

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

September 10, 2024 at 1:30 p.m.

1. [22-22406-E-13](#)
[NLG-1](#)

SHANNON GILLIS
Carl Gustafson

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-29-24 [30]**

NATIONSTAR MORTGAGE 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.

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 July 29, 2024. By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXX.

Nationstar Mortgage, LLC ("Movant") seeks relief from the automatic stay with respect to Shannon Darnell Gillis' ("Debtor") real property commonly known as 107 Sherrod Ct., Vallejo, California 94591 ("Property"). Movant has provided the Declaration of Quinton Butler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 32.

Movant argues Debtor has not made five post-petition payments, with a total of \$8,190.69 in post-petition payments past due. Declaration ¶ 9, Dckt. 32. Debtor's Plan was confirmed on or around November 18, 2022. The arrearage arises under the terms of that Plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition and supporting Declaration on August 27, 2024. Dockets 36, 37. Debtor states that they have made payments totaling \$8,000 of the \$8,190.69 postpetition arrearage. Decl. ¶¶ 3, 4, Docket 37. Debtor intends to be completely current by this hearing date.

Debtor submits two supporting Exhibits, showing that the payments to cure the arrearage were made. Dockets 38, 39.

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 \$335,439.94 (Declaration ¶ 10, Dckt. 32), while the value of the Property is determined to be \$538,700.00, as stated in Schedules A/B filed by Debtor. Schedule A/B 10:1.1, Docket 1.

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

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

In this case, Debtor has shown that she has made substantial steps toward curing the delinquency. At the hearing, **XXXXXXX**

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

Co-Debtor Stay

Additionally, Movant has moved the court for an Order granting relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not identified a co-debtor in this case or 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. For these reasons, relief from the co-debtor stay is not granted.

~~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.~~

~~————— 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 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 Nationstar Mortgage, 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**.

**CROSSROADS EQUIPMENT LEASE
AND FINANCE 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, and Office of the United States Trustee on August 20, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx 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, -----

<p>The Motion for Relief from the Automatic Stay is XXXXXXX.</p>
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Crossroads Equipment Lease and Finance, LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Freightliner CA125SLP tractor truck, VIN ending in 0593 (“Vehicle”). The moving party has provided the Declaration of Rebecca Elli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kendron Nisan Fryer (“Debtor”). Decl., Docket 16.

The Motion states that Movant and Debtor entered into a Master Lease Agreement (the “Agreement”) on June 8, 2020, for the Vehicle. A copy of the Agreement is provided as Exhibit 1.

While titled as a Master Lease Agreement, this Agreement includes a provision whereby the Debtor may “purchase” the Vehicle from Movant. The terms of such purchase provided for in the Agreement are that the purchase price are the lease payments, and additional \$101.00, and the sales tax for

such purchase. The Agreement further states that it is “agreed” that the Vehicle has a value of only \$101.00 at the end of the lease. Exhibit 1, Equipment Lease Schedule (TRAC Lease).

The lease commenced on June 8, 2020, and is for 54 months. The Lease, as computed by Movant, matures on June 22, 2025. There is less than one year remaining on this lease, the vehicle having already been exhausted through the first four years of the lease.

Movant argues Debtor defaulted under the terms of the loan agreement on March 22, 2024, and so Movant accelerated the balance of the loan in the amount of \$23,071.70. Mot. 2:21-25, Docket 13. With fees and expenses, the total owed is \$25,567.68 as of July 22, 2024. *Id.* at 2:26-3:3. Movant informs the court that this is the second Bankruptcy filing by Debtor in the past 30 days. In his first Chapter 13 case, case number 24-23792, Debtor did not file his Schedules and Plan, so the case was subsequently dismissed on August 6, 2024. Movant moves this court for an order granting relief pursuant to 11 U.S.C. § 362(d)(1).

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 3, Docket 17. 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).

REVIEW OF BANKRUPTCY FILE

Debtor commenced this Chapter 13 Bankruptcy Case on August 9, 2024, and is prosecuting it *in pro se*. As Movant notes, Debtor had one prior bankruptcy case in this District, 24-23192, that was filed on July 22, 2024, and dismissed on August 6, 2024. Debtor attempted to prosecute that case *in pro se*.

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 \$25,567.68 (Declaration ¶ 9, Docket 16), while the value of the Vehicle is determined to be \$27,725, as stated on the J.D. Power Valuation Report.

Debtor filed a proposed Chapter 13 Plan on August 9, 2024. Dckt. 7. The basic terms of the Chapter 13 Plan are:

1. Monthly Plan payments of \$881 for a term of thirty-six (36) months. Plan, ¶¶ 2.01, 2.03; Dckt. 7.
2. Movant’s Claim is provided for in Class 1, with a stated arrearage of (\$3,000), plus an 11% interest rate on the arrearage. No amount of arrearage dividend is stated and no amount of the regular post-petition monthly payment is stated to be paid. *Id.*; ¶ 3.07.
3. No claims are provided for in Classes 2, 3, 4, 6, or 7, with those sections of the Plan left blank. *Id.*; ¶¶ 3.08, 3.09, 3.10, 3.13, 3.14.

4. Debtor states that there is (\$26,000) in Class 5 priority claims to be paid. *Id.*; ¶ 3.12.

On August 26, 2024, the Debtor filed a Motion to Confirm the Chapter 13 Plan. Debtor set the hearing on the Motion to Confirm for October 8, 2024. Ntc of Hrg.; Dckt. 24. No Certificate of Service has been filed by Debtor.

Review of Schedules

On Schedule A/B (assets) filed by the Debtor, the only vehicle listed is a 2005 Ford Expedition. Dckt. 1 at 14-15. Nothing is listed for machinery or equipment used in a business. *Id.*; at 21. The 2016 Freightliner CA125SLP tractor truck is not listed as an asset of the Debtor on Schedule A/B.

The court notes that Debtor has not claimed any exemptions on Schedule C. *Id.* at 23-24.

Debtor does list Movant on Scheduled D (secured claims) as having a claim in the amount of (\$25,637.68) which is secured by a “semitruck 2016 freightliner.” *Id.* at 25.

No other creditors are listed on Schedule D, and no creditors are listed on Schedule E/F (priority and general unsecured claims. *Id.* at 25 - 31.

On Schedule I Debtor lists having \$10,000 a month in income (which includes \$1,000 a month from his non-debtor spouse). *Id.* at 38-39. This is gross income, with no deductions for taxes, insurance, or other amounts.

On Schedule J, Debtor lists having (\$8,649) a month in expenses for his family unit of three persons (Debtor, non-debtor spouse, and one child). *Id.* at 40-42. No provision is made for payment of income or other taxes on Schedule J.

It is not clear from the Schedules whether Debtor is an employee (whereby the employer is making the mandatory withholding and deductions for taxes, Social Security, and the like), or whether the Debtor is self-employed or an independent contractor.

Motion to Extend Automatic Stay

On September 3, 2024, the Debtor filed a Motion to Extend Automatic Stay. Dckt. 25. Debtor also filed a Notice of Hearing on Motion to Extend Automatic Stay on September 3, 2024, and set the hearing on the Motion to Extend for 1:30 p.m. on September 10, 2024. Dckt. 26.

The grounds stated in the Motion to Extend are quite simple and straightforward, as follows (identified by paragraph number in the Motion):

1. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on 08/09/2024.
2. The automatic stay provided by 11 U.S.C. § 362(a) is set to expire on 09/09/2024.

3. The Debtor requires additional time to reorganize his/her financial affairs and has already filed a motion with this court to confirm chapter 13 payment plan. Debtor has also filed a notice of hearing with this court.
4. The Debtor has acted in good faith and has not previously requested an extension of the automatic stay in this case.

Motion, Dckt. 25. No Declaration or other evidence is filed in support of the Motion to Extend.

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).

In this case, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) for cause, and in the Motion states that cause exists because:

[t]he interests of Movant in the Trust are not adequately protected. Debtor is not making any payments to Movant pursuant to the Agreement, Debtor has filed a second Bankruptcy case within the past 30 days, this case was filed in bad-faith, Debtor does not have any equity in the Truck after costs of sale and the Truck is not necessary for an effective reorganization, and the automatic stay will automatically expire on September 9, 2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Motion, p. 1:27-2:4; Dckt. 13.

It is true that the record shows a prepetition delinquency; however, Debtor has filed a Plan and proposes payments to Movant in that Plan. Plan, Docket 7. Movant does nothing to argue how the proposed plan payments do not provide adequate protection or provide for Movant’s claim. Movant has merely stated that Debtor is in default, which is presumably why this Debtor (and all debtors) filed bankruptcy. There is no legal authority presented showing why a prepetition default is grounds for 11 U.S.C. § 362(d)(1) relief when a debtor has a plan and Motion to Confirm on file providing for that creditor’s claim. Movant has not provided the court with grounds for relief under 11 U.S.C. § 362(d)(1).

Assertion that Stay Terminates 30 Days After this Case Was Filed

In the Motion, Movant makes passing reference to 11 U.S.C. § 362(c)(3), stating:

13. Movant cannot proceed with its efforts to recover and sell the Truck in light of the automatic stay herein. Pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay will automatically expire on September 9, 2024.

Motion, ¶ 13; Dckt. 13. This is repeated as a basis for asserting that there is cause to grant relief pursuant to 11 U.S.C. § 362(d)(1).

In the Points and Authorities filed by Movant, no legal analysis is provided, no authorities stated, for Movant's repeated proposition:

[a]nd the automatic stay will automatically expire on September 9, 2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Points and Authorities, p. 4:2-3; Dckt. 15.

The Debtor has filed a Motion to Extend the Automatic Stay, in connection with the court provides a detained analysis of the reading of the plain language of 11 U.S.C. § 362(c)(3)(A) providing for the automatic stay to terminate only as to the Debtor, but it does not terminate as to the property of the bankruptcy estate and other parties in interest, such as the trustee (or person exercising the powers of a trustee). That discussion includes the following.

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

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

§ 1306. Property of the estate

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

(1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and

(2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

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

In 11 U.S.C. § 362(a) Congress expressly provides for a multifaceted, multi-protected persons and properties in bankruptcy cases.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) **the enforcement**, against the debtor or **against property of the estate, of a judgment obtained before the commencement of the case under this title**;

(3) **any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate**;

(4) **any act to create, perfect, or enforce any lien against property of the estate**;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

11 U.S.C. § 362(a) [emphasis added].

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).

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

[a] Scope of Stay Limitation

There are certain limitations arising from the express wording of subsection (c)(3). **First, the stay terminates under this provision only “with respect to the debtor.”** As in other provisions in section 362, Congress sought in subsection (c)(3) to distinguish between actions taken against property of the debtor and property of the

estate.¹⁸ **This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)**¹⁹ for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.²⁰ Thus, if there has been a **stay termination based on the operation of subsection (c)(3)** in a case filed within a year of a prior dismissal, **the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate**, but not as to actions against the debtor or property of the debtor that is not property of the estate.²¹

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

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, in light of Debtor's lack of equity in the Truck, Debtor's failure to pay therefor, along with its depreciating nature, and his serial Bankruptcy filing, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:7-9, Docket 13.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Crossroads Equipment Lease and Finance, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is **XXXXXXX** and ~~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 2016 Freightliner CA125SLP tractor truck, VIN ending in 0593 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.~~

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

No other or additional relief is granted.

3. [24-23517-E-13](#)

KENDRON FRYER
Pro Se

**MOTION TO EXTEND
AUTOMATIC STAY
9-03-24 [\[25\]](#)**

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.

No Certificate of Service has been filed by Debtor.

This Motion was filed by Debtor on September 3, 2024, and set for hearing by Debtor on September 10, 2024. No order shortening time was issued by the court.

The court deems this Motion to Extend being presented to the court as an *Ex Parte* Motion, for which further hearings will be set as appropriate and necessary. This Motion appears to have been filed in response to the assertion by Crossroads Equipment Lease and Finance, LLC that thirty days after this Bankruptcy Case was filed the automatic stay, in its entirety, would terminate by operation of law pursuant to 11 U.S.C. § 362(c)(3).

The Motion to Extend the Automatic Stay is XXXXXXX.

Kendron Fryer ("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. 24-23191) was filed on July 22, 2024, by the Debtor in *pro se*, and dismissed on August 6, 2024, after Debtor failed to file Schedules, Statement of Financial Affairs, and a Chapter 13 Plan. *See* Order, Bankr. E.D. Cal. No. 24-23191, Dckt. 21.

Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay terminate **as to Debtor** thirty days after filing of the petition. See discussion below.

On September 3, 2024, the Debtor filed a Motion to Extend Automatic Stay. Dckt. 25. Debtor also filed a Notice of Hearing on Motion to Extend Automatic Stay on September 3, 2024, and set the hearing on the Motion to Extend for 1:30 p.m. on September 10, 2024. Dckt. 26.

The grounds stated in the Motion to Extend are quite simple and straightforward, as follows (identified by paragraph number in the Motion):

1. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on 08/09/2024.
2. The automatic stay provided by 11 U.S.C. § 362(a) is set to expire on 09/09/2024.
3. The Debtor requires additional time to reorganize his/her financial affairs and has already filed a motion with this court to confirm chapter 13 payment plan. Debtor has also filed a notice of hearing with this court.
4. The Debtor has acted in good faith and has not previously requested an extension of the automatic stay in this case.

Motion, Dckt. 25. No Declaration or other evidence is filed in support of the Motion to Extend.

Scope of 11 U.S.C. § 362(c)(3)

Congress provides in 11 U.S.C. § 362(c)(3) for the automatic stay to terminate as to an individual debtor thirty days after the commencement of a bankruptcy case if there had been a prior bankruptcy case for that individual had been pending and dismissed within a year of the filing of the case currently before the court.

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

...

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint **case of the debtor was pending within the preceding 1-year period but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)

—

(A) **the stay under** subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate **with respect to the debtor** on the 30th day after the filing of the later case;

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

However, upon motion of a party in interest and after notice and hearing, the court may order the provisions of the automatic stay that would terminate as to the debtor to be extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B) provides:

(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)(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.

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

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

§ 1306. Property of the estate

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

(1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and

(2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

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

In 11 U.S.C. § 362(a) Congress expressly provides for a multifaceted, multi-protected persons and properties in bankruptcy cases.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) **the enforcement**, against the debtor or **against property of the estate, of a judgment obtained before the commencement of the case under this title**;

(3) **any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate**;

(4) **any act to create, perfect, or enforce any lien against property of the estate**;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

11 U.S.C. § 362(a) [emphasis added].

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).

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

[a] Scope of Stay Limitation

There are certain limitations arising from the express wording of subsection (c)(3). **First, the stay terminates under this provision only “with respect to the debtor.”** As in other provisions in section 362, Congress sought in subsection (c)(3) to distinguish between actions taken against property of the debtor and property of the

estate.¹⁸ **This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)**¹⁹ for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.²⁰ Thus, if there has been a **stay termination based on the operation of subsection (c)(3)** in a case filed within a year of a prior dismissal, **the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate**, but not as to actions against the debtor or property of the debtor that is not property of the estate.²¹

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

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

Thus, even if the court does not grant this Motion, the property of the Bankruptcy Estate continues to be protected by the automatic stay.

Review of Schedules

On Schedule A/B (assets) filed by the Debtor, the only vehicle listed in a 2005 Ford Expedition. Dckt. 1 at 14-15. Nothing is listed for machinery or equipment used in a business. *Id.*; at 21. The 2016 Freightliner CA125SLP tractor truck is not listed as an asset of the Debtor on Schedule A/B.

The court notes that Debtor has not claimed any exemptions on Schedule C. *Id.* at 23-24.

Debtor does list Movant on Scheduled D (secured claims) as having a claim in the amount of (\$25,637.68) which is secured by a “semitruck 2016 freightliner.” *Id.* at 25.

No other creditors are listed on Schedule D, and no creditors are listed on Schedule E/F (priority and general unsecured claims. *Id.* at 25 - 31.

On Schedule I Debtor lists having \$10,000 a month in income (which includes \$1,000 a month from his non-debtor spouse). *Id.* at 38-39. This is gross income, with no deductions for taxes, insurance, or other amounts.

On Schedule J, Debtor lists having (\$8,649) a month in expenses for his family unit of three persons (Debtor, non-debtor spouse, and one child). *Id.* at 40-42. No provision is made for payment of income or other taxes on Schedule J.

It is not clear from the Schedules whether Debtor is an employee (whereby the employer is making the mandatory withholding and deductions for taxes, Social Security, and the like), or whether the Debtor is self-employed or an independent contractor.

Establishing Good Faith in the Prosecution of This Second Bankruptcy Case

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.

In the prior case, the Debtor in pro se “stumbled” into bankruptcy and quickly “stumbled” out of bankruptcy, the case being dismissed for failure to file the basic required documents. The court uses the term “stumble” not out of disrespect to the Debtor, but to highlight that the Debtor is not legally trained, is not demonstrating an ability to meet the legal requirements in trying to prosecute a bankruptcy case, and may well stumble his way out of this case, notwithstanding having substantial monthly income.

Clearly Debtor is financially ahead of many others who seek relief under the Bankruptcy Code. However, it is unclear how much of the \$10,000 a month in income is after tax, take-home income exists to fund a Plan.

Debtor also has stumbled with respect to the Plan that was filed and the Motions. Requests for relief sought by motion must not only clearly state the factual and legal basis for the relief in the motion, but must be supported by admissible evidence and, if necessary, legal arguments in a points and authorities.

Looking at the Chapter 13 Plan proposed, it does not provide for paying creditor Crossroads Equipment Lease and Finance, LLC (“Creditor”) its full claim in Class 1 of the Plan. For Class 1, first both the arrearage and the current monthly payment must be provided for. Second, the payment terms under the contract must exceed the term of the Plan (here, thirty-six months).

Based on a Motion for Relief From the Stay filed by Creditor, the payment terms on Creditors claim come to an end in June 2025, well short of the term of the Plan. Thus, Creditor’s claim would need to be provided for in Class 2 or the additional provisions.

At the hearing **XXXXXXX**

Debtor ~~has~~ ~~has not~~ sufficiently demonstrated the case was filed in good faith and rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. **XXXXXXX**.

The Motion is ~~XXXXXXX~~, 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 Kendron Fryer (“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, 202x.~~

~~IT IS FURTHER ORDERED~~ that the final hearing on this Motion shall be conducted at ~~3:00 p.m. on xxxx, 202x.~~ Debtor shall provide notice of the continued hearing on or before ~~xxxx, 202x~~, with written oppositions, if any, filed and served on or before ~~xxxx, 202x~~, and replies, if any, filed and served on or before ~~xxxx, 202x.~~

~~IT IS ORDERED~~ that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

ARTHUR H. SUTTER, TRUSTEE OF
THE ARTHUR H. SUTTER
REVOCABLE TRUST VS.

Item 4 thru 5

ATTENTION PARTIES: 2:00 Calendar Item 24 - Motion to Extend Stay in Kevin Norman Case

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, parties requesting special notice, and Office of the United States Trustee on July 29, 2024. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay and Motion for Adequate Protection 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, **XXXXXXX**.

The Motion for Relief from the Automatic Stay and Motion for Adequate Protection is **XXXXXXX.**

Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("Movant") seeks relief from the automatic stay with respect to Erika Lizeth Norman's ("Debtor") real property commonly known as 448 Royal Tern Drive, Vacaville, CA 95687 ("Property"). Movant has provided the Declarations

of Christy Mathers (Docket 56) and Reilly Wilkinson (Docket 58) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three post-petition payments, with a total of \$10,946.82 in post-petition payments past due. Declaration 4:25-26, Dckt. 56. Movant also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of \$29,511.88, when adding other fees. *Id.* at 4:23. Movant also argues Debtor has not maintained property taxes. Mot. 3:7-8, Docket 54.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) so that any order for relief will be binding in any other case under this title purporting to affect the subject property filed within two years of the order for relief, as this bankruptcy was filed solely to hinder and delay Movant. Mot. 2:8-10, Docket 54. Movant argues Debtor does not hold an interest in the Property. *Id.* at 11-12. *See* Decl. ¶ 8, Docket 56 (stating that Debtor transferred her entire interest in the Property to her spouse by quitclaim deed dated February 7, 2018); Ex. 3, Docket 57.

Movant also moves this court for relief from the Co-Debtor stay of 11 U.S.C. § 1301 “out of an abundance of caution,” although Movant does not believe there is a Co-Debtor stay in place here. Mot. 2:16-23, Docket 54.

Movant further moves this court for its postpetition attorneys’ fees and costs incurred in bringing the Motion. *Id.* at 3:13-17. No specific amount of attorney’s fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 27, 2024. Dckt. 96. Debtor states:

1. Debtor’s spouse, Kevin James Norman filed a Chapter 13 case, case number 24-23545 on August 10, 2024. *Id.* at 2:14-15.
2. Mr. Norman cured the entire prepetition arrearage of \$29,824.15 in a previous case before it was dismissed, case no. 20-22267. *Id.* at 2:25-26.
3. Debtor only signed the quitclaim deed to Mr. Norman as she believed it was a requirement of the title company, or the lender, as she was not going to be a co-signer on the loan. Debtor maintains she has a community property interest as well as a possessory interest in the property, having resided consistently in the property since its purchase. *Id.* at 3:10-14.
4. There is no cause for relief pursuant to 11 U.S.C. § 362(d)(4). The only other case affecting the Property was Mr. Norman’s first case where he made substantial payments to Movant. Movant seeks extraordinary relief in a case with no extraordinary cause. *Id.* at 4:2-7.
5. Debtor understands that, since her husband filed his case on August 10, 2024, Mr. Norman’s attorney Peter Macaluso, has conferred with Movant’s attorney and has had fruitful conversations regarding a stipulation to resolve Movant’s concerns regarding Debtor’s case. Debtor understands that Mr.

Macaluso will be filing a motion to consolidate the two cases, for better administration of same. Debtor is agreeable to the consolidation as well as the administration of the cases under the experienced guidance and expertise of Mr. Macaluso. Debtor believes it would be prudent to continue this matter until such time as the intended stipulation is completed, and the court has an opportunity to review it. *Id.* a 4:7-16.

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 \$430,816.49 (Declaration ¶ 15, Dckt. 56), while the value of the Property is determined to be \$760,000.00, as stated in Schedules A/B filed by Debtor. Schedule A/B 11:1.1, Docket 1.

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

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

In this case, relief from the stay would not allow Movant to pursue a foreclosure where Mr. Norman’s bankruptcy case is currently ongoing, there being a stay present there. Debtor’s case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman’s cases into one.

At the hearing, **XXXXXXX**

Co-Debtor Stay

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor’s spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval

or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

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

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 not 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. The only case to affect the Property was Mr. Norman's first case, case no. 20-22267, which resulted in making substantial payments on Movant's claim. It is true that Mr. Norman has filed a new case recently, case no. 24-23545. However, it appears the court will soon be consolidating that case and Debtor's current case into one. This behavior does not amount to a series of filings effecting the Property in an attempt to hinder or delay Movant's foreclosure proceedings. Relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

Attorneys' Fees Requested

Request for Attorneys' Fees

Movant requests that it be allowed attorneys' fees. Movant seeks the fees pursuant to the "Note and Deed of Trust or 11 U.S.C. § 506(b)." Mot. 3:13-16, Docket 54. 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.

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 Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("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**.

5. [24-21440-E-13](#)
[RDW-3](#)

ERIKA NORMAN
Mary Ellen Terranella

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-7-24 [66]**

RUDOLPH INCORPORATED 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, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court’s calculation, 34 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, -----

<p>The Motion for Relief from the Automatic Stay is XXXXXXX.</p>
--

Rudolph Incorporated, its successors and/or assignees in interest (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford F150 Regular Cab, VIN ending in 0916 (“Vehicle”). The moving party has provided the Declarations of Angela Hellman (Docket 68) and Reilly Wilkinson (Docket 69) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Erika Lizeth Norman (“Debtor”).

Movant argues Debtor has not made four monthly post-petition payments, with a total of \$2,086.36 in post-petition payments past due. Declaration 4:8, Docket 68. Movant also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$547.66. *Id.* According to

Movant, relief should be granted pursuant to 11 U.S.C. § 362(d)(1) for this delinquency, and because Debtor misrepresented facts to Movant when obtaining the loan secured by the vehicle. Mot. 2:14-21, Docket 66. Movant further seeks an order granting relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for a reorganization. *Id.* at 2:25-26.

Movant further moves this court for its postpetition attorneys' fees and costs incurred in bringing the Motion. *Id.* at 3:10-12. No specific amount of attorney's fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

Kelley Blue Book Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70. 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).

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 \$14,489.60 (Declaration 4:14-15, Docket 68), while the value of the Vehicle is determined to be \$13,268, as stated in the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70.

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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON

BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

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

However, as noted in the related matter, relief from the stay would not allow Movant to pursue repossession where Debtor’s spouse’s (“Mr. Norman”) individual bankruptcy case is currently ongoing, there being a stay present there. Debtor’s case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman’s cases into one.

At the hearing, **XXXXXXX**

Co-Debtor Stay

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor’s spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

Attorneys’ Fees Requested Request for Attorneys’ Fees

Movant requests that it be allowed attorneys’ fees. Movant seeks the fees pursuant to the “Security Agreement securing Movant’s claim or 11 U.S.C. § 506(b).” Mot. 3:10-13, Docket 66. 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.

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 Rudolph Incorporated, its successors and/or assignees in interest (“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 **XXXXXXX**.

ALEC SNOWDON 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.

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, other parties in interest, and Office of the United States Trustee on August 2, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

However, Movant's Notice of Hearing indicated the date of this Hearing as April 29, 2015 at 10:00 a.m. Notice 2:1, Docket 21. This error may present confusion to parties in interest. At the hearing, **XXXXXXX**

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.
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Creditor Alec Snowdon ("Movant") seeks relief from the automatic stay to enable Movant to pursue certain claims under Michael Adrian Medina and Jodie Annette Medina's ("Debtor") insurance policy and other third party defendants involved, particularly, Creditor's personal injury claims in the case of *Alec Snowdon v. California Department of Transportation; County of Placer; City of Lincoln; Michael Medina; Salvador Mendoza*; Superior Court of California, County of Placer, Case Number S-CV-0050974 ("State Court Litigation"). Movant has provided the Declaration of Christopher Price to introduce evidence to authenticate the documents upon which it bases the Motion. Decl., Docket 22.

Movant argues that the State Court Litigation should proceed because it will not hinder, burden, delay, or be inconsistent with this case. Movant's state claim is unrelated to the claims of other creditors in this bankruptcy proceeding. Mot. 2:7-14, Docket 20. In the state action, Creditor Alec Snowdon seeks to pursue claims against Debtor's insurance policy and other third parties involved. Movant argues Debtor's bankruptcy estate will not be prejudiced because the Debtor has no interest in any applicable insurance

policies. Rather, Debtor's bankruptcy estate will benefit from the relief requested because creditor Alec Snowden's claims will be reduced to the extent of any recovery under any insurance policies. *Id.* at 3:18-24.

The Chapter 13 Trustee filed a statement of nonopposition on August 27, 2024. Docket 32.

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).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. It appears that any recovery sought will be from Debtor's insurance company, not Debtor personally, meaning creditors in this case will not be prejudiced by the State Court Litigation. The litigation has additionally been ongoing since August 4, 2023. Mot. 3:4-7, Docket 20. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

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 for any amounts in excess of the insurance proceeds against Debtor, 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.

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 Creditor Alec Snowden (“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 Michael Adrian Medina and Jodie Annette Medina (“Debtor”) 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 to proceed with litigation in the case of *Alec Snowdon v. California Department of Transportation; County of Placer; City of Lincoln; Michael Medina; Salvador Mendoza*; Superior Court of California, County of Placer, Case Number S-CV-0050974 .

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant, to the extent being enforced against the Debtor in excess of the insurance proceeds, shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

**LIGHTHOUSE AT BRIDGEPORT
OWNERS' 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.

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 August 27, 2024. By the court's calculation, 14 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.

Lighthouse at Bridgeport Owners' Association ("Movant") seeks relief from the automatic stay with respect to Flynn Earl Jemerson's ("Debtor") real property commonly known as 363 Lighthouse Drive, Vallejo, California 94590 ("Property"). The Motion seeks relief to allow Movant to proceed with a foreclosure of the Property.

Movant has provided the Declaration of Terin Reeder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 59.

Movant argues Debtor has fallen behind on assessment obligations to the Movant and is currently post-petition delinquent in the amount of (\$13,312.11). Mot. 1:28-21, Docket 57; Decl ¶ 5, Docket 59. Movant provides authenticated Exhibits, although improperly attached to the Declaration (LOCAL BANKR. R. 9004-2(c)(1)), that show Debtor is obligated to pay monthly payments of \$619.19, and Debtor has only made three of those postpetition payments. Decl ¶ 5, Docket 59. Movant requests relief pursuant to 11 U.S.C. § 362(d)(1), (2), and (3). Mot. 1:23, Docket 57.

The Movant is a non-profit association charged with the management, governance and operation of the developed community known as Lighthouse at Bridgeport. *Id.*, 2:6-8. The monthly assessment due Movant is (\$619.19). *Id.*, 2:22.

The (\$13,312.11) post-petition assessment arrearage consists of:

Regular Assessments.....	(\$2,871.54)
Special Assessments.....	(\$ 578.66)
Late Fees.....	(\$ 325.47)
Interest.....	(\$ 79.95)
Collection Charges.....	(\$1,071.01)
Agent Fee.....	(\$ 75.00)
Other.....	(\$ 455.00)

Exhibit D, Notice of Assessments; Dckt. 59.

DISCUSSION

Confirmation of Modified Plan

On August 28, 2024, this court entered an order granting the Debtor's Motion to Confirm the Modified Chapter 13 Plan in this Case. Order; Dckt. 56. The Confirmation Order itself has not yet been entered on the Docket.

The Modified Plan provides for Movant's claim in the amount of (\$32,572.25) to be paid through the Plan with a monthly dividend of \$660.00. Plan, ¶ 3.08; Dckt. 47.

On April 10, 2023, Movant filed Proof of Claim 1-1 stating a pre-petition claim for HOA Assessment defaults in the amount of (\$32,572.25). The Modified Plan addresses only that Claim and does not appear to address post-petition defaults.

Relief From Stay

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 \$13,312.11 (Decl ¶ 5, Docket 59), while the value of the Property is determined to be \$275,000, as stated in Schedules A/B filed by Debtor. Schedule A/B 11:1.1, Docket 1.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In*

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

From the evidence presented, Debtor has defaulted in:

1. Four and one-half months of assessments, (\$2,871.54)/(\$619.19) per month, and
2. A special assessment of (\$578.66).

Then there is the interest, late fees, collection fees, agent fees, and “other” amount added to the actual assessments.

Here, Debtor retains the property for which the assessments are due, presumably is getting the benefits being provided by Movant, and has defaulted in the post-petition payments to Movant.

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 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).

While making reference to 11 U.S.C. § 362(d)(2), Movant offers no evidence of the value of the Property, any liens which may exist against the Property, or shows that there is no equity in the Property for the Debtor or the Bankruptcy Estate.

Based upon the evidence submitted to the court, the court determines that there is equity in the Property, and the Property is necessary for any effective rehabilitation in this Chapter 13 case. Relief is not granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(3)

The opening line to the Motion states that Movant is seeking relief pursuant to “11 U.S.C. § 362(d)(1) through (3).” While citing to the statutory provisions of 11 U.S.C. § 362(d)(1) and (d)(2), the Motion makes no further reference to § 362(d)(3).

Relief pursuant to 11 U.S.C. § 362(d)(3) is entirely unwarranted in this case as that section of the code applies only in single asset real estate cases. The case here is not a single asset real estate case. *See* 11 U.S.C. § 101(51B) (defining a single asset real estate case). Relief is not granted pursuant to 11 U.S.C. § 362(d)(3).

The court will presume that the reference to 11 U.S.C. § 362(d)(3) is a clerical error and not an intentional misstatement of the law.

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.

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 Lighthouse at Bridgeport Owners’ 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 that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 363 Lighthouse Drive, Vallejo, California 94590 (“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.

No other or additional relief is granted.