UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 6, 2024 at 1:30 p.m.

1.	**24-20485-E-13** **NLG-1**	**HARVINDER SINGH AND KULDIP KAUR** **Pauldeep Bains**	**MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY** **6-27-24 [57]**

UMPQUA BANK VS.

The Court Has Posted This as a Tentative Ruling to Afford Movant the Opportunity to Address the Co-Debtor Stay if Such Relief is Proper For This Bankruptcy Case

No Appearance by Movant is Required If It Does Not Disagree With the Tentative Ruling

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—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 27, 2024. By the court's calculation, 40 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.

Umpqua Bank ("Movant") seeks relief from the automatic stay with respect to Harvinder Jeet Singh and Kuldip Kaur's ("Debtor") real property commonly known as 1524 Countryside Drive, Yuba City, CA 95993 ("Property"). Movant has provided the Declaration of Jeremy Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 60.

Movant argues Debtor has not made four post-petition payments of $991 each, with a total of $3,964 in post-petition payments past due. Decl. 3:11-15, Docket 60.

CHAPTER 13 TRUSTEE'S NONOPPOSITION

David Cusick ("the Chapter 13 Trustee") file a Nonopposition on July 23, 2024. Docket 67. Trustee states Debtor is delinquent, never having commenced making payments, and supports granting relief.

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 $171,280.95 (Decl. 3:19-20, Docket 60), while the value of the Property is determined to be $420,744, as stated in Schedules A/B filed by Debtor. Schedule A/B 12:1.1, 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.

Co-Debtor Stay

Movant, without providing any evidence or argument that there is a co-debtor in the Property as defined under 11 U.S.C. § 1301(a), asks the court grant relief from the co-debtor stay. Movant states in the prayer for relief:

> That the co-debtor stay of 11 U.S.C. §1201(a) or §1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as the Debtor.

Mot. 4:25-26, Docket 57. 11 U.S.C. § 1301(a) states:

> (a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—
>
> > (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or
> >
> > (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.
>
> (b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.
>
> (c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—
>
> > (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
> >
> > (2) the plan filed by the debtor proposes not to pay such claim; or
> >
> > (3) such creditor's interest would be irreparably harmed by continuation of such stay.
>
> (d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

Movant has not pled any grounds justifying relief from the co-debtor stay nor even identified a co-debtor. As such, the court does not grant this part of the relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to

conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

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

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 Umpqua Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, 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 1524 Countryside Drive, Yuba City, CA 95993 ("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.

2. 24-22967-E-13 VANESSA FRANKLIN
Pro Se

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
7-11-24 [9]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 12, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for July 18, 2024. Dckt. 10.

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

The Motion to Extend the Automatic Stay is xxxxxxx.

August 6, 2024 Hearing

The court continued the hearing on this Motion and ordered the Debtor to appear in person. Docket 17.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Vanessa Lynn Franklin ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-21749) was dismissed on September 27, 2023, after Debtor failed to pay installment filing fees. *See* Order, Bankr. E.D. Cal. No. 23-21749, Dckt.

39, September 27, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because, although Debtor hired an attorney, she experienced a loss of income and was unable to make payments. Debtor explains that in this case, she has surrendered her vehicle back to the financing company, so her payments have dropped to an affordable level. She needs protection of the automatic stay so her wages will not be garnished and she can afford to make plan payments. Mot., Docket 9.

Review of Debtor's Chapter 13 Plan

Debtor file a Chapter 13 Plan on July 8, 2024. Dckt. 7. The Plan provides for a monthly Plan payment of $289.00 for a period of sixty (60) months. *Id*.; ¶¶ 2.01, 2.03. The Plan provides for a monthly administrative expense of $189.00, which is 65% of the monthly Plan payment. It is unclear what administrative expenses are consuming 65% of the Plan payment.

No claims are provided for in Class 1 or Class 2. *Id*. ¶¶ 3.07, 3.08. For Class 3, Debtor is surrendering the collateral for the claims of Santander Consumers USA and the "US Small Business Administration/Personal Property." *Id*.; ¶ 3-09.

For Class 4, Debtor is to make direct payments to CarHop for an auto claim. *Id*.; ¶ 3.10.

There are no priority unsecured claims and for general unsecured claims there is a dividend of not less than 0.00% for such claims totaling approximately ($76,083.91). *Id*.; ¶¶ 3/12, 3.14.

Review of Debtor's Schedules

On Schedule I Debtor lists having gross income of $3,661.21 a month working for Uber. No provision is made for the withholding of any taxes or other amounts from the gross earnings. Debtor states having other monthly income of $2,000 from a source identified as "Amazon Flex." Schedule I; Dckt. 1 at 45.\

On Schedule J no provision is made for the payment of any taxes or Social Security. *Id*.; p. 47-48. Debtor lists a total of ($4,141) in month expenses, with ($2,396) for rent. For Debtor's family unit of two (Debtor and a minor child), Debtor lists only:

A. ($100) a month for electricity and gas expense.

B. ($200) a month for food and housekeeping supplies.

C. ($10) a month for clothing, laundry, and dry cleaning.

D. ($0.00) for home maintenance and upkeep.

E. ($0.00) for medical expenses.

Debtor computes having $1,510.21 in projected disposable income on Schedule J to fund a Chapter 13 Plan. *Id*.; p. 48. However, the Plan provides for only $289.00 to fund the Plan monthly.

On Schedule A/B Debtor lists owning one vehicle, a Lexus ES300H. *Id*., p. 13. On Schedule D Debtor lists Santander Consumer USA as having a lien on this vehicle to secure a ($24,968.66) claim. *Id*., p. 25.

In the Plan filed by Debtor, the Lexus is to be surrendered to the creditor, apparently leaving her without a vehicle.

Decision

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

The Debtor did not provide any evidence (testimony in a declaration, exhibits) and did not attend the July 17, 2024 hearing set for this Motion. This bankruptcy case was filed on July 8, 2024. As provided in 11 U.S.C. § 362(c)(3)(B) the court may extend the stay after notice and hearing completed within 30 days of the filing of this Bankruptcy Case. With the July 8, 2024 filing of this case, the thirtieth day would expire on August 7, 2024.

Because of the lack of evidence and notice to parties in interest of the Motion to Extend the Stay, the court set the emergency hearing on July 17, 2024, to allow the Debtor to be "educated" as to the judicial

process, subsequently provide evidence, and the court completing a continued hearing prior to August 7, 2024.

The Debtor failing to attend the July 17, 2024 hearing, the court could not address these issues and was not able to set a further hearing and have the Debtor confirm that she would be filing the required evidence.

As discussed above, there are some questions with regard to Debtor rebutting the presumption of bad faith with the filing of this case. The Debtor's monthly plan payments do not match up with the projected disposable income Debtor shows on Schedule J. For expenses, Debtor purports to not pay any federal, state, or Social Security taxes.

Application of Automatic Stay to the Bankruptcy Estate and Property of the Bankruptcy Estate

Though denying this Motion without prejudice, the automatic stay will expire only as to the Debtor, as expressly stated in the plain language in 11 U.S.C. § 362(c)(3)(A). The stay does not terminate as to the bankruptcy estate, property of the bankruptcy estate, and other persons and interests as provided in 11 U.S.C. § 362(a).

When an individual debtor has a prior bankruptcy case that was pending and dismissed without one of the debtor's then current case, 11 U.S.C. § 362(c)(3) provides, in pertinent part (emphasis added):

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section—
> . . .
> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint **case of the debtor was pending within the preceding 1-year period but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) —
>
> > (A) **the stay under** subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate **with respect to the debtor** on the 30th day after the filing of the later case;
> >
> > (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and
> >
> > (C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
> >
> > (i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor;

The language in 11 U.S.C. § 362(c)(3) expressly is limited to the Automatic Stay as it applies to the Debtor, **and only the Debtor**. This court first addressed the issue a number of years ago and then more recently in *In re Burns*, 639 B.R. 761 (Bankr. E.D. Cal. 2022). In *Burns*, the court provides a detailed analysis of statutory construction, statutory definitions, specific applications of the Automatic Stay to different persons or property (such as certain protections given to a debtor and other protections expressly given to property of the bankruptcy estate), and the application of 11 U.S.C. § 362(c)(4) in which Congress expressly provides when no stay goes into effect in the "bankruptcy case," rather than merely stating it does not go into effect as to the debtor. *Id*.

In a Chapter 13 case, Congress provides in 11 U.S.C. § 1306 that in addition to all prepetition assets of the Debtor that become property of the Bankruptcy Estate pursuant to 11 U.S.C. § 541(a), the property of the Chapter 13 bankruptcy estate includes (emphasis added):

§ 1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

> (1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and
>
> (2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.
>
> (b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

See, 7 Collier on Bankruptcy, Sixteenth Edition, ¶ 13.06.02[3].

In the *Ex Parte* Motion, Debtor makes reference to her post-petition wages, her "earnings from services" performed being subject to potential wage garnishment for pre-petition debts. Even if the stay terminates as to the Debtor, such "earnings" are property of the Bankruptcy Estate and protected by the Automatic Stay, separate and apart from the stay protecting the Debtor. 11 U.S.C. § 362(a) provides for different stays protecting different persons and properties, including as follows:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) **the enforcement**, against the debtor or **against property of the estate, of a judgment obtained before the commencement of the case under this title**;
>
> (3) **any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate**;
>
> (4) **any act to create, perfect, or enforce any lien against property of the estate**;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; . . . .

This termination of the stay as it applies to the debtor, but not property of the bankruptcy estate, is discussed in 3 Collier on Bankruptcy ¶ 362.06[3][a], which includes the following:

> [a] Scope of Stay Limitation

> There are certain limitations arising from the express wording of subsection (c)(3). First, the stay terminates under this provision only "with respect to the debtor." As in other provisions in section 362, Congress sought in subsection (c)(3) to distinguish between actions taken against property of the debtor and property of the estate.[18] This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)[19] for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.[20] Thus, if there has been a stay termination based on the operation of subsection (c)(3) in a case filed within a year of a prior dismissal, the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate, but not as to actions against the debtor or property of the debtor that is not property of the estate.[21]

See referenced footnotes in the above quotation for case citations and statutory analysis.

Clearly there are Automatic Stay provisions that do not protect the Debtor and which, if the stay that will "terminate with respect to the debtor," 11 U.S.C. §362(c)(1) does not state that the stay will terminate as to the bankruptcy estate, property of the bankruptcy estate, or others who are given protection of the Automatic Stay pursuant to 11 U.S.C. § 362(a).

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 hearing on the Motion to Extend the Automatic Stay filed by Vanessa Lynn Franklin ("Debtor") was conducted on July 17, 2024. The court set the hearing, Debtor having filed in pro se an *ex parte* request for which no parties in interest were served. The court's order setting the hearing (Dckt. 10) expressly addresses the legal issues and scope of the automatic stay terminating as to the pursuant to 11 U.S.C. § 362(c)(3)(A). Upon consideration of the Ex Parte Motion, the files in this case, and good cause appearing;
>
> **IT IS ORDERED** that the Motion to Extend the Automatic Stay as to the Debtor as provided in 11 U.S.C. § 362(c)(3)(B) is **XXXXXXX**.

3. **23-20512-E-7** **VONZIEL HARRISON** **CONTINUED MOTION FOR RELIEF**
ARS-1 **Thomas Amberg** **FROM AUTOMATIC STAY**
5-16-24 [52]

GLOBAL CAPITAL CONCEPTS, INC. VS.

CASE CONVERTED: 07/03/24

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

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

Sufficient Notice not Provided. There is no Certificate of Service filed in this matter. The court is unable to determine which parties were served. Local Bankruptcy Rule 7005-1 requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, counsel addressed this error and reported that it will not happen in the future.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

August 6, 2024 Hearing

The court continued the hearing on this Motion because Debtor reported that the case will be converted to one under Chapter 7, and agreed to continue the hearing for case management purposes. The case was converted on July 3, 2024.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Global Capital Concepts, Inc. ("Movant") seeks relief from the automatic stay with respect to Vonziel Harrison's ("Debtor") real property commonly known as 1635 Grand Avenue, Sacramento, Ca 95838 ("Property"). Movant has not provided any Declaration or other evidence in support of its Motion. Movant has only provided unauthenticated Exhibits showing its right to enforce the debt.

Movant argues its loan came due in 2018 in the amount of $100,000, and Debtor never made this payment. Motion. 2:27-3:4, Docket 52. Debtor's Plan called for a sale of the Property by March of 2024, using those proceeds to pay off all creditors in full. Plan § 7, Docket 12. A sale has not occurred.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 4, 2024. Dckt. 60. Debtor asserts that procedural errors bar granting relief. First, Debtor was never served, as the court noted. Second, Movant has not submitted any evidence in support of its Motion. Debtor argues these are sufficient grounds for denying the Motion. Opp'n ¶ 7, Docket 60.

Alternatively, Debtor asks that a briefing schedule on the matter be set as Debtor's counsel is currently traveling and unable to properly attend to the matter. *Id.*

Debtor submitted his own Declaration in support. Docket 61. Debtor explains that there was a firm purchase agreement in place to sell the Property for $320,000. *Id.* at ¶ 4. However, when it came time to close, Debtor learned the party which he purchased the Property from did not have clear title in the Property to convey. *Id.* at ¶ 3. Debtor is pursuing a quiet title action in order to consummate the sale. *Id.* at ¶ 5.

CHAPTER 13 TRUSTEE'S NONOPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee") filed an Nonopposition on June 4, 2024. Dckt. 63. Trustee asserts that Debtor is currently delinquent $600 in plan payments, and Debtor has not sold the Property by the required deadline. Trustee does not oppose the Motion.

DISCUSSION

The court also notes that though this Bankruptcy Case was filed February 21, 2023, Movant has not filed a proof of claim or sought to receive payment through this Bankruptcy Case. (Additionally, Debtor has not filed a Proof of Claim for Creditor.) Creditor's debt, only for purposes of this Motion for Relief, is determined to be $100,000 (Ex. A 4, Deed of Trust, Docket 55) while the value of the Property is determined to be $320,000, which was the amount Debtor had agreed to sell the Property. Debtor's Schedules A/B list the Property having a value of $450,000. Schedule A/B 3, Docket 11.

Looking at Debtor's confirmed Chapter 13 Plan, a person named "James Devisscher" is listed as the holder of a Class 4 Claim that was not in default as of the commencement of the Bankruptcy Case and which is to be paid directly by Debtor and not through the Bankruptcy Plan. Plan; § 3.10; Dckt. 12. That Plan was confirmed on April 27, 2023. Order; Dckt. 23. No proof of claim was filed by "James Devisscher."

Movant has failed to provide the court with any evidence in support of the Motion. The Motion contains various allegations and contentions – none of which are supported by any evidence. Movant has

filed four exhibits in support of the Motion – none of which are authenticated as required by Federal Rule of Evidence 901.

Looking at the unauthenticated exhibits, Exhibit A is promissory note for which a "James D. De Visscher" is identified as the payee. Dckt. 55. Exhibit B is titled "Allonge to Promissory Note" and is dated September 20, 2023. *Id*. It is signed by a Demetra Devisscher, identified as the sole heir to the deceased James DeVisscher. The Allonge states that all right, title, and interest in the Note and Deed of Trust are assigned to Global Capital Concepts, Inc.

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, as well as failing to sell the Property by the required deadline. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

However, Debtor has submitted testimony and a Response indicating a sale is in the works. Debtor must succeed on the quiet title action in order to go forward with a sale. If the sale can be completed, then there will be sufficient funds to pay all creditors in this case.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Here, there appears to be equity in the Property. The Property is to be sold be for approximately $320,000, which, after applying Movant's lien and unpaid property taxes, leaves over $100,000 in equity in the Property. Furthermore, this whole Chapter 13 Plan revolves around the sale of the Property, meaning the Property is necessary for an effective reorganization/rehabilitation. There is no basis for relief under 11 U.S.C. § 362(d)(2).

It is also significant that Movant fails to provide any testimony to support the allegations in the Motion and has left all of its exhibits unauthenticated. This just may be an oversight by Movant and counsel, being used to practicing in non-federal courts where they believe "evidence is optional" and all one needs to do is make allegations. The court notes that Movant's counsel was admitted to practice in the Eastern District of California on May 9, 2024. U.S. Dist Court, E.D. Cal Website, Attorney Lookup. Alternatively, it may be that none of Movant's principals are willing to provide such testimony under penalty of perjury.

Additional Grounds Asserted in Opposition

In the Opposition it is asserted that the sale of the Property has been delay because the seller of the Property to Debtor, James Devisscher, did not have full ownership and Debtor is now dealing with a clouded title. Opposition, ¶ 5; Dckt. 60. It is further asserted that Debtor is working to clear title, but has taken significantly longer than anticipated. *Id*.

Debtor has provided her testimony in support of her Opposition, and her testimony with respect to the clouded title includes (identified by paragraph numbers in the Declaration):

> 3. Prior to purchasing the property, I rented it from James Devisscher. Mr. Devisscher eventually agreed to sell me the property, only for me to find out later that he did not have clear title to the property.
>
> . . .
>
> 5. I am currently working to secure an attorney to represent me in a quiet title action. I will be filing a supplemental declaration relating to this as soon as I have more information.

Dec.; 61.

In her Declaration, Debtor does not identify the other persons asserting interests in the Property or describe the interests they assert to have the Property. Additionally, Debtor has not provided a copy of a title report showing the clouds on title.

June 18, 2024 Hearing

At the hearing, counsel for the Debtor reported that the case will be converted to one under Chapter 7, and agreed to continue the hearing for case management purposes.

The court continues the hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on August 6, 2024, for a Scheduling Conference.

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 Global Capital Concepts, 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 Motion for Relief from the Automatic Stay is **xxxxxxx**.

4. 09-46625-E-7 VASCO/MICHELE DEMELLO
W. Scott de Bie
MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $10987.48
6-6-24 [237]

CASE CLOSED: 07/18/19

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—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 11, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Application for Unclaimed Funds 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Application for Unclaimed Funds is xxxxxxx.

This matter comes before the Court pursuant to 11 U.S.C. § 347(a), 28 U.S.C. §2042, and the application of Citibank N.A., seeking payment of funds previously unclaimed by Citibank, N.A. in the above-entitled case. It appears from the application and supporting documentation that Citibank, N.A. is entitled to the funds paid into Court.

On June 6, 2024, a the Motion for Unclaimed Funds was filed by Citibank, N.A. Dckt. 237. The Clerk of the Court issued a Notice of Hearing for the Motion, Dckt. 238, setting the hearing for 10:30 a.m. on July 15, 2024, before the Hon. Fredrick Clement in Courtroom 28 of this Court.

On June 25, 2024, Judge Clement issued an Order of Recusal, removing himself from the this case and providing that the Case be reassigned to a different judge. Order; Dckt. 240. The Clerk of the Court issued a Notice of Transfer of Case, assigning the case to the undersigned judge.

On June 26, 2024, the Clerk of the Court issued an Order rescheduling the July 15, 2024 hearing, accelerating the hearing date to July 11, 2024, and to have it heard by the undersigned judge in Courtroom 33 of this Court.

On July 11, 2024, the hearing was conducted in Courtroom 33 on the Motion for Unclaimed Funds and no opposition was stated at the hearing. The court entered an order for the release of the Unclaimed Funds to Citibank, N.A. Order; Dckt. 248.

On July 17, 2024, Debtors Vasco DeMello and Michelle DeMello ("Debtors") filed a Notice of Opposition to Citibank, N.A.'s motion for unclaimed funds. The opposition states that the Debtors arrived at the courthouse, Courtroom 28, Seventh Floor, at 10:30 a.m. on July 15, 2024. The doors to Courtroom 28 were locked.

From what has been presented to the court, it appears that there has been some confusion for the Debtors as to the hearing date due to the Recusal Order and Hearing Date Change Order that accelerated the hearing date. Looking at the Docket, it is not clear that the Bankruptcy Noticing Center served the Notice of Rescheduled Hearing on the Debtors.

Given the Debtors efforts to attend the hearing on the original scheduled date of July 15, 2024, the Clerk of the Court accelerating the hearing date, possible confusion as to the change in date, and possible service issues, the court finds that grounds exists to vacate this court's prior order (Dckt. 248) and reschedule and renotice the hearing pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. Such order may be void, due to the possible lack of Due Process if Debtors did not have notice of the reschedule hearing date.

On July 21, 2024, the court vacated the Order authorizing disbursement of funds to Citibank, N.A. Order Vacating, Docket 250.

AUGUST 6, 2024 HEARING

The Opposition stated by the Debtor to the release of the Unclaimed Funds to Citibank, N.A. is summarized by the court as follows:

A. Debtor seeks the opportunity to reclaim the funds for which Citibank, N.A. has filed its Application of Unclaimed Funds.

Opposition; Dckt. 249. The Opposition does not state why the Debtor is entitled to receive the unsecured claim distribution in this Chapter 7 Case based to Citibank, N.A. based on Proof of Claim 11-1 stating a $29,667.32 general unsecured claim filed by Citibank, SD, N.A., for which a Transfer of Claim, Proof of Claim 15-1, was filed by Citibank, N.A.

At the hearing, **xxxxxxx**

The court shall issue an order stating:

~~**IT IS ORDERED** that the Clerk is directed to pay $10,987.48 from the Bankruptcy Estate of Vasco DeMello and Michele DeMello to:~~

~~Citibank, N.A.~~

~~The funds may be disbursed only after 14 calendar days from the entry of this court's order to allow for the appeal period to pass.~~

5. 24-22626-E-13 PHL-1 | **MOISES GARCIA** **Pro Se** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-22-24 [20]**

MEDALLION SERVICING LLC VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 22, 2024. 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 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

Medallion Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Moises Serrano Garcia's ("Debtor") real property commonly known as 26 Wilshire Avenue, Vallejo, California ("Property"). Movant has provided the Declaration of Brenda Voelker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 22.

Movant requests relief pursuant to 11 U.S.C. §§ 362(d)(1), (2), and (4). Movant argues that Debtor is acting in bad faith to hinder Movant's collection efforts by transferring 99% of his interest in the Property to Javier Jose Cruz, and by filing this bankruptcy case within five days after his initial case was dismissed in the Northern District for failing to file any required documents. Mot. 3:5-8; Mot. 3:11-12. Movant also expresses concern over the fact that Mr. Cruz now has an interest in the Property, so Movant argues relief *in rem* is necessary. *Id.* at 7:10-13. Therefore, Movant argues relief is warranted pursuant to 11 U.S.C. § 362(d)(4). The court notes Movant never requested relief from the codebtor stay of 11 U.S.C. § 1301.

Movant provides testimony that Debtor has not made any payments under the Note secured by the Property since November of 2023. Decl. 2:11-12, Docket 22. Movant provides evidence that the total outstanding debt owed on the obligation is $422,104.88, which includes the principal, interest, and related fees. *Id*. at 3:15-23. Movant also provides evidence that the total liens against the Property are approximately $484,493.31, including delinquent property taxes, a deed of Trust in favor of Ken Sun CPA Pension Plan recorded April 6, 2020 in the amount of $60,000.00, and Movant's own lien. *Id.* at 3:24-28.

At Exhibit 10 Movant attaches a Redfin price valuation of the Property at $484,376. Ex. 10 at p. 80, Docket 23. Therefore, Movant argues there is no equity in the Property.

While attaching a copy of a third-party Redfin price valuation, such valuation is not authenticated and no testimony is provided by the person or entity making such valuation. Additionally, Exhibit 10, the printout of the Redfin webpage where some third-party attempts to state an opinion of value of real property, has not been authenticated (even if it could provide non-hearsay testimony as to the value of real property). Fn.1.

FN. 1. Movant having just provided the court with a Redfin website printout, the court began to wonder what other such websites might provide hearsay statements of valuation of the Property. A commonly known site is zillow.com. For the Property, Zillow provides hearsay statements that the property has a value of $679,200. https://www.zillow.com/homes/26-Wilshire-Ave-Vallejo,-CA-94591_rb/15672528_zpid/.

No information about this much higher hearsay website valuation was provided by Movant.

DISCUSSION

On Schedule A/B Debtor states that he is the sole owner of the Property and it has a value of $749,000. Dckt. 1 at 13. No reference is made to a co-owner who was transferred a 99% interest. Debtor is providing his opinion, as a owner of the Property. While such testimony is ephemeral evidence of value, it is evidence of value.

Exhibit 7 is a copy of a Grant Deed that was recorded on April 1, 2024, with the Solano County Recorder which states that a 99% undivided interest in the Property was transferred to "Javier Jose Cruz, an unmarried man." Dckt. 23 at 54.

Movant attempts to authenticate this Exhibit by having Brenda Voelker, the manager of the Loan Servicer, testify that the trustee under the deed of trust acquired a copy of the Deed provided as Exhibit 7. Dec., ¶ 6. The Deed is dated March 27, 2024.

Movant does seek to have the court take judicial notice the records of the County Recorder, however it is not proper to so do. Requests for Judicial Notice are limited by Federal Rule of Evidence 201 to (emphasis added):

> Rule 201. Judicial Notice of Adjudicative Facts
>
> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> > (1) is **generally known within the trial court's territorial jurisdiction**; or
> >
> > (2) can be **accurately and readily determined from sources** whose accuracy cannot reasonably be questioned.

Here, the "fact" is a recorded document. This is not something that is generally known within the jurisdiction. Further, rather than being accurately and readily determined from sources it is accurate, the recorded document is itself the evidence put to the court.

Federal Rule of Evidence 902 provides for the self-authentication of public documents, like the County Recorder's Records, to be authenticated by being a certified copy by the public entity which maintains the document.

> Rule 902. Evidence That Is Self-Authenticating
>
> The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:
>
> (1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:
>
> > (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
> >
> > (B) a signature purporting to be an execution or attestation.
>
> (2) *Domestic Public Documents That Are Not Sealed but Are Signed and Certified.* A document that bears no seal if:

(A) **it bears the signature of an officer or employee of an entity named in Rule 902(1)(A);** and

(B) **another public officer who has a seal and official duties within that same entity certifies under seal—or** its equivalent—that the signer has the official capacity and that the signature is genuine.

. . .

(4) *Certified Copies of Public Records*. A copy of an official record—or **a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified** as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

Fed. R. Evid. 902 (emphasis added).

If not self-authenticating, then Federal Rule of Evidence 901 provides that sufficient evidence must be presented to support a finding that it is what the proponent claims it to be. A list of nonexclusive examples of such evidence is stated in Federal Rule of Evidence 901(b) which provides (emphasis added):

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) Testimony of a Witness with Knowledge. **Testimony that an item is what it is claimed to be.**

. . .

(7) Evidence About Public Records. Evidence that:

(A) a **document was recorded or filed in a public office as authorized by law**; or

(B) a purported public record or statement is from the office where items of this kind are kept.

Using the Federal Rules of Evidence, the court has allowed a witness, who obtained a copy of a public record, such as a deed or deed of trust, from the Recorder's Office to authenticate the document as having been obtained by that person from the County Recorder. This requires the person who actually went to the Recorder's Office to provide the authentication testimony.

Here, the trustee who obtained the Deed does not authenticate it and Exhibit 7 is not a certified copy of the Deed. It appears that Ms. Voelker's testimony is that she heard someone say that the Deed was obtained by the trustee and based on what Ms. Voelker heard some unidentified third-party say, she wants to repeat what she heard that third-party say. Such hearsay is not credible authentication of Exhibit 7.

Movant's falling back on Judicial Notice would render the provisions of Federal Rules of Evidence 901 and 902 a nullity.

While Movant may have failed to properly authenticate the Deed, if it does exist then it renders the Debtor's Schedule A/B inaccurate and creates a potentially fraudulent conveyance that the Debtor has a fiduciary duty to recover for the benefit of the Bankruptcy Estate.

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 $422,104.88 (Decl. 2:11-12, Docket 22), while the value of the Property is determined to be $749,000 as stated on Schedule A/B under penalty of perjury by Debtor. The total liens against the Property are approximately $484,493.31.

In this case, the automatic stay of 11 U.S.C. § 362(a) may have expired as to the Debtor on July 17, 2024, pursuant to 11 U.S.C. § 362(c)(3)(A), notwithstanding the court having entered an order stating that it was extended as to the Debtor. Order; Dckt. 31. The stay may have terminated to Debtor on this date because 11 U.S.C. § 362(c)(3) applies to the present case, so the relief pursuant to 11 U.S.C. § 362(c)(3)(B) must have been requested within thirty (30) days from the filing of the case in which the relief is sought. The Motion to Impose the Stay was filed on July 19, 2024, which is more than 30 days after the June 17, 2024 entry of the order for relief (the Case filing date) in this Bankruptcy Case.

However, even if the stay is not extended as to the Debtor, the language in 11 U.S.C. § 362(c)(3) is expressly limited to the Automatic Stay as it applies to the Debtor, **and only the Debtor**. This court first addressed the issue a number of years ago and then more recently in *In re Burns*, 639 B.R. 761 (Bankr. E.D. Cal. 2022). In *Burns*, the court provides a detailed analysis of statutory construction, statutory definitions, specific applications of the Automatic Stay to different persons or property (such as certain protections given to a debtor and other protections expressly given to property of the bankruptcy estate), and the application of 11 U.S.C. § 362(c)(4) in which Congress expressly provides when no stay goes into effect in the "bankruptcy case," rather than merely stating it does not go into effect as to the debtor. *Id.* Therefore, Movant must still gain relief from the stay to pursue assets of the Estate, including the Property that is the subject of this Motion.

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

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

Here, the cause exits because of the Debtor's prior filing of a bankruptcy case in the Northern District of California on May 28, 2024, stating his residence is in the Northern District of California. That

case was dismissed due to Debtor failing to file documents. Debtor then commenced this Case, in which he states that his residence is in the Eastern District of California.

Movant further argues, based upon the unauthenticated Grant Deed that Debtor transferred away 99% of his interest in the Property a month before the filing of the Northern District Bankruptcy Case.

Based on the evidence presented, there appears to be several hundreds of thousands of dollars of equity cushion protecting Movant's ($422,104.88) claim.

~~Here, the court determines that cause exists does not exist for terminating the automatic stay, including a lack of adequate protection in the Property. 11 U.S.C. § 362(d)(1). The request for relief is denied without prejudice.~~

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, the court determines that there is equity in the Property for the Debtor or the Estate.

~~The request for relief pursuant to 11 U.S.C. § 362(d)(2) is denied without prejudice.~~

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[6] (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.* Debtor filed one case on May 28, 2024 in the Northern District of California, case no. 24-50797. That case was dismissed quickly on June 12, 2024. Debtor filed the instant case on June 17, 2024, five days later. Movant provides authenticated evidence that Debtor transferred almost all of his interest in the Property to Javier Jose Cruz on April 1, 2024. Ex. 7 at p. 54, Docket 23. Serial filing and such a transfer of assets are the two benchmarks of bad faith justifying relief pursuant to 11 U.S.C. § 362(d)(4). 3 COLLIER ON BANKRUPTCY ¶ 362.07[6] (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

However, as addressed above, proper, admissible, credible evidence has not been provided by Movant as to the transfer or how such transfer is part of a scheme to hinder, delay, or defraud creditors.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, based on the evidence presented the court does not concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by the transfer or filing multiple (this being the second bankruptcy case) bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

Here, there is one prior case filing by this *pro se* Debtor. Movant references a pre-petition transfer, that has not been disclosed, and inaccurate statement of the Debtor's interest in the Property as of the commencement of this Bankruptcy Case. However, that alleged transfer is not tied into some scheme of the Debtor to hinder, delay, or default Movant. It is this pro se filing of a second case and the pro se filing of the prior case in Northern District that has delayed Movant.

With respect to further filings, Congress has imposed statutory relief as provided in 11 U.S.C. § 362(c)(4) - preventing the automatic stay from going into effect in any subsequent case filed before June 12, 2025. What has been presented to the court does not rise to warrant relief pursuant to 11 U.S.C. § 362(d)(4).

~~The court finds that proper grounds do not exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning one prior bankruptcy case being filed to prevent actions against the Property (which is not unusual and the driving force for consumer bankruptcy cases). Movant has not provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases. Movant does provide unauthenticated evidence of a pre-petition transfer, which might well result in a financial advantage for the Bankruptcy Estate and creditors.~~

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 (other than to state Movant seeks the fees "pursuant to the Security Agreement"). 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.

~~The court having denied the Motion without prejudice, Movant is not the prevailing party in this Contested Matter and has not shown any basis for awarding of fees and costs.~~

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

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

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 Medallion Servicing 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 denied without prejudice.~~

FINAL RULINGS

6. 19-24611-E-13 DPC-3 — RONALD/KIMBERLY GARNER — STATUS CONFERENCE RE: MOTION TO MODIFY CHAPTER 13 PLAN 4-24-23 [88]

Final Ruling: No appearance at the August 6, 2024 Status Conference is required.

Debtors' Atty: Douglas B. Jacobs

Notes:
Set by order of the court filed 5/28/24 [Dckt 131], the Trustee having filed a Motion for Status Conference re plan on 4/22/24 [Dckt 116]

The Status Conference is concluded and removed from the Calendar.

AUGUST 6, 2024 STATUS CONFERENCE

The Chapter 13 Trustee filed an Amended Status Report on July 30, 2024. Dckt. 134. The Trustee directs the court to Creditor having filed a Notice of Postpetition Mortgage Fee, Expenses, and Charges on May 20, 2024. Further, that no Objection to the Notice of Changes has been filed. *Id.*; ¶ 1.

The Creditor Mortgage Statement has been filed (Dckt. 126) and has been provided by the Trustee.

The Trustee then concludes that if this Status Conference was continued one final time, a stipulated modification can be drafted, signed by the parties in interest, and this Status Conference concluded without further proceedings.

The Trustee further suggests that if the court concludes that this matter should be removed from the Calendar in light of the forgoing information, the Trustee will still proceed with a stipulated modification to the Chapter 13 Plan. *Id.*, p. 2:1-5.

The parties in this Bankruptcy Case are well represented by experienced bankruptcy attorneys. It appears that the setting of the Status Conference has produce the desired effect sought by the Chapter 13 Trustee and the parties are moving forward (whether that is a stipulated modification or objection to Notice of Change).

These parties and their counsel can focus on what they will due in the diligent prosecution of this case and do not have to appear at a Status Conference, spending valuable time and money unnecessarily be complimented by the court for addressing this issue.

The Status Conference is concluded and removed from the Calendar.

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 court having conducted a hearing on the Motion to Set Status Conference filed by the Chapter 13 Trustee, the court having scheduled a Status Conference for August 6, 2024, the Chapter 13 Trustee having filed an Amended Status Report summarizing how the Parties are addressing the issues (Dckt. 133), the Chapter 13 Trustee reporting that the Status Conference should be continued or concluded, and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is concluded and removed from the Calendar.

May 21, 2024 Hearing to Set Status Conference

The Chapter 13 Trustee, David P. Cusick ("Trustee"), moves this court for an Order scheduling a Status Conference in the case. Trustee makes his Motion on the following grounds:

1. A Modified Plan was confirmed on July 27, 2023. Docket 113. The Modified Plan changes the Class 1 mortgage claim of Midfirst Bank ("Creditor") for $124,816.17 to Class 2 without setting an interest rate. Trustee has already paid $130,783.59 to that claim, of which $14,029.11 had been paid toward prepetition arrears. Mot., Docket 116 p. 1:24-28.

2. Trustee received a list of taxes and insurance disbursed by the Creditor from Creditor's Counsel on March 8, 2024 showing $24,840.08 of post-petition advances to property taxes and insurance. Trustee believes these expenses were expected by Ronald William Garner and Kimberly Kay Garner ("Debtor") as all Schedules J filed show no property taxes or property insurance expense; unfortunately, no notice of postpetition charges has been filed since October 7, 2019, and the charges commence November 7, 2019. *Id.* at p. 2:14-19.

3. April 2024 is the 57th month of the plan, and while the Trustee could simply adjust his records to show the claim as paid where the plan will pay no less than 61.25% to unsecured, which will result in an unexpected windfall to unsecured claims, but the Trustee believes seeking a status conference was more appropriate. Id. at p. 2:20-24.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 118.

Debtor filed a Response on May 7, 2024, stating that:

1. Trustee's restatement of the events of the case is accurate. Docket 123 ¶ 1.

2. However, Midfirst Bank, d/b/a Midland Mortgage, Creditor who currently holds the first mortgage on the home, claims an amount due on the mortgage of $33,671.17. Id. at ¶ 2.

3. Debtor requests Trustee pay any amount held on hand to Midland Mortgage and not increase the dividend to general unsecured creditors. *Id.* at ¶ 3.

Debtor submits their own Declaration at Docket 122, testifying that they wish to pay the Claim of Midland Mortgage with any funds Trustee has.

Debtor states that they have included an Exhibit A in their responsive pleadings showing Midland Mortgage's claimed amount, but a review of the Docket on May 14, 2024 reveals no such Exhibit has been filed.

DISCUSSION

11 U.S.C. § 105(d)(1) states:

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; . . .

Pursuant to this rule, the bankruptcy court may set a Status Conference as necessary to find an expeditious and economical resolution of a case. Here, the court finds a Status Conference would be helpful in determining how any excess amounts should be distributed. Trustee suggested in his Motion that he could pay the general unsecured creditors a higher dividend, while Debtor responded with a request to use excess funds on hand to pay Midland Mortgage.

At the hearing, counsel for the Trustee reported that the parties have been addressing these issues. As such, the Trustee requests that the Status Conference be set sixty days out. The other parties concurred with such Status Conference being set out sixty days.

7. 23-23620-E-11 GEL-1

ROBERT P. OBREGON DDS INC.
Gabriel Liberman

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
10-13-23 [9]

Final Ruling: No appearance at the August 6, 2024 Hearing is required.

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Office of the United States Trustee and all creditors and parties in interest on October 13, 2023. By the court's calculation, 4 days' notice was provided. The court set the hearing for October 17, 2023. Dckt. 15.

The Motion to Use Cash Collateral and Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, 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. .

The hearing on the Motion for Authority to Use Cash Collateral is concluded and removed from the Calendar.

August 6, 2024 Hearing

The court continued this hearing to August 6, 2024, having granted the previous Motion to use Cash Collateral through August, 2024. Debtor/Debtor in Possession filed a Supplemental Document (Docket 169) and updated proposed cash collateral budget (Exhibit A, Docket 170) for the months of September, 2024 through January, 2025.

However, on August 5, 2024, the court entered its Order confirming the Debtor/Debtor in Possession's Second Amended Subchapter V Plan. On August 1, 2024, Debtor/Debtor in Possession filed a Supplemental Report that with the confirmation of the Plan, no further authorization of case collateral was necessary and the hearings on this Motion concluded.

The Subchapter V Plan having been confirmed, the hearing on the Motion to Use Cash Collateral is concluded and removed from the Calendar.

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 Continued Hearing on the Motion for Further Use of Cash Collateral having been set for August 6, 2024, the court having confirmed the Debtor/Debtor in Possession's Subchapter V Plan, the Debtor/Debtor in Possession reporting that with such confirmation no further authorization of use of cash collateral was sought and the hearing on this Motion may be concluded, and good cause appearing,

IT IS ORDERED that the hearings on the Motion to Use Cash Collateral is concluded and removed from the Calendar.

8. 24-20055-E-13 DS-1 | **JOHN HISER** | **Catherine King** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** **7-1-24 [33]**

SAILFISH SERVICING, LLC VS.

DEBTOR DISMISSED: 07/12/24

Final Ruling: No appearance at the August 6, 2024 Hearing is required.

The case having previously been dismissed, the Motion for Relief is denied as moot without prejudice. Order, Docket 42.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on July 12, 2024.

Sailfish Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to John Michael Hiser's ("Debtor") real property commonly known as 12435 Renegade Lane, Bella Vista, CA 96008 ("Property"). Movant has provided the Declaration of Jennifer Gray to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on July 12, 2024, for fell behind in plan payments and failed to prosecute the case. Dckt. 42.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> (A) the time the case is closed;
>
> (B) ***the time the case is dismissed***; or
>
> (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> (1) reinstates—
>
> (A) any proceeding or custodianship superseded under section 543 of this title;
>
> (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
>
> (C) any lien voided under section 506(d) of this title;
>
> (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
>
> (3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of July 12, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on July 12, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Sailfish Servicing, 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 denied without prejudice as moot, this bankruptcy case having been dismissed on July 12, 2024 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to John Michael Hiser ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 12435 Renegade Lane, Bella Vista, CA 96008 ("Property"), pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the July 12, 2024 dismissal of this bankruptcy case.

9. 24-20884-E-13 RPM-1 | **RAKESH/BALJIT BAINS** | **Mark Wolff** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 6-26-24 [94]**

DAIMLER TRUCK FINANCIAL SERVICES USA LLC VS.

Items 9 thru 11

Final Ruling: No appearance at the August 6, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2024. By the court's calculation 40 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.

Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay or adequate protection with respect to an asset identified as a 2022 Freightliner Cascadia, VIN 3AKJHHDR3NSNC2110 ("Vehicle"). The moving party has provided the Declaration of Tiana Brooks to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Red Wing Carrier, Inc. ("Red Wing"), who is not the Debtor. Decl., Docket 96.

Movant argues the Vehicle was owned by Red Wing, and then debtor Rakesh Kumar Bains and Baljit Kaur Bains ("Debtor") may have since transferred title upon Red wing's dissolution, not paying various creditors in the process. Mot. 3:3-10, Docket 94. Debtor has not produced evidence that it is the owner as of yet. *Id.*

Creditor submits authenticated evidence showing Red Wing owns the Vehicle, not Debtor, with Debtor's name not appearing as owner of the Vehicle on the Retail Installment Sale Contract and State of California Certificate of Title. *See* Exhibits A-C, Docket 99. Debtor Rakesh Bains' name appears, but only as guarantor of the debt, not as owner. Ex. A at p. 4, Docket 99.

Movant argues the account is delinquent multiple pre and postpetition payments of $2,663.69 each, with a total of $132,096.40 currently due on the entire contract. Decl. 2:23-27; *Id.* at 3:16-24, Docket 96. Movant further argues it is unclear that the Vehicle is insured at this time, and Debtor has not responded to Movant's requests for proof of insurance. Mem. 2:16-17, Docket 97.

The Chapter 13 Trustee filed a nonopposition on July 23, 2024. Docket 121.

Debtor did not file an Opposition. Debtor filed an Amended Plan on July 9, 2024, which surrenders the Vehicle to Movant in satisfaction of the secured claim in Class 3. Am. Plan § 3.10, Docket 127.

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 $132,096.40 (Decl. 3:16-24, Docket 96), while the value of the Vehicle is determined to be $50,000, as stated in Schedules A/B filed by Debtor. Schedule A/B 3:3.7, Docket 16.

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.

As such, the court finds cause to grant relief from the stay, including both postpetition defaults in payments, lack of insurance, and the issues surrounding ownership.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court for no particular reason. However, as it is clear Debtor intends to surrender the collateral, the court will grant additional relief stated in the prayer.

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 Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA 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** 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 2022 Freightliner Cascadia, VIN 3AKJHHDR3NSNC2110 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

10. 24-20884-E-13 RPM-2 | **RAKESH/BALJIT BAINS** | **Mark Wolff** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** | **6-26-24 [101]**

DAIMLER TRUCK FINANCIAL SERVICES USA LLC VS.

Final Ruling: No appearance at the August 6, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2024. By the court's calculation 40 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.

Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay or adequate protection with respect to an asset identified as a 2018 Great Dane Trailer, VIN 1GRAP062XJJ110550 ("Vehicle"). The moving party has provided the Declaration of Tiana Brooks to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Red Wing Carrier, Inc. ("Red Wing"), who is not the Debtor. Decl., Docket 105.

Movant argues the Vehicle was owned by Red Wing, not debtor Rakesh Kumar Bains and Baljit Kaur Bains ("Debtor"). Mot. 2:26-3:3, Docket 101.

Creditor submits authenticated evidence showing Red Wing owns the Vehicle, not Debtor, with Debtor's name not appearing as owner of the Vehicle on the Retail Installment Sale Contract and State of California Certificate of Title. *See* Exhibits A-C, Docket 103. Debtor Rakesh Bains' name appears, but only as guarantor of the debt, not as owner. Ex. A at p. 4, Docket 103.

Movant argues the account is delinquent multiple pre and postpetition payments of $1,192.36 each, with a total of $34,974.80 currently due on the entire contract. Decl. 3:6-10; *Id.* at 3:11-13, Docket 105. Movant further argues it is unclear that the Vehicle is insured at this time, and Debtor has not responded to Movant's requests for proof of insurance. Mem. 2:15-16, Docket 104.

The Chapter 13 Trustee filed a nonopposition on July 23, 2024. Docket 146.

Debtor did not file an Opposition. Debtor filed an Amended Plan on July 9, 2024, which surrenders the Vehicle to Movant in satisfaction of the secured claim in Class 3. Am. Plan § 3.10, Docket 127.

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 $34,974.80 (Decl. 3:11-13, Docket 105), while the value of the Vehicle is determined to be $5,000, as stated in Schedules A/B filed by Debtor. Schedule A/B 4:3.1(2), Docket 16.

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.

As such, the court finds cause to grant relief from the stay, including both postpetition defaults in payments, lack of insurance, and the issues surrounding ownership.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court for no particular reason. However, as it is clear Debtor intends to surrender the collateral, the court will grant additional relief stated in the prayer.

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 Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA 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** 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 Great Dane Trailer, VIN 1GRAP062XJJ110550 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

11. 24-20884-E-13 RPM-3 | **RAKESH/BALJIT BAINS** | **Mark Wolff** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** | **6-26-24 [108]**

DAIMLER TRUCK FINANCIAL SERVICES USA LLC VS.

Final Ruling: No appearance at the August 6, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 27, 2024. By the court's calculation 40 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.

Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay or adequate protection with respect to an asset identified as a 2021 Freightliner Cascadia, VIN 3AKJHHDR7MSMD9925 ("Vehicle"). The moving party has provided the Declaration of Tiana Brooks to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Red Wing Carrier, Inc. ("Red Wing"), who is not the Debtor. Decl., Docket 113.

Movant argues the Vehicle was owned by Red Wing, not debtor Rakesh Kumar Bains and Baljit Kaur Bains ("Debtor"). Mot. 3:3-8, Docket 108.

Creditor submits authenticated evidence showing Red Wing owns the Vehicle, not Debtor, with Debtor's name not appearing as owner of the Vehicle on the Retail Installment Sale Contract and State of California Certificate of Title. *See* Exhibits A-C, Docket 112. Debtor Rakesh Bains' name appears, but only as guarantor of the debt, not as owner. Ex. A at p. 4, Docket 112.

Movant argues the account is delinquent multiple pre and postpetition payments of $2,409.36 each, with a total of $104,569.46 currently due on the entire contract. *See* Ex. B at 10, Docket 112; Decl. at 3:16-17, Docket 113. Movant further argues it is unclear that the Vehicle is insured at this time, and Debtor has not responded to Movant's requests for proof of insurance. Mem. 2:15-16, Docket 110.

The Chapter 13 Trustee filed a nonopposition on July 23, 2024. Docket 148.

Debtor did not file an Opposition. Debtor filed an Amended Plan on July 9, 2024, which surrenders the Vehicle to Movant in satisfaction of the secured claim in Class 3. Am. Plan § 3.10, Docket 127.

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 $104,569.46 (Decl. at 3:16-17, Docket 113), while the value of the Vehicle is determined to be $50,000, as stated in Schedules A/B filed by Debtor. Schedule A/B 3:3.6, Docket 16.

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.

As such, the court finds cause to grant relief from the stay, including both postpetition defaults in payments, lack of insurance, and the issues surrounding ownership.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court for no particular reason. However, as it is clear Debtor intends to surrender the collateral, the court will grant additional relief stated in the prayer.

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 Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA 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** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Freightliner Cascadia, VIN 3AKJHHDR7MSMD9925 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.