

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

September 19, 2024 at 10:00 a.m.

1. [24-90459-E-7](#)

ARTHUR YAJIMOVICH AND

MIKAYLA RANDALL

Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY, MOTION FOR  
ADEQUATE PROTECTION

8-21-24 [[19](#)]

BAKER BLOCK ASSOCIATES, L.P.

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 (*pro se*), Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on August 21, 2024. By the court's calculation, 28 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 granted.**

**NO DOCKET CONTROL NUMBER**

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not

September 19, 2024 at 10:00 a.m.

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complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

## THE MOTION

Baker Block Associates, L.P. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 125 Baker Block Street East, # 415, Costa Mesa, CA 92626 (“Property”). The moving party has provided the Declaration of Nicole Viteri to introduce evidence as a basis for Movant’s contention that Arthur Yajimovich and Mikayla Randall (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 21. Movant presents evidence that it is the owner of the Property. *See* Decl. ¶ 4; Ex. 1 at 2, Docket 22. Movant further requests annulment of the stay as part of the relief so any actions it has taken since the filing of this case were not in violation of the stay. Mot. 5:16-19, Docket 19.

Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Orange, Case No. 30-2024-01381935-CL-UD-CJC. Mot. 1:25-28, Docket 19. However, Movant has not yet received a final judgment in that case. *Id.* at 3:9-10.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 2005 Bankr. LEXIS 3427, at \*8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

### 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 a failure to pay rent. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### 11 U.S.C. § 362(d)(2)

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se*

not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

### **Annulment: Retroactive Relief**

The Ninth Circuit recognizes the bankruptcy court's wide discretion in granting relief from the automatic stay, including granting "retroactive relief from the stay." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

Here, Movant does not identify any conduct it engaged in, without knowledge of the Bankruptcy Case having been filed, which would be in violation of the automatic stay. The Unlawful Detainer trial was set for September 16, 2024, and presumably that trial has been continued (which is not a violation of the stay).

The Motion does not state with particularity the grounds, factual and legal, upon which an annulment of the stay is warranted. The Motion "merely" requests relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). The Motion does identify that the Lessee under the lease tried to improperly remove the Unlawful Detainer Action to the District Court in the Central District of California. It also states that in addition to this Bankruptcy Case, two other debtors commenced a bankruptcy case in the Eastern District of California in which they asserted one of those debtors was living in the Property.

Only when the Movant gets to the prayer in the Motion does a series of requests for relief, none of which are set forth in the Motion itself, get stated by Movant. This includes requesting an annulment of the Stay. No act for which annulment is requested, but rather Movant appears to say, "Judge, just annul the Stay for whatever I have done, the court doesn't need to know what has been done."

Movant has failed to state grounds and provide evidence in support for annulling the automatic stay.

This relief is denied without prejudice.

### **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. Rather, it is just added in the prayer, as if assigning the court the duty to assemble the grounds and law for such requested relief.

### **Requested Relief that No Stay is in Effect**

Movant further requests this court find that no stay is in effect pursuant to 11 U.S.C. § 362(b)(22) and (23). Neither of those sections are applicable in this case. 11 U.S.C. § 362(b)(22) is only applicable if there has been a judgment for possession applicable against debtor. Movant has shown that is not the case here, the unlawful detainer action, Case No. 30-2024-01381935-CL-UD-CJC, not having been concluded.

Furthermore, 11 U.S.C. § 362(b)(23) is only applicable if Movant has shown there has been endangerment of the Property or illegal use of controlled substances on the Property. Movant has not made any such showing here.

Therefore, the request that the court find there is no stay in effect pursuant to 11 U.S.C. § 362(b)(22) and (23) is without merit.

### **Requested 11 U.S.C. § 362(d)(4) Relief**

In the prayer, Movant drops in a request for relief pursuant to 11 U.S.C. § 362(d)(4). The plain language of that statute states:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay. . .

. . .

(4) with respect to a stay of an act against real property under subsection (a), **by a creditor whose claim is secured by an interest in such real property**, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either. . .

(emphasis added). Creditor has not shown its claim is secured by an interest in real property; rather, Creditor has shown it is the owner of the Property, and Debtor is currently unlawfully in possession of the Property.

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FN. 1. The court cannot identify any basis under the law for this request for relief. This request, dropped into the prayer, is subject to the certifications made by Movant and counsel pursuant to Federal Rule of Bankruptcy Procedure 9011. As identified below, the prayer in the Motion makes other requests for relief for which the court cannot identify any legal basis.

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Therefore, the request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied without prejudice.

## Other Requests for Relief

The prayer in this Motion, though no factual and legal grounds are stated in the Motion, requests a number of other types of relief. These are:

6) A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing of this motion upon recording a copy of the order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law;

...

8) The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion without further notice;

9) The order is binding in any other bankruptcy case purporting to affect the Property filed not later than 2 years after the date of entry of such order, except that a debtor in a subsequent case may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

10) The order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days so that no further automatic stay shall arise in that case as to the Property

Motion, ¶¶ 6, 8, 9, 10; Dckt. 19. No factual or legal basis for these additional relief requested are provided by Movant.

All other requests for relief are denied without prejudice.

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 Baker Block Associates, L.P. ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated and terminated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 125 Baker Block Street East, # 415, Costa Mesa, CA 92626 ("Property").

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

**IT IS FURTHER ORDERED** that all other relief requested in the Motion (whether stated in the Motion or merely requested in the prayer in the Motion) is denied without prejudice.

2. [24-90376-E-7](#)  
[SD-1](#)

**ONSAYO ABRAM**  
**Peter Macaluso**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-15-24 [\[15\]](#)**

**CONSUMER PORTFOLIO SERVICES,  
INC. 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b>
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Consumer Portfolio Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Civic vin ending in 2424 ("Vehicle"). The moving party has provided the Declaration of Alex Kotsay to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Onsayo Abram ("Debtor"). Decl., Docket 18.

Movant argues Debtor has no equity in the Vehicle and it is not necessary for an effective reorganization, justifying 11 U.S.C. § 362(d)(2) relief. Mot. 2:6-12, Docket 15. Movant further argues because it is not adequately protected, relief is proper pursuant to 11 U.S.C. § 362(d)(1). *Id.* at 2:9-10.

### **Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*In re Weatherford*, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **Grounds Stated in Motion**

In this Motion, Movant states with particularity the following “grounds” in support of the Motion for Relief From the Automatic Stay:

- A. “A copy of CPS’s Relief from Stay Information Sheet is filed concurrently herewith as a separate document pursuant to Local Rules of Court.

Motion, p. 2:2-3; Dckt. 15. It is unclear to the court what “grounds” are being stated in the above with respect to the requested relief. Whatever is in the Information Sheet is not stated in the Motion.

- B. The current value of the Vehicle is \$12,000.00.

*Id.*; p. 2:4-5. Clearly an important ground which is stated with particularity.

- C. “In the present case, the Debtor has no equity in the Property, as evidenced by the approximate market value compared to the total lien owed to CPS.”



*Id.*; p. 2:6-7. While Movant states (dictates to the court) Movant’s factual finding that the Debtor has no equity in the Vehicle, there are no grounds stated with particularity from which such can be concluded by the court.

D. “Secured Creditor is not receiving regular monthly payments, . . . .”

*Id.*; p. 2:10. It is unclear if this is one payment, ten payments, or one hundred payments. Also, there is no allegation that the Debtor is actually in default. It may be, as may be stated by Movant, the Debtor has been making “irregular” payment, and there is no default.

The Declaration of Alex Kotsay is filed in support of the Motion. Dec.; Dckt. 18. The factual, personal knowledge testimony of Alex Kotsay consists of (identified by paragraph number in the Declaration):

4. Authentication of Retail Installment Sales Contract filed as Exhibit 1.
5. Authentication of the Lien and Title Information Report filed as Exhibit 2.
7. The amount necessary to payoff the loan is \$15,522.77. Alex Kotsay also authenticates a Payoff Statement which is filed as Exhibit 3. Mr. Kotsay provides no testimony about the status of the loan or any defaults.

Exhibit 3, is a actually a letter written to its counsel, not a “Payoff Statement.” In this letter, which previously may have been subject to the attorney-client privilege, a representative of Consumer Portfolio Services, Inc. This letter requests that counsel represents CPS to file a motion for relief from the stay for a flat fee of \$XXX.

The letter then includes some attorney-client communications about the debt (not a payoff statement).

Interestingly, it appear that in addition to the letter requesting that the attorney represent CPS, it also “threatens” the attorney with debt collection action, stating at the bottom of the letter:

**THIS IS AN ATTEMPT TO COLLECT A DEBT, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report.

NOTICE: If you are entitled to the protections of the United States Bankruptcy Code (11 U.S.C . §§ 362; 524) regarding the subject matter of this letter, the following applies to you: **THIS COMMUNICATION IS NOT AN ATTEMPT TO COLLECT, ASSESS, OR RECOVER A CLAIM IN VIOLATION OF THE BANKRUPTCY CODE AND IS FOR INFORMATIONAL PURPOSES ONLY.**

Exhibit 3; Dckt. 19. It appears that CPS is using its debtor debt collection letter form to communicate with its own attorneys.

There is no basis shown for the above letter to be some authenticated financial record concerning the debt.

### **J.D. Power Valuation Report Provided**

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 4, Docket 19. 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).

### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on September 5, 2024. Docket 21. Debtor asserts that he is only one payment delinquent, and requests 30 days to prove he has become current. Debtor states that he carries insurance on the Vehicle and depends on the Vehicle to keep employment. *Id.* at 1:21-25.

However, the above is “argued” by Debtor’s counsel in the Opposition. No declaration or other evidence that there is no default or there will be a cure of the default has been provided.

### **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 \$15,522.77 (Declaration ¶ 7, Docket 18), while the value of the Vehicle is determined to be \$12,000, as stated on the J.D. Power Valuation Report. Ex. 4, Docket 19.

#### **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).

#### **11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON

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

### **Debtor's Request for A Continuance to Cure the Default**

Debtor's Opposition requests a continuance to become current on the payments, believing that he is only one payment in default. Opposition, p. 2:1; Dckt. 21. Based on this, Debtor first requests that the court deny the Motion based on an intention to cure thirty days in the future.

Alternative, if the court will not deny the Motion, Debtor requests a thirty day continuance.

This Bankruptcy Case was commenced on July 6, 2024. Debtor has diligently prosecuted this case, appeared at the 341 Meeting, and the Trustee has now filed his No Asset Report (Dckt. 23). However, the deadline for filing Objections to Discharge and Complaints for Nondischargeability is October 7, 2024, which means that the Debtor cannot get his discharge, and this case be closed, until late in October 2024.

The Declaration in support of the Motion states that amount necessary to pay off the secured claim is \$15,522.77. Dec. ¶ 7; Dckt. 18. The Declaration does not provide any evidence of the Debtor being in default on the secured obligation.

### **Decision**

The parties have placed the court in a bit of a quandary. What should be a simple motion for relief for the grounds to be stated with particularity, Movant has chosen a legal strategy that cuts the corners and does not comply with the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure enacted by the U.S. Supreme Court. Movant chooses instead to state general conclusions, have incomplete testimony, and leave it for the court to try and assemble the grounds and the evidence for Movant.

The Debtor, in seeking to oppose the Motion, merely sends in his attorney to make a factual argument. However, Debtor has chosen to not provide any testimony or evidence of the asserted fact upon which his opposition is based.

At the hearing, **XXXXXXX**

Debtor wishes to retain the Vehicle by becoming current. At the hearing, **XXXXXXX**

~~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) 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 Consumer Portfolio Services, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**~~IT IS ORDERED~~** 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 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 2015 Honda Civic vin ending in 2424 ("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 not waived for cause.

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