

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 18, 2022 at 1:30 p.m.

1.	<u>22-21528-E-13</u> <u>JCW-1</u>	MICHAEL CARTER/TORRIE GIDGET CONN Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-15-22 [47]
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FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

**The Hearing on This Motion Shall Be Conducted on
the Court's 2:00 Calendar in Conjunction With The
Debtors' Motion For Issuance of an Order to Show Cause**

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 and Chapter 13 Trustee on September 15, 2022. By the court's calculation, 33 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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Federal National Mortgage Association (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 3141 Claremont Dr., Oroville, California (“Property”). The moving party has provided the Declaration of Cathe Cole-Sherburn to introduce evidence as a basis for Movant’s contention that Michael Anthony Carter and Torrie Gidget Conn (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on February 6, 2019. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Butte and received a judgment for possession, with a Writ of Possession having been issued by that court on May 5, 2022. Exhibit 6, Dckt. 49.

Trustee’s Nonopposition

Chapter 13 Trustee, David P. Cusick (“Trustee”), filed a nonopposition on September 26, 2022. Dckt. 59. Trustee states the declaration Creditor provided, Dckt. 52, has key pieces of information missing. However, a second declaration, Dckt. 50, has some information.

On September 29, 2022, a Cathe Cole-Sherburn, Senior Vice President of MTC Financial, filed a declaration in support of the Motion for Relief. This appears to be what Movant intended to file with the Motion, but inadvertently filed a blank declaration.

Debtor’s Motion/Request for an Extension of Time to Respond

On October 4, 2022, Debtor filed a request to continue the hearing to November 22, 2022 due to the complexity of issues. Dckt. 74. The court ordered the request for extension of time and to continue the hearing be heard in conjunction with this Motion. Dckt. 83.

Discussion

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-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).

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

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 Federal National Mortgage 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3141 Claremont Dr., Oroville, California.

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.

2.

[22-21528](#)-E-13
[JCW-1](#)

MICHAEL CARTER/TORRIE
GIDGET CONN
Pro Se

MOTION TO EXTEND TIME TO FILE
RESPONSE AND/OR TO CONTINUE
10-4-22 [\[74\]](#)

**The Hearing on This Motion Shall Be Conducted on
the Court's 2:00 Calendar in Conjunction With The
Debtors' Motion For Issuance of an Order to Show Cause**

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. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Creditor's Counsel on October 4, 2022. By the court's calculation, 14 days' notice was provided. The court set the hearing for October 18, 2022. Dckt. 83.

The Motion/Request for an Extension of Time to File Response to Motion for Relief from Automatic Stay and to Continue the Hearing on the Motion for Relief from Automatic Stay Hearing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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/Request for an Extension of Time to File Response to Motion for Relief from Automatic Stay and to Continue the Hearing on the Motion for Relief from Automatic Stay Hearing is **XXXXX.**

On October 4, 2022, Michael Carter and Torrie Conn, Debtors, filed a Motion/Request for an Extension of Time to File Response to Motion for Relief from Automatic Stay and to Continue the Hearing on the Motion for Relief from Automatic Stay Hearing ("Motion/Request"). Dckt. 74. The Debtors also filed a Notice of Hearing stating that the Debtors had moved the court for an extension of time for filing, and the hearing, to November 22, 2022.

The court has not granted the Motion for Extension of Time, and from the Notice it could be read that Debtors are setting the hearing on the Motion for Extension of Time for November 22, 2022. That is well after the hearing on the Motion for Relief From the Stay filed by Federal National Mortgage Association (Dckt. 47), which is set for hearing on October 18, 2022.

The Motion for Relief From the Stay was filed on September 15, 2022, and set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1), which requires that a written opposition be filed. Notice, Dckt. 48.

On September 20, 2022, the court entered an order setting a Status Conference on Debtor's Motion to Confirm the Chapter 13 Plan in this Bankruptcy Case, with the Status Conference set to be conducted at 2:00 p.m. on September 27, 2022, the time and date set for the hearing on the Motion to Confirm Plan. Debtors appeared and a productive Status Conference was conducted. The court entered an order denying the Motion to Confirm without prejudice. Civ. Minutes, Dckt. 68; Order, Dckt. 72.

The court deems the Motion for Extension of Time and to Continue Hearing as a response to the Motion for Relief From the Stay, and sets a hearing on the Motion for Extension of Time and to Continue Hearing for 1:30 p.m. on October 18, 2022, to be conducted in conjunction with the Motion for Relief From the Automatic Stay.

The court also notes that Congress provides in 11 U.S.C. § 362(e) that the initial hearing must be conducted within thirty (30) days of the filing of the Motion and a final hearing conducted within thirty (30) days of the initial hearing (unless the movant seeking relief from the stay consents to a longer period). Here, the Motion for Relief from the Stay was filed on September 15, 2022, and the hearing is set for October 18, 2022 – which is thirty-three (33) days after the Motion for Relief was filed. Local Bankruptcy Rule 9014-1(f)(1)(A) provides that if a motion for relief from the stay is not set by the movant within thirty (30) days of the filing of said motion, then it is deemed the movant has waived the time constraints of 11 U.S.C. § 362(e). Thus, it appears that for the Motion for Relief the parties and court have some flexibility in the scheduling of further hearings, if any.

October 18, 2022 Hearing

At the hearing, **XXXXXXXXXX**

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.

IT IS ORDERED that the Debtors' Motion/Request for Extension of Time and to Continue the Hearing on the Motion for Relief from the Automatic Stay is **XXXXXXXXXXXXXXXXXXXX**

**NISSAN MOTOR ACCEPTANCE
COMPANY 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 September 12, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief from the Automatic Stay is granted.</p>
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Nissan Motor Acceptance Company LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2020 Nissan Altima, VIN ending in 2959 ("Vehicle"). The moving party has provided the Declaration of Nancy Saavedra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Nicole Danielle Sadler and Michael Wade Sadler ("Debtor").

Movant argues Debtor has not made 4 post-petition payments, with a total of \$2,118.51 in post-petition payments past due. Movant's Information Sheet, Dckt. 27.

NADA Valuation Report Provided

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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). The NADA valuation for the Vehicle is \$27,775.00.

TRUSTEE'S NONOPPOSITION

Chapter 13 Trustee, David P. Cusick, filed a nonopposition to Debtor's motion for relief from automatic stay on September 19, 2022. Dckt. 29. Trustee also notes that the secured proof of claim 15-1 for \$32,346.94 is in Class 4, the creditor may already have the relief they seek and this motion may be moot.

DEBTOR'S RESPONSE

Debtor filed a response on October 4, 2022. Dckt. 31. Debtor asserts that they acknowledge the deficiency in payments but deny that there was any lapse in coverage of insurance for the vehicles. Debtor also notes that they mailed Nissan a cashier's check for \$2,772.40 to bring the plan current. On that basis, Debtor asks the Movant to withdraw their motion.

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 \$29,755.18 (Motion, Dckt. 23), while the value of the Vehicle is determined to be \$27,775.00, as stated on the NADA Valuation Report, which is slightly more than 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.

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 because the property is rapidly depreciating and Secured Creditor is not receiving adequate protection for its collateral.

~~—————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.~~

~~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 Nissan Motor Acceptance Company ("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 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 2020 Nissan Altima, VIN ending in 2959 ("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 request to terminate the co-debtor stay of Leon Rex Quiberg 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.~~

PROVIDENT CREDIT UNION VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION ,
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
10-3-22 [\[23\]](#)**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 3, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion for Relief from the Automatic Stay is granted.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 GMC Yukon, VIN ending in 9880 ("Vehicle"). The moving party has provided the Declaration of Johnnelle Gomez and NaVee Mardione to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Heather Elizabeth Cooksey ("Debtor").

Movant argues Debtor has not made 1 post-petition payment, with a total of \$696.98 in post-petition payments past due. Movant's Information Sheet, Dckt. 29. Movant also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$2,090.94. *Id.*

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$51,754.63 (Motion, Dckt. 23), while the value of the Vehicle is determined to be \$47,000.00, as stated in Schedules A/B and D filed by Debtor, which is slightly more than the retail value as stated on the Kelly Blue Book Valuation Report, \$40,067.00.

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, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). 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.

Co-Debtor Stay

In the Motion, almost as if an afterthought, Movant requests relief from co-debtor stay. The Motion does not allege any grounds for relief from the stay, or even that there is a co-debtor on the obligation. The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. Federal Rules of Bankruptcy Procedure 9013. Pursuant to our local rules, a request for relief must state with particularity both the factual and legal grounds therefore. Local Bankruptcy Rule 9014-1(d). Here, Movant provides no factual grounds for why relief from the co-debtor stay should be granted. Thus, the request for relief from the co-debtor stay is denied.

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.

Request for Attorneys' Fees

In the Motion, Movant requests that it be allowed attorneys' fees. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 Provident 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 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 2017 GMC Yukon, VIN ending in 9880 ("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.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

No other or additional relief is granted.

5. [16-26158-E-13](#) **HELEN GUNKEL** **CONTINUED MOTION FOR RELIEF**
[RAS-1](#) **Mary Ellen Terranella** **FROM AUTOMATIC STAY**
 8-4-22 [98]
MORTGAGE ASSETS MANAGEMENT
SERIES I TRUST VS.

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

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

Sufficient Notice 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 4, 2022. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is XXXXXXXXXXXXXXXXXXXX.
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Mortgage Assets Management Series I Trust ("Movant") seeks relief from the automatic stay with respect to Helen Ruth Gunkel's ("Debtor") real property commonly known as 513 Phillip Street, Vallejo, California ("Property"). Movant has provided the Declaration of Marilyn Solivan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor is in default under the terms and conditions of the Note and Reverse Mortgage due to failure to maintain property taxes, an obligation set forth under the Reverse Mortgage. Motion, Dckt. 98. The total delinquency is stated to be \$1,371.58. *Id.*, p. 3-4. However, no evidence (such as testimony) is provided to support the allegation that the taxes are \$1,371.58 in arrears.

TRUSTEE'S RESPONSE

Trustee filed a Response on August 9, 2022. Dckt. 103. Trustee opposes Motion for Relief on the grounds that Movant has not filed a Relief from Stay Summary Sheet and that Trustee is not certain to the nature of the default. Trustee filed an amended response on August 10, 2022. Dckt. 106. Trustee retracts opposition to the motion.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 30, 2022. Dckt. 113. Debtor asserts that her adult son is assisting her in the final payments and will make payments to Movant once her plan is paid off. Debtor also asserts there is sufficient equity in the property to more than adequately protect 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 \$276,018.51 (Declaration, Dckt. 101), while the value of the Property is determined to be \$246,000.00, 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).

In light of there being only a (\$1,371.58) default at this time and Debtor coming to the end of the Plan in October 2022, just one month away, cause does not exist to grant relief at this time. The Plan will come to an end and the stay will terminate in the near future by operation of law.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The obligation at issue is a Reverse Mortgage, which the court understands to be an obligation that the Debtor is not obligated to repay. Rather, whether there is equity or no equity, Movant gets the Property.

Here, with an obligation of (\$276,018), the only amount for which testimony is provided in the Declaration in Support of the Motion (Dckt. 101) and Movant relying on Debtor's valuation from 2016 on Schedule A/B of \$246,000, it appears that there may be equity for the Debtor, if she wanted to sell the Property, or at least Movant is adequately protected.

It is curious that Movant has chosen to use a six year old value for the Property. The court takes judicial notice that real estate values in California have increase substantially since 2016. While Debtor makes this statement in the Opposition, no evidence of the magnitude of the increase is provided.^{Fn.1.} Given the well documented increase in property values, based on the six year old evidence of value that Movant has chosen to use, the court concludes that equity exists for Debtor in the Property.

FN. 1. In some situations the court will be presented with values from the zillow.com or redfin.com websites. The court does not accept such internet values as evidence of value, but it is interesting to note. For the redfin.com website, it gives an estimated value of \$460,000. Zillow.com has an estimated value of \$391,600.

<https://www.redfin.com/CA/Vallejo/513-Phillip-St-94590/home/2247704>.
https://www.zillow.com/homedetails/513-Philip-St-Vallejo-CA-94590/15660102_zpid/

Continuance of Hearing

Movant reported that they are willing to work with Debtor to put in place a payment arrangement to cure the default. The court continues the hearing to afford the Debtor and Movant the opportunity to do such, as well as Debtor getting the Plan completed in October 2022.

October 18, 2022 Hearing

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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 Mortgage Assets Management Series I 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 Motion for Relief is **XXXXXXXXXXXXXXXXXXXXX**.

FINAL RULINGS

6. [22-22063](#)-E-13 **LYLE/SHARON SHEPHERD** **MOTION FOR RELIEF FROM**
[DBJ-1](#) **Scott Johnson** **AUTOMATIC STAY**
9-16-22 [[21](#)]

IRA ADAMS VS.

Pursuant to the court's October 6, 2022 Order, Dckt. 35, **the hearing on the Motion for Relief from the Automatic Stay is continued to December 13, 2022.**

7. [22-20041](#)-E-13 **JEAN DE LA CRUZ** **MOTION FOR RELIEF FROM**
[APN-1](#) **Mikalah Liviakis** **AUTOMATIC STAY**
9-12-22 [[22](#)]

**TOYOTA MOTOR CREDIT
CORPORATION VS.**

Final Ruling: No appearance at the October 18, 2022 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, and Office of the United States Trustee on September 12, 2022. By the court's calculation, 36 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.

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2020 Toyota Camry, VIN ending in 4943 (“Vehicle”). The moving party has provided the Declaration of Ariana Canale to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jean Laureta De La Cruz (“Debtor”).

Movant argues Debtor has not made 3 post-petition payments, with a total of \$1,595.39 in post-petition payments past due. Movant’s Information Sheet, Dckt. 26.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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).

TRUSTEE’S NON-OPPOSITION

Trustee filed a non-opposition on September 19, 2022. Dckt. 28. Trustee mentions that the vehicle is not accounted for in the confirmed plan but includes Toyota Financial Services on Schedule F.

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 \$30,014.50 (Declaration, Dckt. 24), while the value of the Vehicle is determined to be \$26,040 by the authenticated NADA Valuation Report. Exhibit D, Dckt. 25. Debtor did not list vehicle in schedules.

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.

Co-Debtor Stay

Additionally, Movant requests relief under 11 U.S.C. § 1301(a). This statute is for relief from the co-debtor stay. Movant does not identify with particularity any co-debtors in their Motion. However, Movant mentions a Feran B. Sarao as a non-filing co-debtor in their declaration. Movant is reminded that pursuant to federal and local rules, the Motion itself must plead factual and legal grounds with particularity. FED. R. BANKR. P. 9013; Local Bankruptcy Rule 9014-1(d).

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.

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 Toyota Motor Credit Corporation (“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 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 2020 Toyota Camry, VIN ending in 4943 (“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 request to terminate the co-debtor stay of Feran B. Sarao 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.