the estate is not sufficient standing alone to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass'n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *see also United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

Movant's Motion makes a more subtle contention as to cause, that the property is not property of the bankruptcy estate, no stay should exist, and out of an abundance of caution, the court (applying the automatic stay "discretion is the better part of valor" principle) is warranted in granting relief from any stay to the extent it exists or confirm that the stay does not exist.

Again, the court will stretch the pleadings to read such grounds being stated with particularity as required by Federal Rule of Bankruptcy Procedure 9013.

However, all the court is presented with is a Motion making arguments for which there is no declaration and no properly authenticated (Federal Rule of Evidence 901, *et seq.*) documentary evidence. Movant may argue, "hey, nobody opposes, so you shouldn't care that there is not evidence." Though some non-federal courts may take such an approach, that is not federal court procedure. The Supreme Court has made it clear that a federal trial court should not grant relief unless it is actually warranted on the law and evidence. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

More fundamentally, this court has observed that if given a small vacuum of not applying a Rule adopted by the Supreme Court, attorneys will flood it with substandard pleadings arguing, "you didn't make

X follow the rules, so you can't make me follow the rules." Also, when evidence is not required, (and to be clear, that does not appear to be the situation here), the allegations in the motion become more and more "creative."

Unfortunately for Movant, the court ~~denies the Motion without prejudice~~.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Helen McAbee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion is ~~denied without prejudice~~.

8. **18-90258-E-7** **ANDREAS ABRAMSON** **MOTION FOR RELIEF FROM**
SDF-1 **Iain Macdonald** **AUTOMATIC STAY**
6-27-18 [47]

BERNADETTE CATTANEO 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 7 Trustee, and Office of the United States Trustee on June 27, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

Bernadette Cattaneo ("Movant") seeks relief from the automatic stay to allow Case No. 17FL42860, Superior Court for Tuolumne County, Family Law Division ("State Court Action") to be concluded. Movant has provided the Declaration of John Triflio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Andreas Abramson ("Debtor").

The Triflio Declaration states that dissolution proceedings were commenced in April 2009 and that there has been litigation ever since. Most importantly, judgment was issued in January 2014, and there has been ongoing litigation since then, with issues remaining unresolved still. Presently, Movant has been trying (even setting a motion for hearing) to move the matters to a trial, but is prevented from doing so now that this bankruptcy case is pending.

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

The court finds that the nature of the State Court Action warrants relief from stay for cause. Some of the issues appear to have been litigated already, and a judgment has already been issued. Now, the remaining matters are being litigated either on appeal or at trial. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Action. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Michael McGranahan ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Bernadette Cattaneo ("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 modified as applicable to Andreas Abramson ("Debtor") to allow Bernadette Cattaneo, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to

proceed with litigation in Case No. 17FL42860, Superior Court for Tuolumne County, Family Law Division.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Michael McGranahan ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

9. **18-90362-E-7** **ABNER/NICOLE EDWARDS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JHW-1 **Mark Nelson** **6-12-18 [14]**

AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling: No appearance at the July 12, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 12, 2018. By the court's calculation, 30 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.

Americredit Financial Services, Inc., dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Dodge Journey, VIN ending in 4036 ("Vehicle").

The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Abner Edwards and Nicole Edwards ("Debtor").

The Rangel Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $541.81 in post-petition payments past due. The Declaration also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of $2,167.24.

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 $22,731.67, as stated in the Rangel Declaration, while the value of the Vehicle is determined to be $12,361.00, as stated in Schedules B and D filed by Debtor.

DISCUSSION

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

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Americredit Financial Services, Inc., dba GM Financial ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2015 Dodge Journey ("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.
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> No other or additional relief is granted.