

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 15, 2025 at 1:30 p.m.

1. [25-21560](#)-E-13
[JTK-2](#)

HARRY CHAFFEE
Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
5-20-25 [\[24\]](#)

KAMALJIT S. TAKHAR 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*) and all creditors and parties in interest on May 20, 2025. By the court's calculation, 21 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.

No opposition was stated at the hearing.

The Motion for Relief from the Automatic Stay is ~~denied without prejudice~~.

July 15, 2025 Hearing

The court continued the hearing on the Motion as the Motion was set pursuant to Local Bankruptcy Rule 9014-1(f)(2) and a briefing schedule was set. Order, Docket 47. Debtor filed his Opposition on June 24, 2025. Docket 52. Debtor states:

1. Debtor filed in *pro per* and Counsel substituted into the case on June 9, 2025. Amended schedules and Plan have been/will be filed and set for hearing on August 12, 2025. *Id.* at 12:21-23.
 - a. The Amended Plan was filed on July 2, 2025, with a Motion to Confirm and supporting evidence.
2. Creditor has been properly provided for as a Class 2 claim to be paid in full under the proposed Plan. *Id.* at 1:24-25.
3. The value of the Property is \$180,000 and creditor is adequately protected. *Id.* at 1:26-2:1.

Movant's Reply

Movant filed their Reply Brief on July 2, 2025. Docket 69. Movant states:

1. Debtor has not met their burden of proof in showing cause does not exist for granting relief. *Id.* at 1:23-2:3.
2. There is no equity in the Property that adequately protects Movant. The total secured debts amount to \$243,342.53 while the Property is valued at \$180,000. *Id.* at 2:4-20.
3. Debtor's only chance in performing a Plan that could make adequate protection payments would involve selling the Property, but there is no Motion to Employ a broker on file. *Id.* at 2:21-3:6.
4. If Debtor has made payments Movant would request, if relief is not granted, that the court authorize Trustee to disburse those payments to Movant directly prior to confirmation of a Plan as adequate protection payments. *Id.* at 3:7-21.

Review of Second Amended Chapter 13 Plan

Debtor filed the Second Amended Plan on July 2, 2025. Dckt. 67. The basic terms of the Plan are:

- A. Monthly Plan Payments:
 1. \$450.44 through June 2025; and
 2. \$4,660.00 each for the remaining 58 months of the Plan. 2nd Amd Plan, § 7; Dckt. 67.

- B. Term of Plan.....60 Months. *Id.*; ¶ 2.03.
- C. Class 1 Secured Claims.....None. *Id.*; ¶ 3.07(c).
- D. Class 2 Secured Claims:
 - 1. Karen J Nolan, DOT
 - a. (\$32,682.00) Secured Claim.
 - b. Paid with 6% Interest, with monthly payments of \$655.00.
 - 2. Kamaljit Takhar
 - a. (\$166,235.03) Secured Claim.
 - b. Paid with 6% Interest, with monthly payments of \$3,310.00. ^{FN.1.}
 - c. No other Class 2 secured claims. *Id.*; ¶ 3.08

FN. 1. With payments of \$3,310.00 a month for 58 months, the total amount paid on this Secured Claim would be \$191,980.

- E. Class 3 Secured Claims - Surrender.
 - 1. Capitol One Auto Finance, surrender of Explorer. *Id.*; ¶ 3.09.
- F. Class 4 Secured Claims - Direct Payment.....None. *Id.*; ¶ 3.10.
- G. Class 5 Priority Claims
 - 1. Estimated Total.....(\$766.11). *Id.*, ¶ 3.12.
- H. Class 6 Designated Unsecured Claims.....None. *Id.*; ¶ 3.13.
- I. General Unsecured Claims
 - 1. 8% dividend on estimated (\$50,419.49) in Claims. *Id.*; ¶ 3.14.

In the Motion for Relief, Creditor makes reference to unpaid property taxes and that in the prior bankruptcy case filed by Debtor, a Proof of Claim was filed by the I.R.S. stating a secured claim in the amount of (\$44,245.50). Motion, ¶ 12; Dckt. 24. See Amended Proof of Claim 8-2 filed in Debtor's prior Bankruptcy Case, 24-24159.

DISCUSSION

In this contested matter the court finds cause is not present for relief from the stay. Debtor has met their burden in showing that there is no cause for relief. There is an Amended Plan on file that provides for paying Movant in full in Class 2 at 6% interest. Am. Plan, Docket 67. Movant will be receiving a dividend of \$3,310 per month. *Id.* This payment constitutes adequate protection as the claim is paid in full. In denying the Motion, the court grants Movant's requests in authorizing Trustee to disburse the dividend of \$3,310 to Movant prior to confirmation, pursuant to 11 U.S.C. § 1326 and Local Bankruptcy Rule 3015-1(f)(2).

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Kamalajit S. Takhar ("Movant") seeks relief from the automatic stay with respect to Harry Michael Chaffee's ("Debtor") real property commonly known as 16028 and 16048 Bridge Street, Meridian, CA 95957 ("Property"). Movant has provided his own Declaration and the Declaration of his attorney, Terrance Kilpatrick, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decls., Dockets 26, 27.

Movant argues Debtor has not made two post-petition payments for the months of April and May of 2025. Mot. 6:26. Movant also provides evidence Debtor has failed to pay property taxes in the amount of \$5,634.83. Declaration 3:1-3, Docket 26.

Movant seeks further relief pursuant to 11 U.S.C. § 362(d)(4), arguing this case is part of a scheme to hinder or delay collection by Debtor filing multiple cases. Mot. 8:16-21.

Movant requests adequate protection payments of \$1,973.86 if this Motion is not granted. *Id.* at 8:25-28.

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 \$248,977.36 (Declaration ¶ 13, Docket 26), while the value of the Property is determined to be \$182,920.50, as stated in Schedules A/B and D filed by Debtor.

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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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).

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).

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.* In this case, there is one other case filed that affects the Property:

- A. Case No. 24-24159
 - 1. Filed: September 18, 2024
 - 2. Chapter 13
 - 3. Dismissal Date: April 16, 2025
 - 4. Reason for Dismissal: Failure to timely file documents and a Chapter 13 plan.

What is striking here, however, is Debtor filed this present case on April 2, 2025, while the prior case was still ongoing. Debtor appears to have filed this present case in response to Judge Clement granting Movant's Motion for Relief From Stay in the prior case. *See* Case No. 24-24159, Order, Docket 52.

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

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of multiple and concurrent filings made to frustrate Movant's collection efforts.

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, based on Debtor's unjustified delay and frustration efforts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 9:2-12.

OPPOSITION STATED AT THE HEARING

The present Motion was set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2). No written opposition is required, and may be presented orally at the hearing. Debtor has now obtained counsel, the basics of the opposition was stated, including that Debtor will promptly have on file a Chapter 13 Plan and motion to confirm.

The hearing on the Motion for Relief from the Automatic Stay continued to 1:30 p.m. on July 15, 2025. Opposition Pleadings shall be filed and served on or before June 25, 2025, and Reply Pleadings, if any, shall be filed and served on or before July 3, 2025.

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

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

The Motion for Relief from the Automatic Stay filed by Kamalajit S. Takhar ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice.

IT IS ORDERED that the David Cusick, the Chapter 13 Trustee, shall disburse the monthly dividend of \$3,310 to Movant prior to confirmation of the Amended Plan filed on July 2, 2025 at Docket 67. The dividend of \$3,310 shall constitute adequate protection payments for Movant's secured claim and is provided for in Debtor's Amended Plan filed on July 2, 2025.

FINAL RULINGS

2. [24-23782-E-13](#)
[JDS-6](#)

VICTORIA BROWN
Mohammad Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-3-25 [\[22\]](#)

PLANET HOME LENDING, LLC VS.

Final Ruling: No appearance at the July 15, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 3, 2025. 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.

Planet Home Lending, LLC ("Movant") seeks relief from the automatic stay with respect to Victoria Ashely Monette Brown's ("Debtor") real property commonly known as 630 Vernon Oaks Dr, Roseville, CA 95678 ("Property"). Movant has provided the Declaration of Ashley Cusano to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 24.

Movant argues Debtor has not made three post-petition payments, with a total of \$13,773.15 in post-petition payments past due. Declaration ¶ 9, Docket 24.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 1, 2025. Docket 28.

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 \$603,468.96 (Declaration ¶ 10, Docket 24), while the value of the

Property is determined to be \$610,000, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 11, Docket 1.

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

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

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 Attorneys’ Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys’ fees or having any obligation to pay attorneys’ fees. Based on the pleadings, the court would either: (1) have to award attorneys’ fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys’ fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 will have minimal motivation to secure, preserve and protect the Property, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:20-21.

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 Planet Home Lending, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 630 Vernon Oaks Dr, Roseville, CA 95678 (“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.