

pending in the past year. Debtor's prior bankruptcy case (No. 23-22835) was dismissed on May 8, 2024, after Debtor became delinquent under the terms of her plan. *See* Order, Bankr. E.D. Cal. No. 23-22835, Dckt. 104, May 8, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states "there has been a substantial change in the financial or personal affairs of the debtor since the dismissal of the last case, and the debtor believes that this case will result in a confirmed plan that will be fully performed." Docket 7. Debtor also filed an Affidavit and Exhibits in support of the Motion. Dockets 8, 9. Debtor explains that her circumstances have changed because she is now receiving a pension from State Farm that will assist her in funding a plan. Docket 8. The attached Exhibit is an unauthenticated receipt for a retirement payment from State Farm in the amount of \$1,874.45. Docket 9.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Kuaji Yvette Hill (“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 on an interim basis, 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 **xxx 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**.

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.

October 8, 2024 Hearing

The parties agreed to continue the hearing on this Motion with Debtor asserting she has made serious steps in curing the delinquency. Nothing new has been filed with the court as of the court’s review on October 2, 2024. At the hearing, XXXXXXX

REVIEW OF MOTION

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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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).

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.

Continuance of Hearing

In this case, Debtor has shown that she has made substantial steps toward curing the delinquency. At the September 10, 2024 Hearing, counsel for the creditor reports that payments have been made and they

are awaiting confirmation from Movant whether the default has been cured or what remaining balance is owed.

The Parties agreed to continue the hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on October 8, 2024.

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

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

The 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 for Relief from the Automatic Stay is
XXXXXXX

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Item #6 on 2:00 Calendar

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 granted.

October 8, 2024 Hearing

The court continued the hearing on this Motion after having granted it on an interim basis. Opposition pleadings were to be filed and served on or before September 24, 2024, and Reply pleadings by the Debtor or other party in interest, if any, were to be filed and served on or before October 1, 2024. Docket 31. A review of the docket on October 2, 2024 reveals nothing new has been filed with the court related to this Motion.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

October 8, 2024 at 1:30 p.m.

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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.

September 6, 2024 Hearing

At the hearing, held in conjunction with a Motion for Relief From the Automatic Stay, the Debtor stated his opposition to the Motion for Relief and his intention to pursue prosecution of this case. The court addressed with the Debtor the shortcomings and challenges the Debtor faced in pursuing this Chapter 13 case in *pro se*.

As the court stated on the record, the filing of this Second Case is due to the Debtor trying to prosecute the First Case in *pro se*. The reasons for filing the bankruptcy cases is clear, Debtor needing to protect his source of income. It appears that Debtor generates significant monthly income from his truck driving business and can fund a Chapter 13 Plan.

The Debtor is seeking relief under the Bankruptcy Code, but has stumbled due to his lack of legal knowledge.

The Debtor has 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 on an interim basis through and including October 11, 2024.

The final hearing on this Motion shall be conducted a 1:30 p.m. on October 8, 2024. Opposition pleadings shall be filed and served on or before September 24, 2024, and Reply pleadings by the Debtor or other party in interest, if any, shall be filed and served on or before October 1, 2024.

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

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

The Motion to 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.

**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, opposition was stated by the Debtor.

The Motion for Relief from the Automatic Stay is XXXXXXX.

October 8, 2024 Hearing

The court continued the hearing on this Motion after Debtor appeared at the previous hearing and opposed the Motion. Opposition pleadings were to be filed and served on or before September 24, 2024, and Reply pleadings by the Debtor or other party in interest, if any, were to be filed and served on or before October 1, 2024. Docket 32. Trustee was also directed to make a disbursement of \$1,484.99 to Movant on its secured claim.

On October 1, 2024, Debtor filed a late Opposition to the Motion. Docket 47. Debtor states his counsel was hired recently, on September 18, 2024, and they are working together on a new Plan. Docket 47.

At the hearing, XXXXXXX

REVIEW OF MOTION

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.

September 6, 2024 Hearing

At the hearing, the Debtor stated his opposition to the Motion. The court addressed with the Debtor the shortcomings and challenges the Debtor faced in pursuing this Chapter 13 case in *pro se*.

The Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on October 8, 2024. Opposition pleadings by the Debtor or other party in interest shall be filed and served on or before September 24, 2024, and Reply pleadings, if any, shall be filed and served on or before October 1, 2024.

The Debtor having commenced Plan payments, and providing for Movant's secured claim in the proposed Plan, the Chapter 13 Trustee shall make a September 2024 disbursement of \$1,484.99 to Movant on its secured claim based on the current proposed Chapter 13 Plan.

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

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

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

5. [23-21835-E-13](#)
[AT-1](#)

ANGELA FIELDS
Mo Mokarram

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-24-24 [20]**

**RIVER CITY COMMONS
HOMEOWNERS 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, Co-Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion for Relief from the Automatic Stay and from the Co-Debtor 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 and the Co-Debtor stay is granted.

River City Commons Homeowners Association (“Movant”) seeks relief from the automatic stay with respect to Angela Yvonne Fields’ (“Debtor”) real property commonly known as 1630 Bannon Creek Drive, Sacramento, California 95062 (“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 24.

Movant pleads with particularity that:

1. Debtor and Co-Debtor Brian Chiesa (“Co-Debtor”) own an interest in the River City Commons as their Property is apart of the development. Movant is a non-profit mutual benefit corporation charged with the management, governance and operation of the development. Debtor and Co-Debtor are obligated to pay regular monthly assessments to Movant. Mot. 2:7-13.
2. Debtor and Co-Debtor’s monthly assessment is \$93. Since filing the Chapter 13 Petition commencing this matter, Debtor and Co-Debtor have failed to make payment of the monthly assessment obligations and are now post-petition delinquent in the amount of \$2,611.13. *Id.* at 2:23-26; Decl. ¶ 6, Docket 24.
3. As such, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) to record its assessment and foreclose on the Property. Movant seeks leave to file a proof of claim reflecting the delinquency and associated attorneys’ fees and costs in the amount of \$1,500.

The court notes that filing an Amended Proof of Claim does not violate the provisions of the automatic stay. *See* Official Form 410.

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 \$2,611.13 (Declaration ¶ 6, Docket 24), while the value of the Property is determined to be \$450,000, as stated in Schedules A/B filed by Debtor.

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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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.

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted as Movant would be unable to foreclose on the Property and if the Co-Debtor stay remained in effect.

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 River City Commons Homeowners 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 1630 Bannon Creek Drive, Sacramento, California 95062 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

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.

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

October 8, 2024 Hearing

The court continued the hearing to afford the parties the opportunity to have the Stipulation filed and proposed Order uploaded to the court. A review of the Docket on October 2, 2024 reveals no stipulation has been filed with the court.

However, Debtor filed a Motion for Joint Administration to administer this case with the related case no. 24-23545. Docket 126.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

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.

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.

Continuance of September 10, 2024 Hearing

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The Parties requested a short continuance to allow for the stipulation to be documented.

September 24, 2024 Hearing

The court continued this hearing to afford parties time to document their Stipulation, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Order, Docket 114. A review of the Docket on September 20, 2024 reveals that no such Stipulation has been filed with the court.

Though it has been represented to the by the Debtor and her spouse Kevin Norman, a debtor in his separately filed Chapter 13 Case, 24-23545, that the Erika Norman case will be consolidated with the Kevin Norman case to be prosecuted as a joint case. No motions to consolidate had been filed as of the court's September 22, 2024 review of the files in these two cases.

At the hearing, counsel for the Creditor reported that a stipulation has been worked out, documented, and it has been circulated for signatures.

The hearing is continued to 1:30 p.m. on October 8, 2024.

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

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

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

7. [24-23759-E-13](#) **ABDUL MUNIF**
[DVW-1](#) **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION,
FOR RELIEF FROM CO-DEBTOR STAY
MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
9-13-24 [16]**

**U.S. BANK TRUST NATIONAL
ASSOCIATION VS.**

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

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 September 13, 2024. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

The Motion to Confirm Absence of 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 to Confirm Absence of the Stay is granted, and relief from the stay is further granted pursuant to 11 U.S.C. § 362(d)(4).

Creditor, U.S. Bank National Trust Association, not in its individual capacity, but solely as Trustee of the Truman 2021 SC9 Title Trust (“Movant”), moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(c)(4). Movant seeks confirmation from the court that no automatic stay in effect on real property commonly known as 620-620A Maple Street, West Sacramento, CA 95691 (“Property”) is not in effect because this is Debtor’s third case in the same year with the previous two cases both being dismissed. Mot. 3:11-24, Docket 16. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4) as well based on a series of cases being filed that affect the Property. *Id.* at 4:3-18. Movant also seeks recovery of its attorneys fees pursuant to Movant’s Deed of Trust. *Id.* at 6:18-7:2.

22. The Chapter 13 Trustee, David Cusick, filed a nonopposition on September 24, 2024. Docket

DISCUSSION

11 U.S.C. § 362(c)(4) states:

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

...

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

Debtor has had the following cases dismissed within the past year:

- A. Case No. 24-20579
 1. Filed: February 15, 2024
 2. Chapter 13
 3. Dismissal Date: June 5, 2024
 4. Reason for Dismissal: delinquency in plan payments

- A. Case No. 24-23204
 1. Filed: July 23, 2024
 2. Chapter 13
 3. Dismissal Date: August 12, 2024
 4. Reason for Dismissal: failure to timely file documents

Therefore, no automatic stay has gone into effect regarding Debtor's third case within the past year, this current case, which was filed on August 23, 2024.

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.* In this case, there have been four bankruptcy cases affecting the Property in the two year. *See* Case nos. 22-23379, 24-20579, 24-23204, and 24-23759.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the series of unsuccessful cases being filed that result in dismissal.

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

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

Request for Attorneys' Fees

Movant requests attorneys fees in the amount of \$1,263 pursuant to 11 U.S.C. § 506(b) and the terms of the Deed of Trust secured by the note. The Deed of Trust provides for recovery of attorneys' fees pursuant to paragraph 9 of the Deed of Trust. Deed of Trust ¶ 9, Ex. 2 at p. 13, Docket 19.

Because Movant has established that there is equity in the Property for Debtor and value in excess of the amount of Movant's claims as of the commencement of this case, Movant is awarded attorneys' fees as part of Movant's secured claim in the total amount of \$1,263 for all matters relating to this Motion. 11 U.S.C. § 506(b).

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, due to Debtor's repeated bankruptcy filings that frustrate Movant's collection attempts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 6:11-16, Docket 16.

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.

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

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

The Motion to Confirm Absence of the Automatic Stay filed by U.S. Bank National Trust Association, not in its individual capacity, but solely as Trustee of the Truman 2021 SC9 Title 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 relief is granted pursuant to the Motion, the court confirming that there is no automatic stay in effect in this case, case no. 24-23759, pursuant to 11 U.S.C. § 362(c)(4).

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

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

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

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien having a value greater than the obligation secured, the moving party is awarded attorneys’ fees as part of Movant’s secured claim in the total amount of \$1,263 for all matters relating to this Motion.

No other or additional relief is granted.

**OPERATING ENGINEERS LOCAL
UNION FEDERAL CREDIT UNION
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 parties requesting special notice on September 10, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required. The Certificate of Service does not indicate that the Office of the U.S. Trustee was served.

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.

Community First Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Heartland Wilderness RV, VIN ending in 8407 (“Vehicle”). The moving party has provided the Declaration of Tina Patrone to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kenton Lee Bess and Rochelle Marie Bess (“Debtor”). Decl., Docket 17.

Movant argues Debtor has not made one post-petition payment, with a total of \$403.54 in post-petition payments past due. Declaration 3:20-21, Docket 17. Movant also provides evidence that there are six pre-petition payments in default, with a pre-petition arrearage of \$2,542.29. *Id.* at 3:15-18.

Debtor filed a nonopposition on October 4, 2024. Docket 31.

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 \$22,183.27 (Declaration 4:3-4, Docket 17), while the value of the Vehicle is determined to be \$18,788, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 13:4.1, 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).

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.

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 Community First Credit Union (“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 Heartland Wilderness RV, VIN ending in 8407 (“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.

FINAL RULINGS

9. [23-22540-E-13](#)
[RHS-1](#)

SATINDER SINGH

STATUS CONFERENCE RE: ORDER FOR
FILING OF FINAL MOTION FOR
ALLOWANCE OF ATTORNEY'S FEES
AND COSTS BY COUNSEL FOR DEBTOR
9-13-24 [[308](#)]

DEBTOR DISMISSED: 09/13/24

Final Ruling: No appearance at the October 8, 2024 Status Conference is required.

Debtor's Atty: Ryan C. Wood

Notes:

Set by order filed 9/13/24 [Dckt 308]. On or before 9/30/24, Ryan C. Wood, Esq. to file and serve a Motion for Final Allowance of Fees and Expenses.

[RCW]17] Final Application for Compensation filed 9/27/24 [Dckt 315], set for hearing 11/19/24 at 2:00 p.m.

The Status Conference is continued to 2:00 p.m. on November 19, 2024, to be conducted in conjunction with the hearing on the Motion for Allowance of Fees and Expenses for Debtor's counsel.

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 Status Conference having been scheduled, counsel for the Debtor having filed a Motion for allowance of fees and expenses, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 19, 2024**, to be conducted in conjunction with the hearing on the Motion for Allowance of Fees and Expenses for Debtor's counsel.

**MERCEDES-BENZ FINANCIAL
SERVICES USA LLC VS.**

Final Ruling: No appearance at the October 8, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 6, 2024. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

Mercedes-Benz Financial Services USA LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Mercedes-Benz GLS450W4, VIN ending in 4883 (“Vehicle”). The moving party has provided the Declarations of John Eng and Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Nanette Rose Bautista and John Alan Bautista (“Debtor”). Decls., Dockets 22, 23.

Movant argues Debtor has not made at least one postpetition payment and five prepetition payments for a delinquency in the amount of approximately \$5,934.46. Decl. ¶ 7, Docket 23.

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 \$45,288.62 (Mot. 2:25-26, Docket 20), while the value of the Vehicle is determined to be \$44,000, as stated in Schedules A/B and D filed by Debtor. Docket 1 at 11:3.3.

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.

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, as Movant is not receiving payments and Debtor’s Plan calls for a surrender of the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:3-5, Docket 20.

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 Mercedes-Benz Financial Services USA 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 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 2019 Mercedes-Benz GLS450W4, VIN ending in 4883 (“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.