

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

August 27, 2019 at 1:30 p.m.

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1. [19-24208-C-13](#) [DWE-1](#) CHARLENE SIPPIO MOTION FOR RELIEF FROM  
Lucas B. Garcia AUTOMATIC STAY  
7-22-19 [13](#)

U.S. BANK NATIONAL  
ASSOCIATION 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.

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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. 28 days' notice is required. That requirement was met.

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

**~~The Motion for Relief from the Automatic Stay is granted.~~**

U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005-AR14 ("Movant") seeks relief from the automatic stay with respect to Charelene Sippio's ("Debtor") real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Movant has provided the Declaration of Sasha Anderson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that there are thirty-one pre-petition payments in default, with a pre-petition arrearage of \$103,518.72. Declaration, Dckt. 16. Movant also argues that the property has been involved in a scheme to hinder or delay a foreclosure. In support, Movant identifies four bankruptcy filed by Anthony Sippio, Debtor's non-filing spouse, where this same property was scheduled. (Case Nos. 15-26854; 17-24007; 17-27707; and 18-26693). Movant does not identify or assert that there were any transfers relating to the property.

## **CHAPTER 13 TRUSTEE'S RESPONSE:**

David Cusick ("the Chapter 13 Trustee") filed a Response on August 12, 2019. Dckt. 22. The Trustee does not oppose the relief and flag for the court that Debtor's filing is incomplete, Debtor has not made any payment to the Trustee, and neither Debtor nor Debtor's attorney appeared at the August 8, 2019 Meeting of Creditors. Dckt. 22.

## **DISCUSSION**

No evidence was provided to the court for purposes of this Motion for Relief regarding the value of the asset. Debtor has not filed schedules and the Movant did not provide any evidence regarding the value of the Property. The total debt owed to Movant is \$509,636.10. Proof of Claim No. 3-1.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). The Movant has not provided the court with any evidence to determine the value of the property and thus cannot determine whether there is sufficient equity.

**At the hearing Movant provided the court with evidence on the value of the property-----**

~~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.~~

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here Movant identifies

cases filed by Debtor's non-filing spouse where the subject property was scheduled. Movant does not identify any transfers or other factors to support its allegations.

- A. Case No. 15-26854
  - 1. Filed: August 31, 2015
  - 2. Chapter 13
  - 3. Dismissal Date: April 20, 2017
  - 4. Reason for Dismissal: Debtor's Voluntary Dismissal
  
- B. Case No. 17-24007
  - 1. Filed: June 15, 2017
  - 2. Chapter 13
  - 3. Dismissal Date: September 7, 2017
  - 4. Reason for Dismissal: Delinquency due to medial emergency
  
- C. Case No. 17-27707
  - 1. Filed: November 24, 2017
  - 2. Chapter 13
  - 3. Dismissal Date: August 26, 2018
  - 4. Reason for Dismissal: Did not Confirm Plan with 60 of denial of prior Motion to Confirm
  
- D. Case No. 18-26693
  - 1. Filed: October 24, 2018
  - 2. Chapter 13
  - 3. Dismissal Date: April 11, 2019
  - 4. Reason for Dismissal: Did not Confirm Plan with 60 of denial of prior Motion to Confirm

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, the court 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 filing multiple 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. Movant has not sufficiently shown that the filing of the current Chapter 13 case could not have been for any bona fide, good faith reason.

**At the hearing —**

~~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.~~

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~~The Motion for Relief from the Automatic Stay filed by U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005 (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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~~**IT IS ORDERED** that the 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 8472 Winterberry Drive, Elk Grove, 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.~~

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~~**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Charlene Sippio (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.~~

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

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~~“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.”~~

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~~No other or additional relief is granted.~~

**WELLS FARGO BANK, N.A. VS.**

**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.

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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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2019. 28 days' notice is required. That requirement was met.

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

<p><b>The Motion for Relief from the Automatic Stay is <span style="color: red;">xxxxx</span>.</b></p>
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Hiyam Abutarboush ("Debtor") real property commonly known as 1054 Starbrook Drive, Galt, California ("Property"). Movant has provided the Declaration of Tonya Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that the Property is involved in a scheme to hinder, delay, or defraud Movant based on Debtor and/or Debtor's non-filing spouse scheduling the Property in seven prior bankruptcies since 2011.

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on August 9, 2019. Dckt. 23. The Trustee flags for the court that Debtor has not filed Schedules or a Plan and the case is incomplete. The Trustee states that he both does not oppose the relief requested and that the motion should be denied.

## DISCUSSION

Movant seeks relief under 11 U.S.C. § 362(d)(4). 11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here the Movant argues that Debtor is a serial filer and identifies seven prior cases where the subject Property was scheduled either by Debtor and/or Debtor's Non-Filing Spouse:

- A. Case No. 11-45905 (Joint case)
  - 1. Filed: October 31, 2011
  - 2. Chapter 13
  - 3. Dismissal Date: March 27, 2012
  - 4. Reason for Dismissal: Not making required Plan Payments
- B. Case No. 12-2879 (Joint case)
  - 1. Filed: May 9, 2012
  - 2. Chapter 13
  - 3. Dismissal Date: September 9, 2012
  - 4. Reason for Dismissal: Not making required Plan Payments
- C. Case No. 13-34662 (Debtor's Non-Filing Spouse)
  - 1. Filed: November 15, 2015
  - 2. Chapter 13
  - 3. Dismissal Date: August 15, 2014
  - 4. Reason for Dismissal: Not making required Plan Payments
- D. Case No. 16-24554 (Debtor's Non-Filing Spouse)
  - 1. Filed: July 13, 2016
  - 2. Chapter 13
  - 3. Dismissal Date: August 1, 2016
  - 4. Reason for Dismissal: Required Documents Not Filed
- E. Case No. 18-20693 (Joint case)
  - 1. Filed: February 8, 2019
  - 2. Chapter 7
  - 3. Discharged: May 14, 2018
- D. Case No. 18-27413 (Debtor's Non-Filing Spouse)
  - 1. Filed: November 28, 2018

2. Chapter 13
3. Dismissal Date: April 26, 2019
4. Reason for Dismissal: Not making required Plan Payments

E. Case No. 19-23273 (Debtor)

1. Filed: May 22, 2019
2. Chapter 13
3. Dismissal Date: June 3, 2019
4. Reason for Dismissal: Required Documents Not Filed

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. Movant has only identified prior proceedings but has not suggested or pointed to any transfers relating to the Property.

**At the hearing Movant addressed any other factors regarding a scheme that the court should consider -----**

~~Accordingly, the court finds that the filing of the current Chapter 13 case -----~~

~~The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.~~

~~In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.~~

~~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 Wells Fargo Bank, N.A. ("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 1054 Starbrook Drive, Galt, 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.

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~~IT IS FURTHER ORDERED~~ that the request to terminate the co-debtor stay of Marwan Abdulrahim of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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

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~~“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.”~~

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~~No other or additional relief is granted.~~

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**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on July 26, 2019.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$310.00 due on July 10, 2019.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$310.00.

On August 21, 2019 the court continued this matter to be heard in conjunction with a pending Motion for Relief from Stay. Dckt. 26.

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

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

The Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

DIAMOND RESORTS U.S.  
COLLECTION MEMBERS  
ASSOCIATION 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.

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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2019. 28 days' notice is required. That requirement was met.

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

**The Motion for Relief from the Automatic Stay is denied without prejudice as moot, this Movant's secured claim being provided for in Class 4 of the Plan, for which there is a plan modification of the stay.**

Diamond Resorts US Collection Members Association ("Movant") seeks relief from the automatic stay with respect to an asset identified as a Membership in the Diamond Resorts U.S. Collection Members Association and 13000 Points for use in the Diamond Resorts Collection ("Property"). The moving party has provided the Declaration of Lesley Fernandez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Samuel Mata and Crystal Mata ("Debtors").

Movant provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of \$3,513.51. Dckt. 20. Movant provides no evidence on whether there are post petition defaults.

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 12, 2019. Dckt. 26. The

Trustee states that Debtors are current under the confirmed plan. Debtors have paid a total of \$7,000.00 to date. Movant is provided for in Class 4 of the plan.

## 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 \$3,513.51 (Declaration, Dckt. 20), while the value of the Vehicle is determined to be \$5,000.00, as stated in Schedules B and D filed by Debtor, which is higher than the valuation asserted by the Movant.

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

The order confirming Debtor's plan was entered on May 28, 2019. Order, Dckt. 15. The confirmed Chapter 13 Plan provides for "Diamond Resorts Fs/2 timeshares with Diamond Resorts with a loan against it" in Class 4 of the Plan. Plan ¶ 3.10, Dckt. 2. Debtor certifies that the secured claim is not in default and Debtor will make currently monthly payments of \$200.00 directly to Movant.

Further, confirmation of the plan modifies the automatic stay for Movant as provided in ¶ 3.11 of the Plan (emphasis added)as follows:

### 3.11. Bankruptcy stays.

**(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.**

Thus, to the extent that Movant asserts there is a default, there is no stay with respect to Movant exercising its rights against its collateral.

## Class 4 Treatment

Movant has chosen not to file a proof of claim in this case. The declaration filed in support of the Motion asserts that defaults in the secured obligation date back to 2017 0 two years before this case was filed. It is surprising that Debtor would file such a plan if a known pre-petition arrearage existed. Such

conduct is not a basis for denying the present motion.

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

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

The Motion for Relief from the Automatic Stay filed by Diamond Resorts US Collection Members Association (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is denied without prejudice as moot, the confirmed Chapter 13 Plan providing for treatment of Creditor’s claim in Class 4 of the plan and the modification of the automatic stay as it applies to Movant and the collateral described as a Membership in the Diamond Resorts U.S. Collection Members Association and 13000 Points for use in the Diamond Resorts Collection, which confirmed Plan states:

3.11. Bankruptcy stays.

**(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.**

Plan ¶ 3.11, Dckt. 2; Order Confirming, Dckt. 15.

**HONDA LEASE TRUST 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.

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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. 28 days' notice is required. That requirement was met.

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

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Accord, VIN ending in 8070 ("Vehicle"). The moving party has provided the Declaration of Adrian Lopez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ronald Gadreault ("Debtor").

Movant argues Debtor has not made four post-petition payments, with a total of \$3,399.32 in post-petition payments past due. Declaration, Dckt. 40.

Movant has also provided a copy of NADA Valuation Report for the Vehicle stating that the value of Vehicle is \$15,900.00. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

**THE CHAPTER 13 TRUSTEE'S RESPONSE:**

The Chapter 13 Trustee filed a response on August 9, 2019 flags for the court that Debtor's

confirmed Plan assumes the lease of Honda Finance Corporation with pre-petition arrears paid through the Plan. The Trustee notes that Movant may not need Relief where the confirmed Plan provides relief.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$23,350.48 (Declaration, Dckt. 40), while the value of the Vehicle is determined to be \$33,000.00, as stated in Schedules B and D filed by Debtor, which is more than \$10,000.00 than the retail value as stated on the NADA Valuation Report.

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.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because while the Plan elects to make post-petition payment directly to Movant, Debtor has not remained current on those payments.

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

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Honda Lease Trust (“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 2017 Honda Accord, VIN ending in 8070 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Megan Christine of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**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.

**JPMORGAN CHASE BANK, N.A.  
VS.**

**Final Ruling:** No appearance at the August 28, 2019 hearing is required.  
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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. 28 days' notice is required. That requirement was met.

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.**

JP Morgan Chase Bank, NA ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Subaru WRX SDN, VIN ending in 4365 ("Vehicle"). The moving party has provided the Declaration of Elaine Sanchez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Anselmo Alday and Alma Alday ("Debtors").

Movant argues that Debtors lease, with respect to the vehicle, matured on June 19, 2019 and the Debtors turned in the vehicle on or about June 19, 2019. Dckt. 34.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

Debtor filed a Response noting no opposition to the requested relief on August 9, 2019. Dckt. 39.



## DISCUSSION

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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate because the lease has matured. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Since the lease has expired and neither the Debtor nor the Estate have an interest in the property waiver of the (14) day stay is appropriate.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by JP Morgan Chase Bank, NA (“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 2017 Subaru WRX SDN, VIN ending in 4365 (“Vehicle”), and applicable nonbankruptcy law to obtain possession

of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Jose Alday of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.