

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

September 27, 2022 at 1:30 p.m.

1. [22-21401](#)-E-13 **JULIANNE KELLEY**
[EAT-1](#) **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-18-22 [38]**

LAKEVIEW LOAN SERVICING, LLC

VS.

CASE DISMISSED: 08/25/2022

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 (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2022. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to Julianne Lynne Lee Kelley's ("Debtor") real property commonly known as 147 Glacier Street,

September 27, 2022 at 1:30 p.m.

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woodland, California (“Property”). Movant has provided the Declaration of Darcie Lyle to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion seeks relief pursuant to 11 U.S.C. § 362(d)(1), lack of adequate protection. The Motion was filed on August 18, 2022. Dckt. 38. This Bankruptcy Case was subsequently dismissed on August 25, 2022. Order, Dckt. 47. The dismissal of the case renders the request for relief pursuant to 11 U.S.C. § 362(d)(1) moot, the staying having terminated by operation of law pursuant to 11 U.S.C. § 362(c)(2)(B).

**Prospective Relief Requested Pursuant to
11 U.S.C. § 362(d)(4)**

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as 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 secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Movant states with particularity in the Motion that Debtor and others have filed a series of bankruptcy cases, each of which has been dismissed, since 2018, with the debtors in each of those cases asserting an interest in the Property:

A. Chapter 13 Case 18-27799

1. Debtors filing the case: William and Mary Carter
 - a. Filed.....December 16, 2018
 - b. Dismissed.....August 26, 2019
2. On May 26, 2022 a grant deed was recorded in which William Carter “relinquished his legal interest in the Property.”
 - a. An unauthenticated copy of the Carter grant deed is attached as Exhibit 4 in support of the Motion. Dckt. 41.
 - b. It states that William Carter grants his interest in the Property to Mary Carter.
3. In the court’s review of the Docket in Case 18-27799, the court notes the following:
 - a. No Chapter 13 plan was confirmed in the Carter Bankruptcy Case.

- b. On Schedule A/B William and Mary Carter state they own 100% of the interests in the Property as community property. 18-27799; Dckt. 1 at 10.

B. Chapter 13 Case 19-27010

- 1. Debtor filing the case: Mary Carter (her second case)
 - a. Filed.....November 11, 2019
 - b. Dismissed.....July 15, 2021.
- 2. A Chapter 13 Plan was confirmed in Case 19-27010, order entered on September 21, 2020. 19-27010; Dckt. 53.
- 3. Though Mary Carter had funded the Plan with \$39,055.75 in payments, she was \$15,945.89 in default, and the Chapter 13 Trustee sought dismissal of the case, which motion was granted by the court. *Id.*; Motion, Dckt. 54, Civil Minutes, Dckt. 58.

C. Chapter 13 Case 22-20272

- 1. Debtor filing the case: Mary Carter (her third case)
 - a. Filed.....February 7, 2022
 - b. Dismissed.....February 18, 2022 (failure to file Schedules and Statement of Financial Affairs).

D. Chapter 11 Case 22-20805

- 1. Debtor filing the case: Mary Carter (her fourth case)
 - a. Filed.....April 1, 2022
 - b. Converted to Chapter 7.....June 2, 2022
- 2. On Schedule A/B Mary Carter states that she is the sole owner of the Property. 22-20805; Dckt. 27 at 21.
- 3. Movant provides an unauthenticated grant deed by which Mary Carter states that she is gifting a 15% interest in the Property to her daughter, Julianne Kelley. 22-21401; Exhibit 8; Dckt. 41.
 - a. This grant deed is dated May 30, 2022, and has a May 31, 2022 recording date.

- b. As of May 2022, the Property was the property of the bankruptcy estate. No order granting authority for the sale or transfer of an interest in the Property appears on the Docket in Chapter 7 Case 22-20805.
 - 4. The Chapter 7 case remains open and has not been closed.
 - a. On July 28, 2022, the Chapter 7 Trustee filed his Report of No Distribution. 22-20805; July 28, 2022 Dckt. Entry Report.
- E. Chapter 13 Case 22-21401 (Current Case)
- 1. Debtor filing the case: Julianne Kelley (her first, and the sixth case since 2018 in which interests in the Property are listed as property of the debtor and bankruptcy estate)
 - a. Filed.....June 2, 2022
 - b. Dismissed.....August 25, 2022
 - 2. No Chapter 13 Plan was confirmed in the Debtor's Chapter 13 case.
 - a. The case was dismissed due to Debtor's failure to cure default in the filing fee installment payment.
 - 3. Debtor's proposed Chapter 13 Plan provides for paying Creditor's claim in the amount of \$47,500 over the 60 month term of the Plan with 0.00% interest, with monthly payments of \$750. Plan, Class 2(A); Dckt. 7.
 - a. Debtor's Plan only provides for funding the Plan with payments of \$550 a month. *Id.*, ¶ 2.01.
 - 4. In sustaining the Objection to Confirmation of the proposed Chapter 13 Plan, the court's findings and conclusions include:
 - a. "Trustee further alleges that Debtor likely filed the Plan in bad faith when considering the totality of the circumstances. In re Warren, 89 B.R. 87, 90 (B.A.P. 9th Cir. 1988). "The Debtor appeared at the Meeting of Creditors and **testified that she was told she had to file bankruptcy by her mom [prior multiple filing debtor Mary Carter] and her mom helped her fill out her paperwork but that she was not sure why she filed or what the case was about.**" Objection, Dckt. 13, at 3:15-17 (emphasis added).

The Plan may not be confirmed unless the Plan was proposed in good faith. 11 U.S.C. § 1325(a)(3). In light of the totality of the

circumstances and the questionable ownership of the Property, the Plan cannot be confirmed.” Dckt. 32 at 2 (emphasis added).

- b. “Schedule J shows the Debtor’s net monthly income is \$ 12.53 per month. Dckt. 1at 23: 23. This amount is insufficient to make a Plan payment of \$550.00 per month, let alone a higher payment that will ultimately be necessary to successfully complete this plan. Thus, the Plan may not be confirmed. *Id.* at 3.
- c. “The Debtor has failed to identify the Codebtor’s case in the Voluntary Petition and file a Notice of Related Case pursuant to Local Rule 1015-1. The Debtor admitted at the First Meeting of Creditors, that the Codebtor is Mary Carter. The Voluntary Petition, Question #10, asks if there are any bankruptcy cases pending by affiliate, (Page 3), and the Debtor marked “No”, and failed to identify Ms. Carter’s case that is currently pending.” *Id.*
- d. The court’s findings also include Debtor stating that she had no assets other than her interest in the Property and a Toyota Corolla. The court found this statement by Debtor under penalty of perjury to be “questionable.” *Id.*
- e. Debtor did not provide the Trustee with copies of pay advices or tax returns. *Id.* at 4.

From the court’s review of the files in this case, the Court’s findings (Dckt. 32) demonstrate that this bankruptcy case is not one filed by Debtor to obtain relief under the Bankruptcy Code in good faith, but it appears that she has been made the puppet of Mary Carter, made to dance in a canard bankruptcy case in which the “real person seeking bankruptcy relief” is her mother, Mary Carter (having failed in five prior bankruptcy cases).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfers of interests in the subject property to beneficiaries who then filed several bankruptcies were a deliberate attempt as a stay to any foreclosure. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue an order granting relief pursuant to 11 U.S.C. § (d)(4), vacating the automatic stay to allow Lakeview Loan Servicing, LLC, 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 which is recorded against the 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 obtain possession of the real property commonly known as 147 Glacier Street, Woodland, California.

This order, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any subsequent bankruptcy case under Title 11 (the Bankruptcy Code) purporting to affect such real property filed not later than 2 years after the date of the entry of this order of the court, except as ordered by the court in any subsequent case filed during that period.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Lakeview Loan Servicing, LLC, 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 which is recorded against the 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 obtain possession of the real property commonly known as 147 Glacier Street, Woodland, California.

IT IS FURTHER ORDERED that pursuant to 11 U.S.C. § 362(d)(4) that this Order, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, is binding in any subsequent bankruptcy case under Title 11 (the Bankruptcy Code) purporting to affect such real property filed not later than 2 years after the date of the entry of this order of the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

ELSA SHEKELLE, AS TRUSTEE OF
THE THE MARTHA J. VOESTER
LIVING TRUST VS.

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 1, 2022. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

With respect to service, there are a couple shortcomings. First, for contested matters such as this Motion for Relief, the Motion and supporting pleadings must be served in the manner prescribed for service of a summons and complaint in Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(c). Such service must be made on both the debtor and debtor's counsel. Fed. R. Bankr. P. 7004(b)(9), (g). Additionally, service was made by "email" on Debtor's counsel. Such electronic service may be made when the party or counsel consents in writing. Fed. R. Bank. P. 9036(b)(2). There is no indication that such written consent was given.

However, both of these service issues have been remedied. Debtor has filed an opposition. Second, Counsel for Debtor, a registered user in this District, has been electronically served by the Clerk of the Court as provided in Federal Rule of Bankruptcy Procedure 9036(b)(1). Though the certificate of service does not document such service, the court notes for purposes of this Motion, this one time, that such service was made.

Additionally, the Local Bankruptcy Rules for the Eastern District of California have been updated to provide not only for such electronic service via the Clerk of the Court, but also a mandatory Certificate of Service Form to be used by all registered users which provides a clear process to document the various types of service which the serving party is certifying. *See* L.B.R. 9036-1, 7005-1.

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 to allow Movant to allow the enforcement of the Nondischargeable Judgment of this Court issued in Adversary Proceeding 18-2121.

Elsa Shekelle, as Trustee of the The Martha J. Voester Living Trust (“Movant”) seeks relief from the automatic stay to allow *In re the Martha J. Voester Living Trust, Established June 20, 2002*, Superior Court of El Dorado County, and Case No. 20160033 (the “State Court Litigation”) to be concluded. Movant has failed to provide the Declaration of any individual to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Edward Peterson and Kathryn Martha Peterson (“Debtor”). Additionally, Movant provides no or grounds stated with particularity in her motion.

The court continued the hearing to allow Movant to file an amended motion and supplemental pleading, and for Debtor to file an opposition thereto. Order, Dckt. 128.

DEBTOR’S ORIGINAL OPPOSITION, DCKT. 119

Debtor’s counsel argues that relief is not warranted because Debtor is current in plan payments. Opposition, Dckt. 119. Debtor states that the “confirmed plan” provides for 100% of the Creditor’s claim. *Id.*

CREDITOR’S ORIGINAL SUPPLEMENTAL RESPONSE, DCKT. 122

Creditor states a First Modified Plan was proposed based on the entry of a Judgment for Nondischargeable Debt and Dismissal of Objection to Claim. Supp. Response, Dckt. 122 at ¶ 4. This plan was subsequently denied. Order, Dckt. 104.

Creditor states that the confirmed plan does not provide for Creditor and that the lack of a new plan filing after the denial of the First Modified Plan is grounds for relief from the automatic stay.

CREDITOR’S AMENDED/SUPPLEMENTAL MOTION FOR RELIEF

Creditor filed an Amended/Supplemental Motion for Relief on August 16, 2022. Dckt. 129. In the Amended Motion, Creditor states with particularity the following grounds for relief:

1. The Motion is made pursuant to 11 U.S.C. § 362(d)(1) for “cause” relating to Debtor’s “long-term and repeated delay and bad faith tactics” in state and bankruptcy court actions. Debtor’s actions include:
 - a. **State court action**
 - i. Failure to acknowledge jurisdiction of the Court.

- ii. Failure to appear and participate in properly scheduled/noticed Depositions – resulting in an El Dorado County Superior Court Order to appear at depositions and issuance of monetary sanctions.

It is not clear to the court when this alleged misconduct occurred, whether prior to or after the settlement agreement. However, in Creditor’s original Motion for Relief, Creditor states “Debtors admitted their misconduct when they entered into the [Bankruptcy Dispute Resolution Conference] Settlement Agreement.” Motion, Dckt. 114 at 15:1.

As the court addressed in the prior ruling, Creditor provides no law suggesting relief should be granted after entering into a settlement agreement.

b. Adversary Proceeding

- i. Refusing to substantively testify at deposition and asserting the Fifth Amendment Privilege against self-incrimination.

Again, it is not clear when this alleged misconduct occurred, whether prior to or after entering into a settlement agreement. However, in Creditor’s original Motion for Relief, Creditor states “Debtors admitted their misconduct when they entered into the [Bankruptcy Dispute Resolution Conference] Settlement Agreement.” Motion, Dckt. 114 at 15:1. If before entering in the settlement agreement, Creditor provides no law suggesting relief should be granted after entering into a settlement agreement.

- ii. Entering into a Stipulated Settlement Agreement for Non-Dischargeability of Debt through the Bankruptcy Dispute Resolution Program and immediately thereafter refusing to communicate and perform their obligations under this Stipulated Settlement.
- iii. Refusal to communicate with Plaintiff’s counsel after entering into a formal Stipulated Settlement for Non-Dischargeability of Debt causing multiple months’ delay and ultimate refusal to move forward with this Stipulated Settlement.
- iv. Refusal to provide notarized Release of Claims from Debtors’ children to Plaintiff and the Estate, as required under the Stipulated Settlement.
- v. Failure to provide ample evidence of credit/offset of bank payments/distribution as called for under the Stipulated Settlement, but still falsely asserting the Debtors’/Defendants’ entitlement to said offset/credits.

- vi. Refusal to execute a submitted formal Stipulated Settlement for Non-Dischargeability of Debt.
- vii. Refusal to dismiss Debtors' Objection to Claim of Movant/Creditor with Prejudice, as agreed in the Stipulated Settlement.
- viii. Refusal to submit a viable and approved Amended Chapter 13 Plan to pay for the Stipulated Settlement debt owed to Movant/Plaintiff, as required under the Stipulated Settlement, but still falsely asserting to the Court that such amended/approved Chapter 13 Plan had been achieved; and
- ix. Forcing/requiring Movant to expend attorney's fees and costs in filing a Motion before this Court in the Bankruptcy Adversary Proceeding Case No.: 2018-02121 for enforcement of Stipulation for Judgment of Non-Dischargeability of Debt.

c. **Bankruptcy Case**

- i. Failure to submit an approved Amended Chapter 13 Reorganization Plan addressing the Stipulated Non-Dischargeable Debt owed to Movant.

TRUSTEE'S NONOPPOSITION

Trustee filed a nonopposition to Creditor's Amended/Supplemental Motion for Relief on August 29, 2022. Dckt. 134.

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 6, 2022 stating the Motion appears to be a "frivolous motion and should not have been brought before the Court." Dckt. 136. Debtor claims the following:

- A. Debtor is current in their proposed Chapter 13 plan payments and the plan is feasible.
- B. Debtor was able to get original notarized releases and full release of claims against/to Martha J. Voester Living Trust and Elsa Shekelle and provide them to the Plaintiffs. Therefore, they are entitled to receive the \$38,776.68 credit. Debtor claims they have not been able to get Creditor to sign the releases.

Upon review of Exhibit A, Dckt. 137, releases have been signed by Kendyl Faass and Jordan Peterson.

- C. Debtor states Creditor is not entitled to relief because after the \$38,776.68 credits, the total amount of class 7 claims are \$78,115.52.

Upon review of the proposed Modified Plan, Dckt. 142, Debtor provides for \$78,115.52 of nonpriority unsecured claims and a 100% dividend to those claims. Under the nonstandard provisions, the real property at 3030 Woodleigh Court, Cameron Park, CA 95682 is to be sold no later than month 56 and Debtor estimates the net proceeds after costs of sale and payment to all secured claims encumbering the property to be at least \$141,880.00.

DEBTOR'S SECOND MODIFIED CHAPTER 13 PLAN

On September 6, 2022, Debtor filed a Second Modified Chapter 13 Plan. Dckt. 142. Upon review of the Second Modified Plan, it does not appear to account for Creditor's Claim. The Court states the basic terms of the proposed Second Modified Plan (identified by paragraph numbers in the Second Modified Plan) as follows:

7.01. The monthly Plan payments by Debtor are \$700 a month for months 1-56 and \$124,000 in month 57.

7.02. The 3030 Woodleigh Ct Property ("Property") will be sold no later than month 56. Movant's claim will be paid through the sale of the Property.

3.07. No Class 1 Claims

3.08. Two Class 2 Claims, with the amounts paid to date equaling the amounts of the secured claims. See Plan Paragraphs 7.04, 7.05.

3.09. No Class 3 Claims.

3.10. Two Class 4 Claims paid directly by Debtor

CREDITOR'S REPLY

On September 13, 2022, Creditor filed a Reply to Debtor's Opposition. Dckt. 153. Creditor denies Debtor's representation of this Motion as an attempt to modify or object to a confirmed plan that fully provides for the debt owed to her.

Creditor states Debtors are not entitled to the purported credit reduction of \$38,776.68 because:

1. Per the terms of the settlement agreement, proof of the releases were not submitted to Creditor within thirty (30) days of the date of the executed Settlement Agreement. No extensions were filed.
2. Debtor admitted they would agree to the judgment without offset because they could not secure releases by the deadline imposed in the Settlement Agreement.

3. It was Debtor's duty to give the releases to Creditor.
4. No extensions were requested by Debtor nor given by Creditor.
5. After the non-performance/breach of Debtor, the court entered a Judgment of Nondischargeability on March 31, 2021, which supersedes the Settlement Agreement.
6. The Judgment's terms include the following terms: "judgment is entered for Plaintiff Elsa Shekelle and against Defendant-Debtors Robert Peterson and Kathryn Peterson, and each of them jointly and severally, in the amount of \$123,486.51 (comprised of \$114,341.70 principal and prejudgment interest of \$9,144.81 (computed at 7% per annum, which is \$21.93 per day x 471 days computed to March 30, 2021))."

RULING

The court finds that cause exists to grant their Motion because of delay in confirmation of a Plan that provides for their claim, the failure of Debtor to diligently prosecute this Bankruptcy Case, and the Debtor not showing that in the final months of this case that Debtor can, or will, prosecute the sale of the Property in good faith.

This is an unusual bankruptcy case in that Movant is the only creditor with an unsecured claim. Allowing Movant to enforce the Nondischargeable Judgment will not negatively impact any creditors with other unsecured claims.

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).

Per the terms of the judgment entered on March 31, 2021 (Judgment, Adv. Proceeding Case No. 18-02121, Dckt. 96), judgment has been entered on the following terms:

1. Judgment is entered for Plaintiff Elsa Shekelle and against Defendant-Debtors Robert Peterson and Kathryn Peterson, and each of

them jointly and severally, in the amount of \$123,486.51 (comprised of \$114,341.70 principal and prejudgment interest of \$9,144.81 (computed at 7% per annum, which is \$21.93 per day x 471 days computed to March 30, 2021));

2. Post-judgment simple interest of 10% per annum shall accrue on this Judgement as agreed to by the Plaintiff and Defendant-Debtors in the Settlement Agreement;
3. The Judgment is nondischargeable as to Defendant-Debtor Robert Peterson and Defendant-Debtor Kathryn Peterson, and each of them as agreed by Plaintiff and the Defendant-Debtors in the Settlement Agreement; and
4. The court shall issue a separate order in Defendant-Debtors' Bankruptcy Case (18-22123) dismissing the Defendant Debtors' Objection to Plaintiff's Claim (DCN: DEF-004) as agreed by Plaintiff and Defendant-Debtors in the Settlement Agreement.

The court finds Debtor has not taken sufficient action to modify the plan to provide for Movant's full claim based on the nondischargeable judgment. It appears that the proposed Second Modified Plan was filed only in response to this Motion for Relief From the Stay being dropped on Debtor.

This Bankruptcy Case was filed on April 9, 2018. Judgment was entered for Movant and against Debtor on March 31, 2021. Debtor made an initial effort to file and confirm a Modified Plan, with the Motion and Modified Plan filed on May 5, 2021. Confirmation was denied on July 28, 2021. Order, Dckt. 104.

No effort was made by Debtor during the 13 months following the entry of the Judgement to modify the Chapter 13 Plan and provide for Creditor's claim. Rather, it wasn't until September 6, 2022 that the Second Modified Plan and Motion to Confirm were filed. Dckts. 142, 140.

The second Modified Plan states that Movant's claim will be paid in month 57 of the Plan. Putting aside the dispute as to whether the correct amount is stated, it appears that month 57 would be January 2023. (First confirmed Plan filed May 2018.)

The Property is to be sold no later than then month 56 of the Plan, which is December 2022. That would be right in the middle of the Christmas, Hanukkah, Kwanza, and Thanksgiving holidays. The start of that Holiday season is only about six weeks after the date of the hearing on this Motion.

A review of the Docket reflects that no motion for authorization to employ a real estate broker and agent has been filed. In looking at the Declaration in support of the Motion to Confirm (Dckt. 143), Kathryn Peterson, one of the two debtors in this case, provides extensive testimony of the history of the litigation, the history of the bankruptcy case, review of the objection to claim, history of communications, and that she is filing the Second Modified Plan to address the one and one-half year old nondischargeable Judgement entered by this court on March 31, 2021.

The Declaration then repeats the terms of the Second Modified Plan. Most of what is in the Declaration appears to be in the nature of what an attorney would say in recounting litigation and reading the court's Docket.

In her Declaration, debtor Kathryn Peterson testifies with respect to the necessary sale of the Property and how it will be done, it consists of:

Sell of the Real Property

43. The real property commonly described as 3030 Woodleigh Ct, Cameron Park, CA 95682-8159, shall be sold no later than month 56. I have been working on repairs to the home and getting it ready to be sold. Attached hereto as Exhibit "F" is a list of repairs that are currently being done on the real property. My real estate agent will have a list agreement ready for me to sign by the end of September. I will be filing a Motion to Approve the Real Estate Agent. My intent is to put the real property on the market in October. I have had several window companies out for bids on the windows. I have the garage door repair scheduled in September. I am working as quickly as I can to get this real property on the market so that it can be sold.

Declaration, ¶ 43; Dckt. 143.

In it, though facing this Nondischargeable Judgment for eighteen months, Debtor will be getting a real estate broker employed only in October 2022.

Debtor does discuss having to make some repairs to the Property, but apparently these will not be done until September or October 2022.

While Debtor testifies that she is "working as quickly as I can to get this real property on the market so it can be sold," the conduct of Debtor is to the contrary. It is only now, facing the Motion for Relief From the Stay, that Debtor has contemplated getting bids, making repairs, and possibly getting the Property sold during the Thanksgiving-Christmas-Hanukkah-Kwanza holidays.

Cause has been shown for granting the requested relief from the stay with respect to the enforcement of the Nondischargeable Judgment entered by this court. The automatic stay is vacated to allow Movant to prosecute the Adversary Proceeding and enforce the Nondischargeable Judgment entered in *Shekelle v. Peterson et al*, United States Bankruptcy Court Eastern District of California, Adversary Case No. 18-02121 (the "Adversary Proceeding")

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 Elsa Shekelle, as Trustee of the The Martha J. Voester Living Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated in this case 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 prosecute and enforce the Nondischargeable Judgment of this court in *Shekelle v. Peterson et al*, United States Bankruptcy Court Eastern District of California, Adversary Case No. 18-02121 (the “Adversary Proceeding”).

No other or additional relief is granted.

FINAL RULINGS

3. [18-27960-E-13](#) SOUA YANG
[NLG-1](#) Thomas Amberg

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-30-22 [32]

MATRIX FINANCIAL SERVICES
CORPORATION VS.

Final Ruling: No appearance at the September 27, 2022 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

Matrix Financial Services Corporation (“Creditor”) having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on September 15, 2022, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Soua Yang (“Debtor”); the Ex Parte Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion for Relief filed by Matrix Financial Services Corporation (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.