UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 20, 2024 at 1:30 p.m.

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1. 24-22626-E-13 **MOISES GARCIA** **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY**
Pro Se **7-19-24 [17]**
1 thru 3

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 all parties in interest, Chapter 13 Trustee, and Office of the United States Trustee on July 22, 2024. By the court's calculation, 10 days' notice was provided. The court set the hearing for July 30, 2024. Dckt. 18.

The Motion to Impose 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. At the hearing opposition was presented.

The Motion to Impose the Automatic Stay is xxxxxxx.

August 20, 2024 Hearing

The court continued the hearing on this Motion from the July 30, 2024 calendar, Debtor not having appeared at the prior hearing. Creditor Medallion Servicing, LLC presented opposition at the prior hearing. The court gave Creditor until August 13, 2024, to file any opposition pleadings. Docket 51.

On August 13, 2024, Creditor filed its opposition pleading. Dockets 68. Creditor states:

1. Debtor has not overcome the presumption of bad faith, and Debtor fails to show the court that there has been a substantial change in his financial or personal affairs since the dismissal of the Northern District Case, and Debtor is unable to demonstrate that he is in a position to confirm a Chapter 13 Plan that will be fully performed. Opp'n 1:2-5, Docket 68. *See In re Villanueva*, 274 B.R. 836, 841 (9th Cir. B.A.P. 2002).

2. Debtor has not overcome the presumption of bad faith because Debtor has misrepresented facts on the petition, including an improper valuation of the Property. Debtor also transferred a 99% interest in the home to a third party after Creditor began foreclosure proceedings, without Creditor's knowledge or consent. Opp'n at 5:27-6:1; 2:8-9.

3. Debtor's bankruptcy history also shows he has not overcome the presumption of bad faith, his previous case being quickly dismissed. *Id.* at 6:2-3.

4. Furthermore, Debtor's present filing was intended solely to defeat state court litigation, as he has not made any Plan payments and has failed to provide the Chapter 13 Trustee with required information. He also fails to list unsecured creditors such as his wife and the attorneys that were supposed to be paid in the Divorce Case. *Id.* at 6:2-5.

5. Debtor has not presented any evidence in support of this Motion, which is egregious behavior. *Id.* at 6:7-8.

6. The automatic stay terminates as to both Debtor and property of the Estate pursuant to *In re Reswick*, 446 B.R. 362, 365–66 (9th Cir. BAP 2011). Opp'n at 7:3-15.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Debtor Moises Serrano Garcia ("Debtor") commenced this Chapter 13 Case on June 17, 2024. On July 19, 2024, Debtor filed a motion titled "Emergency Motion to Impose the Automatic Stay." Dckt. 17. In the Motion, Debtor's grounds stated include:

A. Debtor requests that the court impose the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4). Motion, p. 1:24-25; Dckt. 17.

B. Prior to filing this Bankruptcy Case Debtor had a prior case that was pending in the Northern District of California Bankruptcy Court (24-50797) that was dismissed on June 14, 2024. *Id.*; p. 2, ¶ 1.

C. Pursuant to 11 U.S.C. § 362(c)(4) the Automatic Stay terminated thirty (30) days after the Current Bankruptcy Case in the Eastern District of California was filed on June 17, 2024. *Id.*; p. 2, ¶ 2.

D. Debtor cites to 11 U.S.C. § 362(c)(4)(B), stating that if within 30 days after the filing of the bankruptcy case the party in interest, which includes the Debtor, the court may order the stay to go into effect in the bankruptcy case. *Id.*; p. 2, ¶ 4.

E. In Paragraph 4 of the Motion Debtor states grounds by which he asserts that the presumption of bad faith is rebutted. *Id.*

No declaration is filed in support of the Motion.

Prior Filed Bankruptcy Cases
For Debtor Pending and Dismissed
Within One Year of June 17, 2024

A review of the records for the Bankruptcy Court in the Eastern District of California showed no prior bankruptcy case having been filed by the Debtor.

A review of the Northern District of California records, using PACER, discloses only one prior bankruptcy case having been filed by Debtor, case 24-50797, as reported by Debtor. That Northern District Chapter 13 case was filed on May 28, 2024, and dismissed June 12, 2024.

Application of 11 U.S.C. § 362(c)(4)
to Debtor and Prior Case Filings

The Motion seeks relief pursuant to 11 U.S.C. § 362(c)(4)(B), requesting the court impose the Automatic Stay in this Bankruptcy Case. Congress provides in 11 U.S.C. § 362(a) for no Automatic Stay to go into effect when there have been two bankruptcy cases that were pending and dismissed within one year of the filing of a subsequent case:

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section—
> . . .
> (4)
> (A)
> (i) if a single or joint case is filed by or against a debtor who is an individual under this title, **and if 2 or more** single or joint **cases of the debtor were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection
>
> (a) **shall not go into effect** upon the filing of the later case; . . . .

11 U.S.C. § 362(c)(4) [emphasis added].

Under the plain language of 11 U.S.C. § 362(c)(4)(a), there must have been two prior bankruptcy cases that were pending and dismissed in the year prior to the June 17, 2024 filing of the Current Bankruptcy Case.

Thus, it appears that 11 U.S.C. § 362(c)(4) did not prevent the Automatic Stay from automatically going into effect in the Current Bankruptcy Case.

Time Limit to Seek Relief
Pursuant to 11 U.S.C. § 362(c)(4)(B)

The court notes that if 11 U.S.C. § 362(c)(4)(A) applies to the present case, the relief pursuant to 11 U.S.C. § 362(c)(4)(B) must be requested within thirty (30) days from the filing of the case in which the relief is sought. The Current Bankruptcy Case was filed on June 17, 2024, and the Debtor's current Motion was filed on July 19, 2024. The court computes the thirtieth (30th) day after June 17, 2024 to be July 17, 2024.

Alternative Relief That
May be Requested

It appears that the *pro se* Debtor may have been confused about the possible applicable of 11 U.S.C. § 362(c) when there have been prior bankruptcy cases filed. Congress provides in 11 U.S.C. § 362(c)(3) for a reduction in the application of the Automatic Stay when there has been one prior bankruptcy case that was pending and dismissed, providing:

> (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; . . . .

11 U.S.C. § 362(c)(3)(A), (B) [emphasis added].

Thus, it appears that 11 U.S.C. § 362(c)(3)(A) may have caused the Automatic Stay to terminate as to the Debtor, but only 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.*

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].

Thus, though the Automatic Stay may have terminated "as to the debtor" in this case, the Automatic Stay continues in effect as to others granted protection in 11 U.S.C. § 362(a) [such as property of the bankruptcy estate].

Opposition Presented at
July 30, 2024 Hearing

Counsel for creditor Medallion Servicing, LLC ("Creditor") appeared at the hearing. The Debtor did not appear at the hearing.

Counsel for Creditor advised the court that a Motion for Relief from the Automatic Stay has been filed (Dckt. 20) and one of the grounds asserted is that this bankruptcy case has not been filed in good faith. Counsel wanted to make sure it was clear on the record that the court extending the stay did not constitute a determination of good faith with respect to Creditor's claim and Motion for Relief.

Under the totality of the circumstances, the court is extending the stay as to the Debtor to avoid any confusion over the stay. Given that Creditor already has a Motion for Relief pending, need relief as to the Bankruptcy Estate even if the stay were to terminate as to the Debtor, the issues of good faith as to Creditor will be adjudicated in that Relief From Stay Contested Matter.

Extension of the Automatic Stay as to Debtor

At the hearing the court addressed with the *pro se* Debtor the differences between 11 U.S.C. § 362(c)(3)(A) and § 362(c)(4)(A). Debtor clarified that under the circumstances, the intended relief requested was "only" the extension of the Stay as to the Debtor pursuant to 11 U.S.C. § 362(c)(3)(B), which is already in effect in this Case, and not the imposition of the Stay.

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith in general under the facts of this case and the prior case for the court to extend the automatic stay. The court does not make a determination of good faith with respect to the secured claim of creditor Medallion Servicing, LLC and its Motion for Relief From the Automatic Stay.

The Motion is granted, and the automatic stay is extended on an interim basis for all purposes and parties through and including August 30, 2024, unless terminated by operation of law or further order of this court. The continued hearing on this Motion will be conducted at 1:30 a.m. on August 20, 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 to Impose the Automatic Stay filed by Moises Serrano Garcia ("Debtor") 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 **xxxxxxx**.

2. 24-22626-E-13 PHL-1 | **MOISES GARCIA, Pro Se** | **CONTINUED 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.

August 20, 2024 Hearing

The court continued the hearing from its August 6, 2024 calendar to be heard in conjunction with the other Motion for Relief below. The court held Movant fell short of its evidentiary burden and gave Movant the deadline of August 9, 2024 to file supplemental pleadings. Docket 51.

On August 9, 2024, Movant filed Supplemental Declarations and Exhibits in support. Decl., Dockets 62, 63; Exhibits, Docket 64.

Patricia Lyon, attorney for Medallion Servicing LLC ("Movant") testifies in her Declaration:

1. The attached Grant Deeds at Exhibits 11-15 are true and correct certified copies of the recorded documents, obtained directly form the Solano County

Recorder's Office in Fairfield, California. Ms. Lyon requests the court take judicial notice of these documents. Decl. 1:27-2:19, Docket 62.

2. Debtor represented in his Motion to Impose the Stay and Opposition to the Motion for Relief that he was forced out of the San Jan Bautista Property by his ex-wife and implied he recently purchased the property commonly known as 26 Wilshire Avenue, Vallejo, California ("Property"). However, these events did not occur recently, as Debtor purchased the Property as a single man in 2020, and Movant made its loan secured by a deed of trust on July 12, 2023. *Id.* at 2:20-3:5.

3. Debtor transferred a 99% interest in the Property to Jose Javier Cruz on April 1, 2024, a few months after Movant's foreclosure trustee recorded a notice of default. *Id.* at 3:14-19.

4. Debtor failed to include his ex-wife as a creditor or list any domestic support obligations in the petition, despite there being a final order granting Debtor's ex-wife spousal support of $2,733 per month, retroactive February 8, 2021. *Id.* at 4:1-20.

5. The promissory note evidencing Movant's loan provides for the payment to Movant of attorney's fees and costs incurred in connection with collection. Ms. Lyon's rate was $450 per hour, and her partner's rate was $400 per hour. Ms. Lyon includes her billing and task statement, showing fees of $10,920. *Id.* at 4:21-6:4.

The court notes that certified copies of the grant deeds, deed of trust Notice of Default and Notice of Sale, at Exhibits 11-15, Docket 64, are self-authenticating documents pursuant to Fed. R. Evid. 902(4). The court admits these Exhibits as evidence.

Movant also submitted the Declaration of its manager Brenda Voelker. Decl., Docket 63. Ms. Voelker testifies:

1. She is a real estate broker licensed in California since 2015. *Id.* at ¶ 2.

2. She obtained a list of sales of comparables at the time the loan was made in 2023, determining the Property had a value of $575,000. *Id.* at ¶ 3.

3. She has consulted Zillow after the previous hearing held on August 6, 2024, as well as researching other comparables. Ms. Voelker testifies the Property still has a current valuation of $575,000. *Id.* at ¶ 9.

4. She authenticates supplemental Exhibits 16-22 in her testimony, which Exhibits depict price comparables for the Property.

Attorneys' Fees

The note secured by the deed of trust at Ex. 1, Docket 23, contains the following provision:

> If this Note is not paid when due, the undersigned promises to pay, in addition to the principal and interest due under this note, all costs of collection and any reasonable attorney's fees incurred by the Lender thereof on account of such collection, whether or not suit is filed hereon.

Ex. 1 at 4, Docket 23. Although the fees sought related to this Motion may appear high, the court acknowledges this is a complicated case requiring extra effort in prosecuting the Motion.

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment as they do not have "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

Here, the court finds the attorneys' fees to be reasonable under the circumstances. Movant was tasked by this court with providing supplemental pleadings to reinforce the evidentiary record. Movant has complied with this order, presenting clear evidence of both the Property's valuation as well as the grant deeds of trust recorded against the Property. The court awards prevailing party attorneys' fees in the amount of $10,920 for work performed related to this Motion for Relief.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Movant seeks relief from the automatic stay with respect to Moises Serrano Garcia's ("Debtor") 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.

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).

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).

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.

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.

At the hearing, Movant's counsel directed the court to a Motion for Relief filed by Debtor's spouse/ex-spouse, which demonstrates the inaccurate information filed and the Debtor having transferred title shortly before the bankruptcy case.

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 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 26 Wilshire Avenue, Vallejo, California ("Property") to secure

an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

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

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

IT IS FURTHER ORDERED that the fees of $10,920 are awarded to Movant for work related to this Motion pursuant to the note secured by the deed of trust at Ex. 1, Docket 23.

No other or additional relief is granted.

3. 24-22626-E-13 SBL-1 | **MOISES GARCIA** Pro Se | **MOTION FOR RELIEF FROM AUTOMATIC STAY** 8-5-24 [37]

LUCILA GARCIA 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 August 5, 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.

Lucila Perez Garcia ("Movant") seeks relief from the automatic stay to allow Superior Court of California, San Jose Division, proceed with the marriage dissolution proceeding commenced on December 24, 2019, Case No. 19FL004863 (the "State Court Litigation") to be concluded. Movant has provided the Declarations of Yadhira N. Gutierrez (Docket 39) and Lucila Perez Garcia (Docket 43) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Moises Serrano Garcia ("Debtor").

Movant states the following facts in the Motion with particularity (Fed. R. Bankr. P. 9013):

1. Debtor and Movant were married on April 19, 1994. They were separated on or about November 14, 2020. Mot. 2:9-10, Docket 37.

2. Movant is monolingual, only speaking Spanish, while Debtor is bilingual, speaking Spanish and English.

3. On June 8, 2020, while still holding himself out as Movant's husband, and unbeknownst to Movant, Mr. Garcia filed for entry of a Default Judgment for Dissolution. *Id.* at 3:3-4.

4. On August 24, 2020, the Court entered a default Judgment for Dissolution based on Mr. Garcia's misrepresentations. Movant did not receive a notice of entry of Judgment nor the Judgment. The Default Judgment provided that the Debtor would get the family home and that there were no community debts. The Debtor did not even mention it to her. *Id.* at 3:7-10.

5. On November 14, 2020, Movant found a series of documents in their home containing her name. She had them translated and found that they were dissolution of marriage and sale documents. She quickly took steps to restore her community property interest in the assets Mr. Garcia had disposed of in violation of his fiduciary duties and to participate in the dissolution proceedings. *Id.* at 3:19-23.

6. Movant's motion to set aside the default judgment for dissolution was heard on May 5, 2021. The Family Court set aside the default judgment and found that the information provided by Debtor in his disclosures and request for Default are inaccurate. Debtor was ordered to pay, by June 1, 2021, Movant's attorney's fees in the amount of $6,439.60 and to pay spousal support in the amount of $2,733 per month, retroactive to February 8, 2021. Debtor has not complied with the support order. As of July 10, 2024, Movant is owed $99,560.48 in past-due support and interest. *Id.* at 4:19-25.

7. Movant requests relief from the stay to pursue the State Court Litigation that includes:

   a. Dividing and allocating the parties' separate and community property and debt. Ms. Garcia understands community property is part of Mr. Garcia's bankruptcy estate for payment of community debts.

   b. Determining and awarding support, costs, attorney's fees and any sanctions incident to Mr. Garcia's failure to pay support or concealment of assets and breaches of his duties;

   c. Determining the character of any marital debt(s) owed by Debtor to any persons or entities including to Movant;

   d. Determining the character of any marital debt(s) owed by Ms. Garcia to Debtor;

e. Enforcing any and all orders entered in the marital dissolution proceeding, except those involving collection;

f. Enforcing the terms of any restraining orders and other orders issued in connection with the dissolution proceeding, including discovery orders and orders awarding costs, sanctions and attorney's fees against any party that has violated those orders; and

g. To take any other actions that are appropriate and necessary to carry out the dissolution.

Mot. 7:12-8:4, Docket 37.

In their Declarations, Movant and Ms. Gutierrez testify as to the authenticity of the facts alleged in the Motion. They also authenticate the attached Exhibits, which include the Marriage Dissolution Petition. Ex. 1, Docket 41. The court notes Local Bankruptcy Rule 9004-2(d)(2) states: "Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document." Movant did not comply with this Rule in filing her Exhibits.

On August 13, 2024, Ms. Gutierrez filed a supplemental Declaration in support. Decl., Docket 71. The supplemental Declaration authenticates and actually resubmits the Exhibits filed at Dockets 41 and 42, but resubmits the Exhibits as certified copies. However, Ms. Gutierrez attached those certified copies to her supplemental Declaration, which is improper. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankr. R. 9004-2(c)(1).

At the hearing, **xxxxxxx**

The court admits these Exhibits into evidence under Fed. R. Evid. 902(4) as self-authenticating documents.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)).

The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or

is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

11 U.S.C. § 362(b)(2) excepts from the stay the following:

> (b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—
>
> . . .
>
> (2) under subsection (a)—
>
> (A) of the commencement or continuation of a civil action or proceeding—
>
> (i) for the establishment of paternity;
>
> (ii) for the establishment or modification of an order for domestic support obligations;
>
> (iii) concerning child custody or visitation;
>
> (iv) **for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate**; or
>
> (v) regarding domestic violence;

11 U.S.C. § 362(b)(2) (emphasis added). This recognizes the special nature of some state court proceedings and federal court's generally exercising discretion and not delve into family law or probate proceedings in general, but focus on how they interplay with Federal Law.

The court, as well as the practitioners now before the court, recognizes that the Bankruptcy Code allows for the federal bankruptcy judge to clearly provide whether the stay is applicable or not with respect to a state court proceeding, and not merely leave the state court judge having to delve into the intricacies of Bankruptcy Law.

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been in stages of litigation already with the parties making headway in determining the division of marital assets. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already. Such relief does not include allowing for the State Court to "take over" administration of property of the Bankruptcy Estate or provide for distributions of property of the Bankruptcy Estate outside of Bankruptcy Law.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Lucila Perez Garcia ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Moises Serrano Garcia ("Debtor") to allow Movant to proceed with the marriage dissolution proceeding in Superior Court of California, San Jose Division, commenced on December 24, 2019, Case No. 19FL004863, for the conclusion of obtaining a final judgment for dissolution of the marriage with Debtor, address custody and support issues, address other personal family issues as part of the dissolution proceedings, and make a property division order/judgment, which is subject to this court exercising exclusive jurisdiction (28 U.S.C. § 1334(e)) over all property of the Bankruptcy Estate and all property of the Debtor.
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to any property of the Bankruptcy Estate and property of the Debtor, for which this Bankruptcy Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e), or enforcement of any judgment against Debtor, David Cusick, the Chapter 13 Trustee, or property of the bankruptcy estate.
>
> Any judgment or order for the division of property, determining whether property that is or could be property of the Bankruptcy Estate or the Debtor is separate or community property, the granting of property division, or other determination of property rights and interest, is not effective in determining whether property is property of the Debtor or the Bankruptcy Estate during the marriage and

prior to the final decree of dissolution of the marriage. The property division judgment or other order determining community property, separate property, or division of assets will be considered by the Bankruptcy Court as to how property is to be disbursed upon completion or dismissal of the Bankruptcy Case, as well as the application of other legal principles such as marshaling of assets.

If the entry of an order or judgment for determination of the rights and interests in specific property prior to the completion of this Bankruptcy Case or dismissal of this Bankruptcy Case is requested, relief may be sought in a supplemental motion for further relief from the automatic stay and for this court to abstain from determining such ownership or property division issues. Such supplemental motion shall specifically identify the property that will be the subject of such state court proceedings.

No other or additional relief is granted.

4. **23-22970-E-13 BRL-1** | **DANIEL PUENTES** **Gabriel Liberman** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY, MOTION FOR ADEQUATE PROTECTION 7-24-24 [106]**

AZIZ ZHARI VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 24, 2024. By the court's calculation, 27 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. The Motion for relief from the Co-Debtor stayed is denied as moot, this court converting the case to one under Chapter 7 at the hearing held on August 6, 2024. Docket 113.

Aziz Zhari and Monica Zhari ("Movant") seek relief from the automatic stay with respect to Daniel Puentes' ("Debtor") real property commonly known as 8318 Kobert Road, Winters, California ("Property"). Movant has provided the Declaration of Corey Cullen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 109.

On or about May 22, 2020, Debtor obtained a loan from Movant, executing and delivering to Movant a promissory note in the principal amount of $99,000.00. Decl. 2:19-20, Docket 109. The note was for interest only payments until a balloon payment when it came due on June 1, 2022. *Id.* at 2:21-3:1. Movant states it has not received a postpetition payment at all, totaling 11 missed postpetition payments. Mot. 2:18-19, Docket 106.

Therefore, due to missed payments, accrued interest, and foreclosure fees and costs, there is a total $129,655.25 arrearage. Decl. at 4:1-10, Docket 109. Movant's deed of trust is in second position with Shellpoint Mortgage Servicing in first position. Shellpoint Mortgage Servicing's first position deed of trust has a balance of $268,717. *Id.* at 4:21-23. The Property is also encumbered by a junior judgment lien in favor of Erika Puentes-Ceja and Vidal Ceja in the amount of $92,500.00. *See* Schedule D 14:2.3, Docket 16.

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 $129,655.25, while the value of the Property is determined to be $666,500 as stated in Schedule D filed by Debtor. Schedule D 3:1.1, Docket 16. By the court's calculation, the outstanding consensual and non-consensual liens on the Property total $490,872.25.

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

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

11 U.S.C. § 362(d)(2)

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

However, based upon the evidence submitted, the court determines that there is equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Relief is not granted pursuant to 11 U.S.C. § 362(d)(2).

Co-Debtor Stay

There are no grounds for relief pursuant to the Co-Debtor Stay under 11 U.S.C. § 1301(a) because this case is no longer in Chapter 13. This part of the relief is denied without prejudice as moot, there no longer being a Co-Debtor Stay in place in this case.

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 Aziz Zhari and Monica Zhari ("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 8318 Kobert Road, Winters, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of 11 U.S.C. § 1301(a) is denied without prejudice as moot, this case no longer being under Chapter 13.

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.

5.	**24-20988-E-13** **KXL-1**	**ANDREA MOORE** **Peter Cianchetta**	**CONTINUED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY** **5-23-24 [34]**

5 thru 6

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 23, 2024. By the court's calculation, 27 days' notice was provided as of the date of the Amended Notice of Hearing. Docket 45. 28 days' notice is required, so the court has permitted oral argument.

The Motion to Confirm Absence of 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 to Confirm Absence of the Automatic Stay is xxxxxxx.

August 20, 2024 Hearing

The court continued the hearing to be conducted in conjunction with the continued hearing on the Objection to Confirmation of the Chapter 13 Plan. LoanDepot.com, LLC ("Movant") contends that the automatic stay is not in effect as to Andrea Nicole Moore's ("Debtor") residence located at 3836 Moonbeam Drive, Sacramento, Ca 95827 ("Property"), under the new legislative foreclosure scheme of Cal. Civ. Pro. § 2924m.

The court set the following briefing deadline in this matter: Supplemental briefs by all Parties shall be filed and served on or before August 1, 2024, and Reply Briefs, if any, filed and served on or before August 8, 2024. Order, Docket 60.

Movant filed its Reply Brief on August 1, 2024. Dockets 62. Movant's analysis of California law and its application to the facts in this Bankruptcy Case include:

Finalization of Foreclosure Sale Under New California Law

1. The main question here is about a specific rule in California law, California Civil Code § 2924m(c)(2). This rule says that when a property is sold, the sale is not considered "final" until 5 days have passed. Cal. Code Civ. P. § 2924m(c)(2). It could be longer if certain people (like potential new owners or eligible tenant buyers) show interest in buying the property during this period. Importantly, certain individuals, like the person who lost the property (the mortgagor or trustor) and their immediate family members, cannot place bids. Cal. Civ. 2924m(a)(1)(C)(i),(ii); (a)(2)(C). Reply Brief 2:19-3:5, Docket 62.

2. Another part of the law, California Civil Code § 2924m(f), says that the original owner keeps the title of the property until the sale is considered "final." The original owner cannot stop the sale from becoming final after these 15 days if no eligible new buyers make a bid. This right to finalize the sale is fixed by law and beyond the control of the original owner. Reply Brief 3:6-9, Docket 62.

3. Under California Civil Code § 2924m(c)(2), the sale became final on March 15, 2024, by statute, as no further bids were received. The Debtor's bankruptcy filing does not disrupt this statutory time line. The sale's finality is determined by law, not by the actions or filings of the Debtor. Reply Brief 3:21-24, Docket 62.

4. The automatic stay does not inherently alter or extend statutory periods set by state law unless explicitly stated. *Id.* at 3:26-4:1.

5. Bankruptcy courts must reference state law to determine the nature and extent of the debtor's interest in property at the time of the bankruptcy filing. *In re Pettit*, 217 F.3d 1072, 1078 (9th Cir. 2000). Reply Brief 4:4-6, Docket 62.

6. The Debtor's bankruptcy filing on March 13, 2024, does not affect the statutory finality of the sale that occurred on March 15, 2024. *Id.* at 4:12-13.

Bankruptcy Estate and Bona Fide Purchaser Status

1. By the time the Debtor filed for bankruptcy on March 13, 2024, her right to the Property was already contingent upon the completion of the statutory

overbid period. When the 15-day overbid period concluded on March 15, 2024, with no further bids received, the Debtor had no remaining legal or equitable interest in the property. Under California law, ownership and property rights are defined by the exclusive right to possess and use the property (Cal. Code Civ. P. § 654). These rights transferred to LoanDepot when the Trustee's Deed was recorded on April 4, 2024. Reply Brief 5:1-7, Docket 62.

2. Filing for bankruptcy two days before the finality of the foreclosure sale does not grant the Debtor any legal claims or interests in the property. As the spouse of the borrower, she is explicitly prohibited from placing a bid for the property under California Civil Code § 2924m(a)(1)(C)(i),(ii); (a)(2)(C). Thus, she cannot claim any interest in the property as a bona fide purchaser under the new California foreclosure scheme. Reply Brief 5:8-12, Docket 62.

3. LoanDepot recorded its Trustee's Deed at 12:29 p.m. on April 4, 2024, prior to the court reinstating this bankruptcy case at 12:42 p.m. on the same day. The recording of the Trustee's Deed perfected LoanDepot's interest in title to the Property. *Dr. Leevil, LLC v. Westlake Health Care Ctr*, 6 Cal.5th 474, 478 (Cal. 2018); *see also* California Civil Code § 2924h(c). Reply Brief 5:13-18, Docket 62.

4. Debtor has no legitimate claim to the property following the expiration of the statutory overbid period on March 15, 2024. Her bankruptcy filing does not alter this reality. The automatic stay provision under 11 U.S.C. § 362 does not extend or toll the statutory deadlines set by state law as discussed above. She has no legal or equitable interest in the property, and any assertion to the contrary is without merit. Reply Brief 5:19-24, Docket 62.

In considering these arguments the court notes that Movant refers only the rights and interests of the "Debtor," and not to the Bankruptcy Estate or Trustee of the Bankruptcy Estate. As addressed below, as a matter of federal law, Congress provides in 11 U.S.C. § 544(a) that a trustee (in a Chapter 13 case the debtor exercises this power of the trustee as the fiduciary of the bankruptcy estate) possesses rights of being a *bona fide* purchaser for value, and takes interests in property for the bankruptcy estate ahead of unperfected interests. Then in 11 U.S.C. § 551, Congress makes it clear that such avoided transfers of unperfected interests are preserved for the benefit of the bankruptcy estate, not the debtor or other persons.

On August 1, 2024, Debtor filed her Memorandum of Points and Authorities in support of her position. Debtor states:

<u>When the Foreclosure Sale was Complete</u>

1. The foreclosure sale that took place on February 29, 2024 was not completed because California Civil Code § 2924m(c) states a sale shall not be final until 15 days after the sale date provided certain acts do not extend the sale. Mem. 2:25-28, Docket 64.

2. Cal. Code Civ. P. § 2924h states that for the foreclosure sale to be final on the date of the sale, to relate back to the sale date, the trustee's deed upon sale must be recorded within 21 days of the sale. Mem. 3:14-15, Docket 64.

3. The Creditor had the opportunity to record the Trustee's Deed Upon Foreclosure, however since the Creditor failed to timely record said deed, the date of recording does not cause the Trustee's sale to relate back to the date of the sale, but only the date upon which it was recorded. The title to the property remained with the Debtor because the sale was not deemed final until after the filing of the bankruptcy petition. *Id.* at 4:18-23,

Effect of Dismissal then Vacating Dismissal

1. When the Court issued its order vacating the dismissal, the property of the estate acquired on the filing of the bankruptcy case regained its status of being acquired on March 13, 2024. "[T]he general rule [is] that when a court vacates an order previously entered, the legal status is the same as if the order never existed." *United States v. Jerry*, 487 F.2d 600, 607 (3d Cir.1973). (*Animal Legal v. Veneman* (9th Cir. 2007) 490 F.3d 725, 729-30). Mem. 4:27-5:5, Docket 64.

There are No Grounds to Annul the Stay *Nunc Pro Tunc*

1. In the instant case there is over ninety six thousand dollars equity in the property and therefore there is adequate protection. The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." *Mataya v. Kissinger* (*In re Kissinger*), 72 F.3d 107, 109 (9th Cir. 1995), quoting *In re Shamblin*, 890 F.2d 123, 126 (9th Cir. 1989); *see also In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002). Mem. 5:8-16, Docket 64.

2. Debtor walks through the *Fjeldsted* factors, arguing the factors do not support annulling the automatic stay. *Id.* at 6:26-8:17.

APPLICABLE LAW

It is the law in the Ninth Circuit that, "[a] bankruptcy trustee has the power to avoid any transfer that a hypothetical bona fide purchaser for value could have avoided under the law of the state in which the real property is located." *In re Deuel*, 594 F.3d 1073, 1076 (9th Cir. 2010). 11 U.S.C. § 544(a) states:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—
>
> (1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to

> such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;
>
> (2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or
>
> (3) a **bona fide purchaser of real property**, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(Emphasis added). 5 COLLIER ON BANKRUPTCY ¶ 544.05 states,

> State law governs who may be a bona fide purchaser and the rights of such a purchaser for purposes of subsection 544(a)(3). Pursuant to that subsection, the trustee is given the rights and powers of a bona fide purchaser of real property from the debtor if at the time of the commencement of the title 11 case a hypothetical purchaser could have obtained bona fide purchaser status, so the trustee can avoid any liens or conveyances that a bona fide purchaser could avoid. **As a hypothetical bona fide purchaser, the trustee under this subsection is deemed to have conducted a title search, paid value for the property and perfected its interest as a legal title holder as of the date of the commencement of the case.** . .
>
> However, the trustee's right as a bona fide purchaser does not override state recording statutes and permit avoidance of any interest of which a trustee would have had constructive notice under state law. For example, if, under state mechanics' lien law, a claimant supplying materials or labor to a debtor properly perfects its mechanics' lien by complying with all the requirements of that law, the claim will have priority over the strong arm powers of a trustee under section 544(a). If **a claimant fails to properly perfect under applicable state law, its claim is deemed unperfected under the Code, will not stand against the claim of a bona fide purchaser and, thus, is subject to the trustee's exercise of the strong arm powers of section 544(a)**. Similarly, a trustee generally can avoid an unrecorded transfer of land, but not after having been put on constructive notice or inquiry notice of a prior claim.

(emphasis added).

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

LoanDepot.com, LLC ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case of

Andrea Nicole Moore ("Debtor") implicates the new California legislative foreclosure scheme regarding Debtor's residence. Movant states that Debtor no longer owns or has any right to the property, pursuant to Cal. Civ. Pro. § 2924m(a)(1)(C)(i). Creditor states that a foreclosure sale of the property commonly known as 3836 Moonbeam Drive, Sacramento, Ca 95827 ("Property") occurred on February 29, 2024. Mot. 3:22, Docket 34. Debtor then filed bankruptcy on March 13, 2024, during the 15-day bidding procedure set up under the new California scheme. Creditor states that Cal. Civ. Pro. § 2924M(a)(1)(C)(i) does not allow mortgagor, Debtor here, to overbid on the Property during that 15-day window, meaning Debtor no longer has any right in the Property.

Movant informs the court that during that 15-day window, no overbids came in, and so Movant asserts the sale was finalized ending with Movant owning the Property. Decl. ¶ 4, Docket 37. The case was dismissed on April 1, 2024, for failing to timely file documents. Docket 12. However, the court reinstated the case on April 4, 2024, by Order se3tting aside/vacating the earlier dismissal Order. Docket 22. Movant recorded Trustee's Deed Upon Sale ("TDUS") on April 4, 2024, while the present case was ongoing, but on the very day the court set aside the dismissal Order. Decl ¶ 7, Docket 37. Movant asserts it was not aware this case was reinstated and ongoing when it recorded the TDUS on April 4. *Id.* at ¶ 8.

Movant therefore explains that, under this new California foreclosure scheme, it owned the Property and Debtor had no right in the Property. Movant seeks this Order to confirm there was no stay in effect as to the Property when it foreclosed and subsequently recorded the TDUS.

APPLICABLE LAW
California Law and the
Plain Language

The underlying facts of the present dispute are simple; however, the law may not be. In this situation, the facts boil down to the following:

a. A nonjudicial foreclosure sale was conducted on February 29, 2024, at which Movant was the successful bidder, it also being the foreclosing creditor. Because Movant is not the prospective owner-occupant, a 15-day window opened up for bidding on the Property. No bids were submitted.

b. On Mach 13, 2024, Debtor commenced this Bankruptcy Case. The case was dismissed on April 1, 2024, for failing to timely file documents. The court set aside / vacated that dismissal by Order entered on April 4, 2024.

c. Movant recorded its TDUS on April 4, 2024, perfecting its interest on the same day this court set aside the dismissal and reinstating the case.

California has radically amended its nonjudicial foreclosure law as it relates to 1-4 unit dwellings, creating the opportunity for owner/occupier/tenant/community organizations to submit post-foreclosure bids to purchase. These provisions have been through a series of amendments the past several years.

California Civil Code § 2924h(c) states, in pertinent part, the general rule as to when a nonjudicial foreclosure is deemed final and the period in which the recording of the trustee's deed perfects title back to the final sale date as follows:

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall **be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 21 calendar days after the sale**, or the next business day following the 21st day if the county recorder in which the property is located is closed on the 21st day. If an eligible bidder submits a written notice of intent to bid pursuant to paragraph (3) of subdivision (c) of Section 2924m, the trustee's sale shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 60 calendar days after the sale or the next business day following the 60th day if the county recorder in which the property is located is closed on the 60th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

Cal Civ Code § 2924h(c) (emphasis added). This provision begins with the statement that the sale is deemed final upon the acceptance of the final bid, and that title can then be perfected within a 21 day period. A longer period is provided if written notices of intend to bid are submitted as provided in California Civil Code § 2924(m)(c)(3).

California Civil Code § 2924h(c) further provides that with respect to the provisions of § 2924h, they control "except as specifically provided in [11 U.S.C. § 2924m].

Finality of Nonjudicial Foreclosure Sale of 1-4 Unit Residential Property

Moving to California Civil Code § 2924m(c)(2), it provides that for a trustee's sale of a 1-4 unit residential property through a nonjudicial foreclosure sale when the buyer is not an eligible tenant buyer or bidder, the sale is not "deemed final" until as follows:

(c) A trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to four residential units pursuant to Section 2924g **shall not be deemed final until the earliest of the following**:
. . .

> (2) **Fifteen days after the trustee's sale unless** at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid.

Cal. Civ. § 2924m(c)(2). This period is then extended if a post-foreclosure sale eligible tenant buyer or eligible bidder submits a timely bid or notice of intent to bid. Cal. Civ. § 2924m(b)(3), (4).

California Code of Civil Procedure 2924m(f) and (h) then include specific provisions which address the status of the title to the property pending the running of the applicable period for which it is statutorily deemed to be final, stating:

> (f) Title to the property shall remain with the mortgagor or trustor until the property sale is deemed final as provided in this section.
> . . .
> (h) This section shall prevail over any conflicting provision of Section 2924h.

What these provisions tell all is that while the sale has occurred on February 29, 2024, it would not be "deemed final" until March 15, 2024 California Civil Code § 2924m(f) expressly states that title remains in the trustor (here the Debtor) until final; however, that title is subject to the provisions of California Civil Code § 2924m, which includes the statutory finality of the sale fifteen days after the nonjudicial foreclosure sale having been conducted upon the failure of other events.

The open question is what is the effect of California Civil Code § 2924m(c)(2) providing that the sale is not "deemed final" until the expiration of the fifteen (15) day period, or such longer period as provided in the statute if a bid or notice of bid is made by a prospective owner-occupant or eligible tenant buyer as provided in California Civil Code § 2924m(a)(1) and (2). Excluded from "prospective owner-occupant" and "eligible tenant buyer" are "the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor." Cal. Civ. 2924m(a)(1)(C)(i), (ii); (a)(2)(C).

While California Civil Code § 2924m(f) provides that title remains in the mortgagor or trustor until the "sale is deemed final as provided in this section," is that title subject to the provisions of California Code of Civil Procedure § 2924m(c)(2) that make the sale final upon the expiration of fifteen (15) days?

Are these statutory rights for the nonjudicial foreclosure sale of property fixed rights, subject only to the conditions subsequent that may occur – none of which conditions are under the control or rights of the mortgagor or trustor (which is the Debtor in this case)?

From the court's initial review of the Legislative History, while the term "final" is used in the AB 1837 (the Bill which made the Civ. Code § 2924m and other amendments), it is little discussed in the Legislative Committees.

Timing of Foreclosure Sale and
Recording of Deed of Trust

Here, the nonjudicial foreclosure sale was conducted on February 29, 2024. The fifteenth day after the nonjudicial foreclosure sale is March 15, 2024.

Debtor commenced this Bankruptcy Case on March 13, 2024, prior to the expiration of the fifteen day period specified in California Civil Code § 2924m(c)(2).

Debtor's Bankruptcy Case was dismissed on April 2, 2024, for failure to file documents.

On April 4, 2024, the court issued an order vacating the dismissal of the case and Creditor had the TDUS Recorded.

Creditor provides a copy of the TDUS as Exhibit 8, Dckt. 36, which has a recording time and date of 12:29:47 p.m. on April 4, 2024. The court's order Vacating the Dismissal is stamped with a "filed" date and time of 12:42:28 p.m. on April 4, 2024. Dckt. 22.

The TDUS was recorded on April 4, 2024, which is thirty-four (34) days after the February 29, 2024 nonjudicial foreclosure sale. California Civil Code § 2924h(c) provides that if the Trustee's Deed is recorded within 21 calendar days after the nonjudicial foreclosure sale, then the sale shall be deemed "perfected" as of 8:00 a.m. on the day of the nonjudicial foreclosure sale.

Post-Petition Interests
In the Property

At the heart of the dispute is what is the effect of a foreclosure sale conducted before the bankruptcy case is filed and what occurs when, statutorily, that sale is not "deemed final" until after the expiration of a time period. As has been well known, prior California law provided that so long as the trustee's deed was timely filed (former Cal. Civ. § 2924h), the perfection of such title by recording the trustee's deed was permitted pursuant to 11 U.S.C. § 362(b)(3).

§ 362(b)(3) provides that the stay does not apply to any act to perfect, maintain, or continue the perfection of an interest in property which are subject to the provisions of 11 U.S.C. § 546(b), which states:

> § 546. Limitations on avoiding powers
>
> (b)
>
> (1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—
>
> > (A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or
> >
> > (B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

Congress provides that a bankruptcy estate acquires the property of the Debtor as of the commencement of the bankruptcy case. See, 11 U.S.C. § 541(a) providing in pertinent part:

> § 541. Property of the estate

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
>
> (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
>
> > (A) under the sole, equal, or joint management and control of the debtor; or
> >
> > (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

With respect to the interests acquired by the bankruptcy estate, the trustee (here the Debtor exercising the powers and rights of a bankruptcy trustee) has the rights of a *bona fide* purchaser of real property from the Debtor. 11 U.S.C. § 544(a)(3).

11 U.S.C. § 541 does not provide that the acquisition of interest date for the bankruptcy estate changes if the case is dismissed and then the court vacates the order dismissing the case.

Here, the Bankruptcy Estate in this Case acquired its interests in the Property as of the March 13, 2024 commencement of this Case. Creditor, having missed the twenty-one day window for recording the TDUS to relate back to the February 29, 2024 nonjudicial foreclosure date, has the TDUS recording and it's interests in the Property perfected as of April 4, 2024.

JULY 2, 2024 HEARING

At the July 2, 2024 hearing, the court continued the hearing to be conducted in conjunction with the continued hearing on the Objection to Confirmation of the Chapter 13 Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Absence of the Automatic Stay filed by LoanDepot.com, 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 **XXXXXXX**.

6. 24-20988-E-13 DPC-1 — ANDREA MOORE, Peter Cianchetta — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 5-8-24 [30]

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

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

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

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

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation is xxxxxxx.

August 20, 2024 Hearing

The court continued the hearing on the Objection to Confirmation because creditor LOANDEPOT.COM, LLC ("Creditor") contends that the automatic stay is not in effect as to Andrea Nicole Moore's ("Debtor") residence located at 3836 Moonbeam Drive, Sacramento, Ca 95827 ("Property"), under the new legislative foreclosure scheme of Cal. Civ. Pro. § 2924m.

The court set the following briefing deadline in this matter: Supplemental briefs by all Parties shall be filed and served on or before August 1, 2024, and Reply Briefs, if any, filed and served on or before August 8, 2024. Order, Docket 60. A review of the docket on August 12, 2024 reveals nothing new has been filed with the court under this Docket Control Number. Under DCN: KXL-1, Creditor filed its Reply Brief and Memorandum in support on August 1, 2024. Dockets 62, 64. The issue will be addressed in that related matter.

Congress provides in 11 U.S.C. § 551 when a transfer of property is avoided pursuant to 11 U.S.C. § 544, such as when there is an unperfected interest in property that was not timely perfected under the Bankruptcy Code, then the unperfected interest is preserved for the benefit of the Bankruptcy Estate and not merely "avoided." This situation then puts the Bankruptcy Estate ahead of the interests of the debtor.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

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

1. The Debtor is $2,652.52 delinquent in Plan payments to the Trustee. The next scheduled payment of $2,902.52 is due on May 25, 2024 and electronic payments are pending which may cure the delinquency if they clear.

2. The following Section 521 Documents have not bee provided:

   a. Pay advices. The Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. §521(a)(1)(B)(iv), and the Order Re: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. Obj. 2:9-13, Docket 30.

   b. Tax return. The Debtor has failed to provide the Trustee with her tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. §521(e)(2)(A)(1). A 2021 return was provided. Obj. 2:14-19, Docket 30.

   c. Not all tax returns filed. 11 U.S.C. §1325(a)(9) requires the Debtor to have filed all applicable tax returns for the four years prior to filing and provide the Trustee with a copy of the last filed federal tax return. The Debtor admitted at the First Meeting of Creditors, held on May 2, 2024, that she was required to file a tax return for 2023 and has not done so. The meeting has been continued to June 13, 2024, at 2:00 p.m. in order to give the Debtor sufficient time to file the required tax returns. Obj. 2:20-26, Docket 30.

3. Inaccurate Schedules: The Trustee cannot assess the feasibility of the plan. At the Meeting of the Creditors, the Debtors testified that she should be receiving retirement income from her deceased husband's retirement. The Trustee requested that Schedule A/B be amended to list this account. To date, no amendment has been filed. The debtor has failed to carry her

burden of showing that the plan complies with 11 U.S.C. §1325(a)(6). Obj. 3:1-5, Docket 30.

4. Zero Monthly Payments for attorney's fees. Debtor may not be able to comply with the Plan without assistance from their attorney, 11 U.S.C.§1325(a)(6). Obj. 3:6-8, Docket 30.

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

DISCUSSION
Delinquency

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

Failure to Provide Pay Stubs

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

Failure to File Tax Returns

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

Amendments

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

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the

Plan proposes to pay $0 per month, the Plan violates this rule because it does not provide for payment of fees in equal monthly installments over the term of the most recently confirmed Plan.

July 2, 2024 Hearing

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

On June 20, 2024, before the court having ruled on dismissing the Objection, LOANDEPOT.COM, LLC ("Creditor") filed what it called a Brief in Support of Objection to Confirmation of Chapter 13 Plan. In its Brief, Creditor states that Debtor no longer owns or has any right to the property, pursuant to Cal. Civ. Pro. § 2924M(a)(1)(C)(i). Creditor, without submitting any evidence in support, states that a foreclosure sale of the property commonly known as 3836 Moonbeam Drive, Sacramento, Ca 95827 ("Property") occurred on February 29, 2024. Brief 2:1, Docket 51. Debtor then filed bankruptcy on March 13, 2024, during the 15-day bidding procedure set up under the new California scheme. Creditor states that Cal. Civ. Pro. § 2924M(a)(1)(C)(i) does not allow mortgagor, Debtor here, to overbid on the Property during that 15-day window, meaning Debtor no longer has any right in the Property.

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

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

At the hearing, the court addressed with the Parties the issues arising with respect to the evidence that the Bankruptcy Estate (through the Debtor exercising the powers and duties of a trustee) being a statutory bona fide purchase for value of the property with an interest which is prior in time to the subsequently recorded foreclosure trustee's deed. See 11 U.S.C. § 544(a)3).

The hearing on the Objection to Confirmation is continued to 1:30 p.m. on August 20, 2024. Supplemental briefs by all Parties shall be filed and served on or before August 1, 2024, and Reply Briefs, if any, filed and served on or before August 8, 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 Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is **xxxxxxx**.

7.	**24-23545-E-13** **PGM-1**	**KEVIN NORMAN** **Peter Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T.** **8-15-24 [11]**

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 Chapter 13 Trustee, creditors, parties in interest, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 7 days' notice was provided. The court set the hearing for August 20, 2024. Dckt. 20.

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. At the hearing **----------**.

The Motion to Extend the Automatic Stay is granted on an interim basis and xxxxxxx

Kevin James Norman ("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. 20-22267) was dismissed on May 23, 2024, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 20-22267, Dckt. 249, May 23, 2024. 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. Debtor explains he became delinquent under the terms of the previous plan because his contracted construction jobs took longer to

collect payment than anticipated. Decl. ¶ 1, Docket 15. Debtor explains his circumstances have changed prior to this filing as his son has gotten a job at Genentech and his daughter has gotten a job as a Medical Assistant, and both currently live at home with Debtor and will contribute to the Plan. *Id.* at ¶ 3. Moreover, Debtor explains he has gotten a small business license as a handyman and has begun working under a contractor who is a project manager at Construction Action Network. *Id.* Debtor's NF-Spouse is currently looking for work as well. All members of the family are contributing to make a Plan work. *Id.*

Debtor's Daughter, Anabelle Norman, also submitted her Declaration in support. Docket 17. She states she will contribute $1,000 per month toward the Plan to save the home. *Id.* at ¶ 2.

Debtor's son, Isaac Norma, submitted his Declaration in support as well. He testifies that he will also contribute $1,000 per month to the Plan. *Id.* at ¶ 3.

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.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has presented evidence of a change in his circumstances that will allow for the completion of a successful Chapter 13 Plan. Debtor has testified as to why the previous case failed, and how the present case will succeed, including submitting evidence that shows Debtor's children are going to help make a Plan work.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by Kevin James Norman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including xx:xx x.m. on xxxx, 2024.
>
> **IT IS FURTHER ORDERED** that the final hearing on this Motion shall be conducted at xx:xx x.m. on xxxx, 2024. Debtor shall provide notice of the continued hearing on or before xxxx, 2024, with written oppositions, if any, filed and served on or before xxxx, 2024; and replies, if any, filed and served on or before xxxx, 2024.

FINAL RULINGS

8. **24-20705-E-13 KMM-1** | **HELEN ZADA** | **Matthew DeCaminada** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-17-24 [22]**

TOYOTA LEASE TRUST VS.

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 17, 2024. By the court's calculation, 34 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.

Toyota Lease Trust, as serviced by Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Lexus ES300H, VIN ending in 1765 ("Vehicle"). The moving party has provided the Declaration of Ana Marquina to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Helen McQueen Zada ("Debtor"). Decl., Docket 24.

Movant and Debtor were subject to a Lease Agreement (Ex. A, Docket 26) for the Vehicle which had a maturity date of June 17, 2024. Mot. 3:19-21, Docket 22. Movant is currently in possession of the Vehicle and argues relief is proper pursuant to 11 U.S.C. § 362(d)(1) as "Debtor is in default under the terms of the Lease Agreement, the Vehicle is a rapidly depreciating asset, and Movant is not receiving adequate protection for its collateral." *Id.* at 3:14-16. Movant's Proof of Claim 7-1 additionally shows a prepetition arrearage in the amount of $1,069.92, which is one monthly payment. POC 7-1.

The Chapter 13 Trustee filed a nonopposition on August 6, 2024. Docket 28.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including an expiration of the Lease Agreement during the pendency of this case. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432; *see* 3 COLLIER ON BANKRUPTCY ¶ 362.05[10] ("Most courts have held that expiration of the stated term or successful prepetition termination of a lease constitutes grounds for relief from the automatic stay.").

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 Toyota Lease Trust, as serviced by Toyota Motor Credit Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Lexus ES300H, VIN ending in 1765 ("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.
>
> No other or additional relief is granted.