

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 12, 2021 at 1:30 p.m.

1.	<u>20-23896-E-13</u> <u>MET-4</u>	MILTON PEREZ Mary Ellen Terranella	CONTINUED MOTION TO CONFIRM PLAN 6-28-21 [98]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2021. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Confirm the Amended Plan is XXXXX.

The debtor, Milton Raul Perez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

1. monthly plan payments of \$1,600 for 12 months;

2. followed by monthly plan payments of \$4,100 for 12 months;
3. then \$4,400.00 for 36 month;
4. and a 100 percent dividend to unsecured claims totaling \$5,894.00.

Amended Plan, Dckt. 99. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR’S OPPOSITION

1 Oak Ventures Step Fund LLC (“Creditor”) holding a secured claim filed an Opposition on July 20, 2021. Dckt. 108. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make plan payments.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 27, 2021. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

- A. The claim of PHH Mortgage Corporation is misclassified as a class 4 claim.
- B. Debtor’s plan fails to mention a refinance in progress for the first and second mortgages on their residence.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Here, Creditor asserts that Debtor has failed to provide proper documentation in support of his contention that he will be able to make plan payments because he will be receiving contributions from his family and a \$750 from a boarder.

Debtor filed a Response to Creditor’s Opposition on August 3, 2021 asserting the following:

1. Debtor considers Creditor’s loan predatory where the interest rates in March 2007 when the loan was made were 6.16% and Creditor’s loan had an 11.25% interest.
2. Debtor’s family appeared in court at the June 29, 2021 hearing and attested to their ability to financially assist Debtor. The court was able to assess the credibility of the Debtor and his family at the June 29, 2021 hearing.

3. Debtor has provided all requested documents related to the refinance.
4. While Creditor complains that they have been delayed too long in collecting on its claim and have only received “very little money,” Creditor has received each and every month the contractual monthly on-going payment from the Chapter 13 trustee.

Dckt. 115.

Moreover, according to Trustee, despite the fact that there are arrears to address for creditor PHH Mortgage Corporation, Debtor has classified this creditor Class 4. This classification provides for a debtor to pay a creditor directly where no arrears are due. The Plan also fails to list that Debtor is working on refinancing two mortgages.

Debtor filed a Response to Trustee’s Objection on August 3, 2021 explaining that the arrearage has been addressed since March 2021 and that Debtor only owes a \$950.00 “pre-petition fees due” which consisted of attorneys’ fees from the Debtor’s previous Chapter 13 case, and thus this suggests that Debtor is not significantly behind in pre-petition mortgage such that inclusion of the claim as a Class 1 claim would be necessary. Dckt. 113 at 2:20-26.

Debtor also explains that he has applied for a refinance of both the first mortgage from PHH Mortgage Corporation and the second mortgage held by 1 Oak Ventures Step Fund through Pacific Lending Corporation as stated at the June 29, 2021 hearing. *Id.*, at 3:1-7. Debtor further explains that the refinance package is complete and the loan is in underwriting. Debtor asserts that the refinance should pay off the Plan with a 100% dividend to allowed unsecured creditors. *Id.*, at 3:8-10.

August 10, 2021 Hearing

At the hearing, counsel for the Debtor reported that there is preliminary loan approval to pay off the Plan and secured claims. The court continues the hearing to allow for the prosecution of the refinance.

Trustee’s Amended Response

On September 13, 2021, Trustee, David P. Cusick, filed an amended response to Debtor’s motion to confirm. Trustee wishes to amend:

1. PHH Mortgage - Trustee is no longer opposed to the claim being treated as Class 4.
2. Refinance - The declarations of Debtor and two relatives may be sufficient to allow approval of the modified plan.
3. Case Status - Debtor is current under the plan. Trustee has disbursed fund to 1 Oak Ventures Step Funding LLC.

Creditor’s Supplement to Objection

On September 22, 2021, Creditor 1 Oak Ventures LLC filed a supplement to objection to motion to confirm plan. The Creditor notes:

1. A family member helping Debtor fund the case and plan is “dubious.”
2. Debtor’s operative plan increases payments from \$1600 a month to \$4100 a month but Trustee’s comments and declaration do not address the increased payment.
3. If Debtor does not make the September 2021 payment of \$4100, the court should read non-payment of evidence of inability to fund the plan, deny the motion, and dismiss the case.

Debtor Status Report

Debtor provided an updated Status Report, filed on October 4, 2021 (Dckt. 126), providing information including the following:

- a. For the PHH Mortgage secured claim, Debtor reports that the Trustee does not oppose including it in Class 4 claim treatment, notwithstanding a small outstanding \$950.00 arrearage for attorney’s fees incurred by PHH Mortgage in connection with Debtor’s prior bankruptcy case.
- b. Debtor is continuing to work with his lender on a refinance to pay the junior secured claim (second deed of trust) of 1 Oak Ventures Step Fund, LLC and 100% of the Chapter 13 Plan payments.
 - i. Debtor projects that obtaining this refinance is still several months out from being completed.
- c. For the 1 Oak Venture Step Fund, LLC secured claim, the proposed plan provides:
 - i. Monthly payments to Creditor 1 Oak increase to \$4,110.00 a month beginning with the September 25, 2021 payment and continuing until the refinance is completed. Debtor has made these payments through the Chapter 13 Trustee.
 - ii. Creditor 1 Oak has received payments of \$9,790.32 in payments through the Trustee, who is currently holding \$12,665.53.

October 12, 2021 Hearing

At the hearing, **XXXXXXXXXX**

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—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, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXX.

1 Oak Ventures Step Fund LLC ("Creditor"), seeks dismissal of the case on the basis that the debtor, Milton Raul Perez ("Debtor"), does not provide for full payment of Creditor's pre-petition arrearage.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 12, 2021. Dckt. 64. Debtor contends that the proposed amended plan provides for a refinance of Creditor's claim, which will pay it in full. *Id.*, at 2. Additionally, Debtor asserts that there is significant equity to support the refinance of the second mortgage where Debtor's residence is valued at \$450,000 and the first mortgage has a balance of \$89,344.00. *Id.*

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of \$595.99 monthly along with an adequate protection payment of \$815.86 together with a proposal to refinance to pay off Creditor in full within 12

months of confirmation. Creditor does not consent to these terms.

The court has addressed Debtor's prosecution of this case in the Civil Minutes for the hearing on Debtor's Motion to Confirm the Amended Plan (DCN: MET-3).

At the hearing, Debtor's counsel and Creditor's counsel did not present an agreed to reasonable period, during which Debtor would make adequate protection payments, for the Debtor to obtain a refinance. The court addressed with the parties the concept of adequate protection and the use of an Ensminger like provision for the diligent prosecution of a refinance or sale of the Property.

Creditor expressed concern/skepticism over the Debtor being able to diligently seek either a refinance or sale, noting the history of defaults.

The court noted that a substantial equity exists in the Property above the lien and homestead exemption, and that conversion of this case to Chapter 7 and a trustee pursuing a sale of the Property appeared to be in the best interests of all creditors. If Debtor is unable, as Creditor argues/fears, to diligently prosecute a refinance or sale, it would not be proper to just dismiss and allow creditor to take the substantial value in the property in excess of its lien as extra "profit" for Creditor.

February 23, 2021 Hearing

As discussed in the Civil Minutes from the hearing on the Motion to Confirm the Chapter 13 Plan in this case, the court has determined that the hearing should be continued to determine whether Debtor is legally competent to obtain a refinance of the real property in which the estate has an equity of more than \$111,000, or if a limited purpose personal representative needs to be appointed because Debtor lacks the legal competency to obtain such refinancing or to sell the property if necessary.

The court continues the hearing on the Motion to Dismiss to allow the bankruptcy estate to protect the \$111,000+ in equity in property of the bankruptcy estate.

June 22, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no other documents or pleadings have been filed for this motion.

At the hearing counsel for the Debtor reported that Debtor has not been able to refinance because the lenders require refinancing the first as well. The first has a 2% interest rate, but Debtor can only obtain new financing at 10%.

As the court addressed on the Record for the June 22, 2021 hearing, which is incorporated herein by this reference, Debtor has now (in this and his prior case) been in bankruptcy more than a year with no confirmed plan. Though this bankruptcy case filed on August 11, 2020, has been premised on Debtor refinancing the debt, no refinance has occurred during the last nine months.

Debtor's counsel advises the court that the interest rate on a refinance is too high 10%, and must include the obligation secured by the senior deed of trust, which obligation has only a 2% interest. Debtor new "plan" for a "plan" is to have unidentified family members (Debtor's counsel not having been told who these family members are) who will help fund the Plan to repay the arrearage over the

term of the Plan.

While the Debtor has every economic incentive to save this Property and the substantial equity in it, he is not demonstrating that he can prosecute this case.

The court continues the hearing to allow Debtor to get the new plan on file, the motion to confirm, and the declarations showing how it will be funded.

June 29, 2021 Hearing

At the hearing counsel for the Debtor reported that an amended plan has been filed, with the motion to confirm set for August 10, 2021. An extensive discussion was conducted, with the Debtor and the supporting family members present, concerning the need for the Debtor and his family to follow through on the proposed plan, in which the \$2,000+ arrearage cure will commence to Creditor, or the refinance.

Debtor Status Report

Debtor provided an updated Status Report, filed on October 4, 2021 (Dckt. 126), providing information including the following:

- a. For the PHH Mortgage secured claim, Debtor reports that the Trustee does not oppose including it in Class 4 claim treatment, notwithstanding a small outstanding \$950.00 arrearage for attorney's fees incurred by PHH Mortgage in connection with Debtor's prior bankruptcy case.
- b. Debtor is continuing to work with his lender on a refinance to pay the junior secured claim (second deed of trust) of 1 Oak Ventures Step Fund, LLC and 100% of the Chapter 13 Plan payments.
 - i. Debtor projects that obtaining this refinance is still several months out from being completed.
- c. For the 1 Oak Venture Step Fund, LLC secured claim, the proposed plan provides:
 - i. Monthly payments to Creditor 1 Oak increase to \$4,110.00 a month beginning with the September 25, 2021 payment and continuing until the refinance is completed. Debtor has made these payments through the Chapter 13 Trustee.
 - ii. Creditor 1 Oak has received payments of \$9,790.32 in payments through the Trustee, who is currently holding \$12,665.53.

October 12, 2021 Hearing

At the hearing, **XXXXXXX**

3. [20-23804](#)-E-13 **MARVIN/JEANINE BURGESS**
[RDW-2](#) **Douglas Jacobs**
UMPQUA BANK VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
9-14-21 [115]

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, parties requesting special notice, and Office of the United States Trustee on September 14, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion for Relief from the Automatic Stay is XXXXX.</p>
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Umpqua Bank(“Movant”) seeks relief from the automatic stay with respect to Marvin John Burgess and Jeanine Marie Burgess’ (“Debtor”) real property commonly known as 607 7th Street, Williams, California (“Property”). Movant has provided the Declaration of Debbie Fish to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtors defaulted on the Note, the Note fully matured on April 5, 2019, and Debtors are now due and owing to the Lender \$217,080.70. Declaration, Dckt. 118.

Further, Movant requests that in the event the court does not terminate the stay, Movant be adequately protected of its secured interest pursuant to 11 U.S.C. § 361 and 362, including a requirement that Debtor reinstate all past arrearage and immediately commence regular payments.

CHAPTER 13 TRUSTEE’S OPPOSITION

David P. Cusick (“the Chapter 13 Trustee”) filed an Opposition on October 12, 2021. Dckt. 122. Chapter 13 Trustee asserts that Debtor is current under the confirmed plan. Trustee asserts Creditor filed Claim No. 5-1 on November 24, 2020 in the secured and arrears amount of \$220,389.29.

Trustee has disbursed \$28,947.12 (including interest) to date.

Creditor was to receive \$194,000.00 from escrow of sale of auto parts which was granted on April 21, 2021. Trustee is not aware if payment was made or escrow closed.

DEBTOR

Debtors filed an opposition on September 29, 2021. Dckt. 125. Debtor's attorney filed a supporting Declaration addressing the late filing. Dckt. 126. One-day late of filing will not prejudice the moving party so the court will accept Debtor's opposition.

Debtors assert that they are current on all payments under the plan. Additionally, they assert that they did enter into an agreement with Napa Auto Parts to sell their parts inventory for \$125,000.00 which they would pay to the Creditor.

The sale has not yet consummated. Debtors assert the title company handling the matter received tax liens on the proceeds. Combined with the Creditor's lien, this exceeds the amount owed by Napa Auto Parts.

Debtors assert they have made their plan payments and have paid \$36,555.00 to date. \$28,947.00 has gone to this Creditor. Debtors are working to close the escrow to get an additional \$100,000.00.

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 \$217,080.70 (Declaration, Dckt. 118), while the value of the Property is determined to be \$250,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1)

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 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.~~

~~Request for Attorneys' Fees~~

~~————— 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. However, Movant has not given the court an amount of attorney fees to be awarded. Therefore, Movant's request for attorney fees is denied.~~

~~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 that the court grant relief from the Rule as adopted by the United States Supreme Court.~~

~~————— 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 Umpqua Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) is denied. ~~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 607 7th Street, Williams, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

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 although 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 not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

4. [19-25567](#)-E-13 **RANDELL/MARIA COMSTOCK** **MOTION FOR RELIEF FROM**
[JCW-1](#) **Steven Shumway** **AUTOMATIC STAY AND/OR MOTION**
WELLS FARGO BANK, N.A. VS. **FOR ANNULMENT OF THE**
 AUTOMATIC STAY
 8-27-21 [70]

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, and Chapter 13 Trustee on August 27, 2021. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay to allow Movant to amend their complaint in *Wells Fargo Bank, N.A. v. Randell D. Comstock, et al.*, California Superior Court for the County of Placer, Case No. SCV 0043666, (the "State Court Litigation") and conclude the State Court Litigation. Movant has provided the Declaration of Kelsey Luu and Charice Gladden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Randell Comstock ("Debtor").

Movant argues they filed a Complaint in the Superior Court, County of Placer for Declaratory Relief and Reformation of Instruments on the basis of an incorrect legal description. Declaration, Dckt. 73. Based on previous communications, Movant believes Debtors are willing to stipulate to entry of judgment to reform the instruments.

TRUSTEE'S NON-OPPOSITION

Trustee David P. Cusick ("Trustee") filed a non-opposition to Movant's Motion on September 28, 2021. Dckt. 81. Trustee claims Debtor is delinquent on plan payments and has already filed a Motion to Dismiss which will be heard on October 20, 2021.

Trustee maintains that since Movant's request is only for purposes of continuing with a reformation in state court, he is not opposed to the Motion.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Movant is not seeking recovery or seeking monetary relief from Debtors. Movant only wishes to "rectify an incorrect legal description." The Motion, Dckt. 70. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Randell Dee Comstock and Maria Elvira Comstock (“Debtor”) to allow Movant, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Wells Fargo Bank, N.A. v. Randell D. Comstock, et al.*, California Superior Court for the County of Placer, Case No. SCV 0043666, (the "State Court Litigation"), to final judgment, including all appeals therefrom.

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

No other or additional relief is granted.

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—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, and Office of the United States Trustee on July 27, 2021. By the court’s calculation, 35 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 xxxxxxx
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Specialized Loan Servicing LLC (“Movant”) seeks relief from the automatic stay with respect to Melissa Dawn Lovato’s (“Debtor”) real property commonly known as 2955 Stable Drive, West Sacramento, California (“Property”). Movant has provided the Declaration of Steven Ross 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 twelve (12) post-petition payments, with a total of \$31,451.95 in post-petition payments past due. Declaration, Dckt. 35.

TRUSTEE’S NON-OPPOSITION

Trustee David P. Cusick (“the Chapter 13 Trustee”) filed a Nonopposition on August 16, 2021. Dckt. 43. The Chapter 13 Trustee asserts that the Debtor is current under the pending plan and the Creditor is included as a Class 2A and Class 4 Creditor under the confirmed plan. *Id.* The Trustee has not disbursed any payments towards Debtor’s post-petition, but has disbursed \$733.38, paying the

arrears in full. *Id.*

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 \$402,847.40 (Declaration, Dckt. 35), while the value of the Property is determined to be \$387,000.00, as stated in Schedules A/B and D 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 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 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 Melissa Dawn Lovato (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~————— **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the~~

~~real property commonly known as 2955 Stable Drive, West Sacramento, California (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

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

6. [21-20890-E-13](#) **HAYDEN/MANDY COIT**
[RDW-1](#) **Mikalah Liviakis**
HERITAGE COMMUNITY CREDIT
UNION VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-14-21 [\[55\]](#)**

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, parties requesting special notice, and Office of the United States Trustee on September 14, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

Heritage Community Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Thor Motor Coach Freedom Elite, VIN ending in 8960 (“Vehicle”). The moving party has provided the Declaration of Destiny Davis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Hayden Scott Coit and Mandy Erin Coit (“Debtor”).

Movant argues Debtor has not made four (4) post-petition payments, with a total of \$2,492.28 in post-petition payments past due. Declaration, Dckt. 57; Information Sheet, Dckt. 59.

NONOPPOSITION

On September 28, 2021, the Chapter 13 Trustee, David P. Cusick, filed a nonopposition of the Motion.

WITHDRAWAL OF MOTION

Heritage Community Credit Union (“Creditor”), having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on September 29, 2021, Dckt. 69; no prejudice to the responding party appearing by the dismissal of the Motion; the Creditor having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal not being inconsistent with the nonopposition filed by the Chapter 13 Trustee; the *Ex Parte* Motion is granted, the Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion for Relief filed by Heritage Community Credit Union (“Creditor”) having been presented to the court, the Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 68, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

MEDMEN ENTERPRISES, INC. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 16, 2021. By the court's calculation, 29 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 hearing on the Motion for Relief from the Automatic Stay is XXXX.

MedMen Enterprises, Inc. ("Movant") seeks relief from the automatic stay to allow *Unisys Technical Solutions, LLC, et al. v. CSI Solutions, LLC, et al.*, and all related cross actions, Case No. CV2020-006195 pending in the Maricopa County Superior Court in the state of Arizona (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Dan Edwards to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor Daryll Desantis ("Debtor").

Movant argues that a contempt proceeding is exempt from the automatic stay as it falls under the government regulatory exemption pursuant to 11 U.S.C. § 362(b)(4). Motion, Dckt. 67, ¶ A:25-9. In the alternative, Movant argues that cause exists to lift the stay to allow the State Court to proceed with the contempt proceeding and sanction Debtor after Debtor failed to follow State Court orders and filed the instant bankruptcy case in bad faith. *Id.*, ¶ B:23-3.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 31, 2021. Dckt. 115. Debtor asserts that Movant has failed to meet its burden for the court to lift the stay because the government regulatory exemption does not apply and Movant has failed to show that cause exists where no evidence has been presented that

Debtor filed this case in bad faith.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

On September 10, 2021, the parties filed a Joint Status Conference requesting the court treat the hearing on the instant Motion as a Status Conference since the parties have been meeting and conferring with respect to the issues pending in the State Court Litigation and they are cautiously optimistic that an agreement can be reached which can resolve pending matters and the case. Dckt. 126.

September 14, 2021 Hearing

The Parties reported that they are working on a settlement to address their respective concerns, a bar on refiling, and a procedure for the Debtor to seek relief from the court from said bar on refiling if *bona fide* reasons for such exist. The court addressed with the parties that the procedure can be set up to have the relief sought in this case, from this judge. The procedure would include the notice period and expedited hearing date.

In light of the Parties making substantive progress to address these issues and to avoid needless cost and expense, the court will stay the briefing schedule for the motions to dismiss, convert, and transfer, and conduct a status conference on those matters (if the case has not already been dismissed) at the schedule October 30, 2021 hearing date.

October 12, 2021 Hearing

At the hearing, **XXXXXXXXXXXX**

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 March 30, 2021. By the court's calculation, 42 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.

The Money Source Inc. ("Movant") seeks relief from the automatic stay with respect to Eric Ali'i Fueva and Rosalia Theresa Inez Fueva's ("Debtor") real property commonly known as 2938 Nicolet Lane, Redding, California ("Property"). Movant has provided the Declaration of Ashley Reza 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 (3) post-petition payments, with a total of \$6,775.74 in post-petition payments past due. Declaration, Dckt. 63.

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed a Response on April 26, 2021. Dckt. 67. Trustee asserts that Debtor is delinquent one plan payment in the amount of \$3,582.30 and that Movant is included under the confirmed plan as a Class 4 claim. Trustee has not disbursed any payments to Movant.

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 \$332,581.84 (Declaration, Dckt. 63), while the value of the Property is determined to be \$357,000, as stated in Schedules A/B and D filed by Debtor.

As noted by the Trustee in his response, Movant's Secured Claim is provided for the confirmed Chapter 13 Plan as a Class 4 Claim. Class 4 Claim treatment requires that the payments on the claim be made directly by Debtor, and that the automatic stay is terminated for that creditor:

3.11. Bankruptcy stays.

(a) **Upon confirmation** of the plan, the **automatic stay of 11 U.S.C. § 362(a)** and the **co-debtor stay of 11 U.S.C. § 1301 (a)** are . . . ; (2) **modified** to allow the holder of a **Class 4 secured claim to exercise its rights against its collateral** and any nondebtor in the event of a default under applicable law or contract; . . .

Confirmed First Amended Plan, ¶ 3.11; Dckt. 31 (emphasis added).

Though Movant has had the stay modified by confirmation of the Plan, the court appreciates that an order confirming such relief having been granted may need to have that documented when the collateral is real property. Additionally, Movant may desire obtaining such relief to allow for a possible conversion of the case and the Chapter 13 Plan no longer being in effect.

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).

June 8, 2021 Hearing

The court continued the original hearing date at the request of the parties. As of the court's preparation of this pre-hearing disposition, no other documents have been filed with the court.

Counsel for Movant reported that they are still working on addressing the forbearance and the modification issues, and requested a continuance.

July 20, 2021 Hearing

No supplemental documents have been filed informing or updating the court regarding the forbearance or modification.

At the hearing, counsel for Movant reported that the Parties are working on a loan modification and request that the court continue the hearing past two weeks after September 21, 2021.

October 12, 2021 Hearing

At the hearing, **XXXXXXXXXX**

9. [21-23154-E-13](#) **RAKESHNI SHARMA**
[ETW-1](#) **Richard Jare**

**CHARMAINE MARK AND MATTHEW
MARK AS TRUSTEES OF USRE
TRUST VS.**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
TO CONFIRM TERMINATION OR
ABSENCE OF STAY
9-14-21 [\[11\]](#)**

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, and Chapter 13 Trustee on September 14, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Charmain Mark and Matthew Mark ("Movant") seeks relief from the automatic stay with respect to Rakeshni Devi Sharma's ("Debtor") real property commonly known as 7101 Lyndale Circle, Elk Grove, California ("Property"). Movant has provided the Declaration of Charmain Mark to

introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtors are in default pursuant to terms of the note, and they could not make payments on the prior plan. Motion, Dckt. 11. It is unlikely Debtor can make payments in this case now. *Id.* The plan is not feasible and Debtor does not appear to have sufficient income to fund the plan. Declaration, Dckt. 13. Debtor had a prior case that was recently dismissed for lack of payments and Debtor shows no changed circumstances since the filing of the last case. *Id.*

CHAPTER 13 TRUSTEE’S RESPONSE

David P. Cusick (“the Chapter 13 Trustee” filed a Reply on October 12, 2021. Dckt. 25. The Chapter 13 Trustee would like the court to consider:

- A. The bankruptcy case was filed after the following prior cases:
 - 1. 20-22540, (dismissed August 6, 2021), and
 - 2. 20-21739, (dismissed April 2, 2020.)
- B. Debtor’s Meeting of Creditor’s will be held October 14, 2021, with the first plan payment coming due on October 25, 2021. The Chapter 13 Trustee believes the stay expires prior to the meeting under 11 U.S.C. § 362(c)(3).
- C. Creditor, USRE Trust, is included in Class 1 of Debtor’s proposed plan and has filed Claim No. 2-1 in the secured and arrears amount of \$433,936.52.
- D. Trustee’s records show creditor received disbursements under Debtor’s previous case, 20-22540, in the amount of \$26,316.00.

II. DEBTOR’S DECLARATION

On September 28, 2021, Debtor Sakeshni Sharma filed a declaration arguing that the Creditor violated the Dodd Frank act with this loan.

DEBTOR’S OPPOSITION

On September 29, 2021, Rakeshni Sharma (“Debtor”) filed an Opposition to the Motion. Debtor has many contentions as to why the automatic stay should remain. Of those, Debtor maintains:

- 1. The automatic stay survives past the 30th day of the case, even though the stay as to the person expires.
- 2. The Property is Debtor’s personal residence, and therefore essential to her rehabilitation.
- 3. Equity cushion is sufficient to justify denial of the motion.

4. There are various errors with the Motion itself.

Further, Debtor strongly argues that Debtor disputes that Movant has a valid note and that such must be litigated in the State Court. The dispute goes to how the trustee under the deed of trust is identified - here it is alleged to be “USRE Trust,” and not a beneficiary of the trust.

The specified Beneficiary is USRE Trust. Property interests cannot be held in the name of a Trust, only in the name of the trustee. Should the trustees wish to enforce this Note and Deed of Trust, it must first go to state court to reform the note. It is in state court that the Trustor, the debtor should defend, and state that the designating exhibits were not present when she signed the documents if she is to make that contention. Until the documents are reformed in state court, the [sic] should not even be a foreclosure. The debtor requests that the court take judicial notice of her exhibit in opposition, which contains docket item 46 in the prior dismissed case.

Opposition, p. 2:25-28; 3:1-8; Dckt. 32.

In this Opposition Debtor appears to admit that for any plan this case to go forward, Debtor or Movant will need to proceed in state court (or federal court if a basis for the exercise of such jurisdiction exists) to either clear title to the Property or reform the Deed of Trust.

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

This indicates that relief from the stay is necessary for this litigation to be actively prosecuted by Debtor, if Movant does not such would be necessary to obtain clear title. This court has allowed debtors to use the automatic stay in lieu of a preliminary injunction (noting the limited ability of someone driven into bankruptcy obtaining a bond) conditioned on: (1) the debtor diligently prosecuting an action to quiet title (whether in state court, district court, or the bankruptcy) and (2) the debtor providing adequate protection in the form of maintaining the value of the property and making monthly payments (whether to the disputed creditor or into a blocked account) equal to what the monthly mortgage payment is to be for whomever the creditor turns out to be.

Debtor also asserts other grounds for opposing the present Motion, all of which are well outside the “summary proceeding” nature of this Motion. These other disputes with Movant to be litigated include (the Opposition quoting Debtor’s Declaration):

C. Only last year, long after the closing of the loan, upon seeing the Documents attached by movant to documents filed by them with this court is she aware that USRE Trust is entitled to enforced the note. The note does not state the payee in the normal place. She believes that the lender attached the name of the payee to the note after she signed the note. She has no recollection that the exhibit naming

the payee was present when she signed the note. The Exhibit designating the payee was probably added after she signed the note. She sees that the Deed of Trust recites that Exhibit D names the lender. She sees that the notarization page says there are 16 pages. She sees that the Exhibit A and the Exhibit D are not numbered correctly and cause the page count to exceed 16 by 2 pages.

...

E. The lender violated the Dodd Frank act with this loan. I was misrepresented to by the lender. She was told that in order to qualify that they needed a different address and that they needed for me to say that this was business purpose. However, she basically got \$0 zero cash out from this loan. It merely refinanced the old 1st mortgage on the house. There is mortgage fraud in that this is NOT business purpose and does not exempt the lender from the Dodd Frank Consumer protection act.

...

J.

10. The respondent's loans were predatory and it is [sic] inequitable to vacate the automatic stay in a Chapter 13 Rehabilitation.

11. The plan does provide interim adequate protection to USRE Trust so long as there would be a way to fashion relief that does not otherwise jeopardize my legal rights. She is in the process of trying to make a legal assessment as to whether this loan violates Dodd Frank to such a degree that perhaps it is not even enforceable.

Opposition, p. 8-9; Dckt. 32.

Clearly Debtor documents that this is not a "simple" Chapter 13 to save a home from foreclosure, but involves major litigation that must be prosecuted for there to be a Chapter 13 Plan.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$433,936.52 (Declaration, Dckt. 13), while the value of the Property is determined to be \$635,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(c)(3): Expiration of the Stay

Under 11 U.S.C. § 362(c)(3), if a bankruptcy case is filed by a debtor and was pending within the preceding one-year but was dismissed, the stay with respect to a debt or property securing such debt shall terminate with respect to the debtor on the 30th day after the filing of the later case. The Trustee's Response (p. 2:1-2; Dckt. 25) appears to concede or admit that the "stay expires prior to hearing on this motion pursuant to 11 U.S.C. § 362(c)(3)," and that there is no stay protecting the property of the bankruptcy estate or any property held by the Chapter 13 Trustee.

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).

Here, though the Debtor may have let the stay expire as to the Debtor, Movant correctly is seeking relief from the stay that protects property of the bankruptcy estate - property which is collateral for Movant's secured claim.

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)(1): Relief Because of Lack of Adequate Protection/Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

Debtor commenced this case on September 2, 2021. Here two prior cases were filed on March 24, 2020, 20-21739, and May 15, 2020, 20-22540. The later case was dismissed on August 6, 2021, and the first case dismissed on April 22, 2020. As discussed above, Debtor did not seek to have the automatic stay extended as it applied to the Debtor in this case, thus, the stay terminated as to the Debtor by operation of law. 11 U.S.C. § 362(c)(3)(A).

In the Motion, though seeking relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) Movant fails to state any grounds that there is not an equity in the Property for the Debtor or the bankruptcy estate. Movant does allege that the Note, with a principal balance as July 11, 2019 of

\$297,000. Motion, p. 2:15-16; Dckt. 11. Movant further states that the loan matured August 1, 2021, with the total balance due as of then being \$433,936.52. *Id.*, p. 3:18-19. This is a 46% increase over a two year period.

The Promissory Note provided by Movant as evidence of the obligation states that the “Beneficiary” will be paid \$297,000 plus interest computed at 10.99% per annum. Exhibit A, p. 1; Dckt. 14. The Beneficiary is not identified in the Note signed by Debtor. The Note does state that it is secured by a “Deed of Trust to SUPERIOR LOAN SERVICING, as Trustee.” *Id.*, p.4. The Note is dated July 12, 2019. *Id.*

Following the Note is a one page document identified as Exhibit D which states in its entirety:

LENDER VESTING

USRE TRUST

<u>Lenders</u>	<u>% Ownership</u>	<u>Amount</u>
USRE TRUST	100.0%	\$297,000.00

Dckt. 14, p. 5. This Exhibit D is not dated nor signed by any person.

A Declaration has been provided by Charmane Mark, Trustee. Dckt. 13. The Declaration does not begin with the declarant identifying him or herself, but merely that “The undersigned declares and states:.” *Id.* at 1. The Declarant provides no testimony as to how she, as Trustee, is the person to whom the note was given or who has acquired the Note in her fiduciary capacity.

Though seeking relief pursuant to 11 U.S.C. § 362(d)(2), Movant has capitulated to what Debtor states as the value, Movant offering no evidence on that point in support of the Motion. On Schedule A/B Debtor states under penalty of perjury Debtor’s opinion that the Property has a value of \$635,000. Dckt. 1 at 11,

On Schedule D Debtor lists only unpaid property taxes of (\$7,772) as being the only other debt secured by the Property. *Id.* at 22. No other secured claims have been filed in this case.

Thus, on its face, Movant appears to have an equity cushion of \$190,000, which is a 30% equity cushion based on the full amount of the claim as stated by Movant.

While Movant fails on seeking relief pursuant to 11 U.S.C. § 362(d)(1) lack of adequate protection and (d)(2), the general for cause grounds need closer review.

Debtor on the one hand disputes Movant’s claim, asserts that it is not secured, and believes that the alleged debt violates non-bankruptcy law. Debtor’s proposed plan states that Debtor will make an adequate protection payment of \$2,754 to creditor, and Debtor will seek to refinance the disputed claim. The Plan does not state that Movant will be paid on its claim through the refinance. Debtor states that the dispute may be litigated, or the dispute may not be litigated.

It does not appear that Debtor is prosecuting a confirmable Plan, but instead a “plan” to pay \$2,754 a month rent while the Debtor does not have to do anything for fourteen months.

At the hearing, **XXXXXXX**

10. [19-24355](#)-E-13 **GLENN LEWIS**
[CLB-1](#) **Chad Johnson**
U.S. BANK NA VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-1-21 [72]**

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, Co-Owner, Chapter 13 Trustee, and U.S. Trustee on September 1, 2021. By the court’s calculation, 41 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 XXXXX.

U.S. Bank NA (“Movant”) seeks relief from the automatic stay with respect to Glenn B. Lewis (“Debtor”) real property commonly known as 8909 Garrity Drive, Elk Grove, California (“Property”). Movant has provided the Declaration of Samuel Pearce 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 (3) post-petition payments, with a total of \$6,987.59 in post-petition payments past due. Information Sheet, Dck. 77. Movant also provides evidence that there are 16 pre-petition payments in default, with a pre-petition arrearage of \$45,416.57. *Id.*

DEBTOR'S RESPONSE

Debtor filed a Response on October 12, 2021. Dckt. 82. Debtor asserts they recently made a payment of \$13,558.00 on September 7, 2021. Trustee's records \$9,594.44 of this payment will go out on or about on September 30, 2021 to Debtor's ongoing mortgage. This disbursement will bring the ongoing mortgage payments current through August, 2021. Then, Debtor informs to send in a payment of \$6,900.00 on October 1, 2021 to provide sufficient funds to bring the mortgage payments current.

Debtor's counsel has spoken with Creditor's counsel to request continuing the hearing to November 23, 2021, to allow Creditor to receive the September and October disbursements.

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 \$423,256.42 (Information Sheet, Dckt. 77), while the value of the Property is determined to be \$464,061.00, as stated in Schedules A/B and D filed by Debtor.

At the hearing, ~~XXXXXXXXXX~~

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.~~

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 U.S. Bank NA ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the automatic stay provisions of 11 U.S.C.

~~§ 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 8909 Garrity Drive, Elk Grove, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

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

11. [20-21304](#)-E-13
[RHS-1](#)

CHARLES ABDALLAH
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-5-20 [\[1\]](#)

The Status Conference is XXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

The Chapter 13 Trustee filed a Status Report (Dckt. 27) providing a summary of what has transpired in this case.

At the Status Conference XXXXXXX

The Status Conference is **XXXXXXX**

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

The Chapter 13 Trustee filed a Status Report (Dckt. 27) providing a summary of what has transpired in this case.

At the Status Conference **XXXXXXX**

13. [17-22108](#)-E-13
[RHS](#)-1

JORGE DE LA LOZA
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-30-17 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

The Chapter 13 Trustee filed a Status Report (Dckt. 27) providing a summary of what has transpired in this case.

At the Status Conference XXXXXXXX

14. [18-20009](#)-E-13
[RHS](#)-1

BALTAZAR VITAL
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-2-18 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

At the Status Conference, XXXXXXXX

15. [19-27211-E-13](#)
[RHS-1](#)

KATHLEEN RIVES
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-20-19 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

At the Status Conference, XXXXXXXX

16. [16-20919-E-13](#)
[RHS-1](#)

PAUL/DOREEN BAILEY
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-18-16 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

In the Trustee's Status Report, Dckt. 129, the Trustee states the Plan has been completed, but the Debtors have not filed the necessary documents to obtain their discharge in this case.

At the Status Conference, XXXXXXXX

17. [19-27920-E-13](#) **MICHAEL MULLINS**
[RHS-1](#) **Dale Orthner**

STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-26-19 [1]

The Status Conference is xxxxxxxx

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

18. [20-24738-E-13](#) **ANTHONY/LISSETTE BIANCHI**
[RHS-1](#) **Dale Orthner**

STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-13-20 [1]

The Status Conference is xxxxxxxx

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

In the Trustee's Status Report, Dckt. 41, the following issues have been identified:

III) PLAN. Based on Trustee calculations, the plan pending will not complete within the length of the plan, running 64 months, where the mortgage arrears claim of PHH Mortgage Corporation was filed for \$59,336.54 when it was estimated at \$48,000.00, (Claim 3.)

IV) CLAIMS. The Trustee has reviewed the claims filed and would note that the following issues exist, if any: Claim #3 by PHH Mortgage Corporation exceeds what

the plan estimated and includes \$20,278.25 for funds advanced and a projected escrow shortage of \$3,308.46, (Claim #3, Page 4.)

V) PLAN PAYMENTS MADE. The Trustee shows Debtor has made plan payments to the Trustee of \$ 60,231.16 to date. The Trustee shows the Debtor is in default by \$6,253.79 with last payment posted on August 27, 2021.

VI) ISSUES. The Trustee has reviewed the case and noted the following:

1. No Debtor Education Certificates have been filed yet although the pre-petition Credit Counseling Certificates were filed, (DN 1, Page 8-9.)
2. A modified plan appears needed where the plan exceeds 60 months.

At the Status Conference, **XXXXXXX**

19.	<u>21-21944</u> -E-13 <u>RHS-1</u>	DAVID TAYLOR Dale Orthner	STATUS CONFERENCE RE: VOLUNTARY PETITION 5-26-21 [1]
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The Status Conference is XXXXXXX
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In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

In his Status Report (Dckt. 27), the Chapter 13 Trustee identifies the following issues in this case:

III) PLAN. Based on Trustee calculations, the plan pending will not complete within the length of the plan, running 70 months, where the general unsecured of the Internal Revenue Service was filed for \$20,931.61 but scheduled for \$10,000.00, and the plan proposes 100% to unsecured claims.

...

VI) ISSUES. The Trustee has reviewed the case and noted the following:

1. A modified plan appears needed where the plan exceeds 60 months.

At the Status Conference, **XXXXXXX**

20. [19-21467-E-13](#) **LORI/JOSHUA WHITE** **STATUS CONFERENCE RE:**
[RHS-1](#) **Dale Orthner** **VOLUNTARY PETITION**
3-11-19 [[1](#)]

The Status Conference is XXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

At the Status Conference, **XXXXXXX**

21. [21-21668-E-7](#) **VANESSA GARCIA FIGUEROA** **STATUS CONFERENCE RE:**
[RHS-1](#) **Dale Orthner** **VOLUNTARY PETITION**
5-5-21 [[1](#)]

The Status Conference is XXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

The file in this case reflects that the Debtor has been granted a discharge in this case. However, the file indicates that the Trustee is administering assets of the estate.

At the Status Conference, **XXXXXXX**

22. [19-24675-E-13](#) [RHS-1](#) MICHAEL BENCH AND DANA STATUS CONFERENCE RE:
Dale Orthner VOLUNTARY DAVYPETITION
7-25-19 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

At the Status Conference, XXXXXXXX

23. [20-23479-E-13](#) [RHS-1](#) CHRISTOPHER/VICTORIA STATUS CONFERENCE RE:
Dale Orthner VOLUNTARY MCCracken
PETITION
7-15-20 [\[1\]](#)

The Status Conference is XXXXXXXX

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

At the Status Conference, XXXXXXXX

24. [17-25382-E-13](#)
[RHS-1](#)

ELIZABETH WOOLEY
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-15-17 [1]

The Status Conference is xxxxxxxx

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

A Status Report has been filed by proposed substitute counsel for Debtor. As of the court's October 7, 2021 review of the Docket, the Substitution had not been filed.

At the Status Conference, xxxxxxxx

25. [19-20196-E-13](#)
[RHS-1](#)

MARTIN/ARLENE ZERMENO
Dale Orthner

STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-14-19 [1]

The Status Conference is xxxxxxxx

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

In the Status Report filed on September 28, 2021 (Dckt. 33), the Chapter 13 Trustee identifies the following issues:

III) PLAN. Based on Trustee calculations, the plan pending will not complete within the length of the plan, running 72 months where the mortgage arrears claim to Ocwen Loan Servicing LLC was filed for \$25,009.14 although estimated at \$17,000.00, (Claim #11).

V) PLAN PAYMENTS MADE. The Trustee shows Debtor has made plan payments to the Trustee of \$67,133.00 to date. The Trustee shows the Debtor is in default by \$2,184.00 where the last payment posted September 15, 2021.

VI) ISSUES. The Trustee has reviewed the case and noted the following:

1. No Debtor Education Certificates have been filed yet although the pre-petition Credit Counseling Certificates were filed, (DN 1, Page 8-9.)
2. A modified plan appears needed where the plan exceeds 60 months.

At the Status Conference, **XXXXXXX**

FINAL RULINGS

26. [21-22089-E-13](#) RICHEY HARRISON STATUS CONFERENCE RE:
[RHS-1](#) Dale Orthner VOLUNTARY PETITION
6-3-21 [\[1\]](#)

Final Ruling: No appearance at the October 12, 2021 Status Conference is required.

Counsel having substituted in to represent the Debtor, the Status Conference is concluded and removed from the Calendar.

No Appearance at the Status Conference is Required.

In this Chapter 13 case, the counsel of record for Charles Nicholas Abdallah, "Debtor" is Dale Orthner, Esq. On September 20, 2021, the court learned of Mr. Orthner's passing earlier in September 2021. It does not appear that substitutions of attorney have been entered in the cases in which the late Mr. Orthner is counsel of record, and it may be that those cases are proceeding smoothly, with the debtor unaware of Mr. Orthner's passing.

The court scheduled this Status Conference to insure that the Debtors were aware of their loss of counsel and they could promptly engage new counsel.

The court has signed an order authorizing the substitution of counsel to represent the Debtor. With this substitution, the need for a Status Conference has addressed.