UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 29, 2021 at 10:00 a.m.

FINAL RULINGS

1. **21-90212**-E-7   **GALDINO FRANCONI**   **MOTION FOR RELIEF FROM**
   NSC-1   **Simian Hundal**   **AUTOMATIC STAY**
        7-2-21 [16]

   INOVA FEDERAL CREDIT UNION
   VS.

   Final Ruling: No appearance at the July 29, 2021, hearing is required.

   > **The Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

   INOVA Federal Credit Union, ("Creditor"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.

2.   **21-90186**-E-7   **SARGON BEBLA**   **MOTION FOR RELIEF FROM**
    RPZ-1   **Steve Altman**   **AUTOMATIC STAY**
                                                6-28-21 [34]

**U.S. BANK NATIONAL
ASSOCIATION VS.**

Final Ruling: No appearance at the July 29, 2021 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, and Office of the United States Trustee on June 28, 2021. By the court's calculation, 31 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 non-opposition. *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.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Tesla Model 3, VIN ending in 2505 ("Vehicle"). The moving party has provided the Declaration of Javier Gonzalez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sargon Bebla ("Debtor").

Movant argues Debtor has not made three (3) post-petition payments, with a total of $3,144.39 in post-petition payments past due. Declaration, Dckt. 37.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Though authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will *sua sponte* take notice that the NADA Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)). In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Javier Gonzalez to be that he obtained the NADA 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.

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 $48,093.03 (Declaration, Dckt. 37). Debtor values the Vehicle at $38,232.00, as stated in Schedules A/B and D filed by Debtor. Movant's NADA valuation reports values the Vehicle at $46,900.00.

According to the Statement of Intention, Debtor intends to surrender the Vehicle. Dckt. 11.

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

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

11 U.S.C. § 362(d)(2)

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

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

No other or additional relief is granted by the court.

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

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

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

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Tesla Model 3, VIN ending in 2505 ("Vehicle"), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.