

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

October 24, 2024 at 10:00 a.m.

1. 24-21710 -E-11	SWANSTON OAK, LLC	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 9-27-24 [122]
RDW -1	Karl Schweikert	
ADAM FURMAN VS.		

1 thru 7

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, attorneys of record, 20 largest creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2024. By the court's calculation, 25 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 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.

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Adam L Furman and Dana H Furman, Trustees of The Furman Family Trust dated May 24, 2014 as to an undivided 41 % interest and Susanne Ganley as to an undivided 40% interest and Glen J Oetman Trustee of the Glen Jarvis Oetman Inheritance Trust of December 18, 2012 as to an undivided 19% interest, its successors and/or assignees ("Movant") seeks relief from the automatic stay with respect to various parcels of Swanston Oak, LLC's ("Debtor in Possession") real property. Movant has provided the Declaration of Richard Mendoza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 124.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) for cause and 11 U.S.C. § 362(d)(2) . Movant identifies the following pieces of real property that are subject to the Motion:

1. APNS 012-0151-049-0000, 0125-0151-041, 012-0151-048, 012-0114-018, 004-0242-010, 014-258-003, 012-0151-042-000, 012-0151-043-0000, 012-0151-044-0000, 012-0151-045-0000, 012-0151-046-0000, and 012-0151-047-0000, 2701-2729 Swanston Oak Lane, Sacramento, CA 95818 ("Swanston Oak Properties"),
2. 1209 Swanston Drive, Sacramento, CA ("Swanston Drive Property"),

3. APN No. 012-0151-049-0000 (“4th Avenue Property”), and
4. 945 Fremont Blvd, West Sacramento, CA (“Fremont Property”).

(collectively, “Property”).

Movant states its deeds are in second position for the Swanston Oak Properties, the Swanson Drive Property, and the Fremont Property. Movant’s Deed of Trust is in first position for the 4th Ave Property. The Swanston Drive Property and Fremont Property are owned by Yu Family Trust. The 4th Avenue Property is owned by Moser Development. The Swanston Drive Property, 4th Avenue Property, and Fremont Property are not property of the bankruptcy estate. Movant is including these deeds of trust and properties in its Motion for Relief from Automatic Stay as the loan is cross-collateralized.

Movant provides evidence Debtor in Possession has not paid Movant’s lien upon maturity. Movant’s loan fully matured on October 1, 2023 (“Maturity Date”), pursuant to the terms of the Note. Pursuant to the Loan Modification Agreements (“Loan Mods”) dated December 15, 2023, the maturity date was extended to May 1, 2024. Movant never tendered payments. *See* Decl. ¶ 7, Docket 124. The outstanding delinquent amount is \$1,033,236.65 as of September 11, 2024. *Id.* at ¶ 13. Debtor in Possession listed the value of the Swanston Oak Properties as \$6,458,000. Schedule A/B at 6, Docket 17. However, the total outstanding liens on the Swanston Oak Properties is \$8,082,149.38. Mot. 3:24, Docket 122.

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 \$8,082,149.38, while the value of the Property is determined to be \$6,458,000.

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).

Here, Movant’s notes secured by the deeds of trust in the Swanston Oak Properties matured on May 1, 2024. Debtor in Possession has not paid those obligations. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~————— The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Swanston Oak Properties, 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 Swanston Oak Properties.~~

~~————— As the Swanson Drive Property, the Fremont Property, and the 4th Ave Property are not property of the Bankruptcy Estate, the court cannot grant relief as to those parcels of property.~~

Attorneys' Fees Requested Request for Attorneys' Fees

In the Motion, Movant requests that it be allowed attorneys' fees. 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, because Movant has established that there is no equity in the Property for Debtor in Possession and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. 11 U.S.C. § 506(b).

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, because the senior position lender is also seeking relief, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:21-25, Docket 122.

~~————— 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 Adam L Furman and Dana H Furman, Trustees of The Furman Family Trust dated May 24, 2014 as to an undivided 41 % interest and Susanne Ganley as to an undivided 40% interest and Glen J Oetman Trustee of the Glen Jarvis Oetman Inheritance Trust of December 18, 2012 as to an undivided 19% interest, its successors and/or assignees (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

~~APNS 012-0151-049-0000, 0125-0151-041, 012-0151-048, 012-0114-018, 004-0242-010, 014-258-003, 012-0151-042-000, 012-0151-043-0000, 012-0151-044-0000, 012-0151-045-0000, 012-0151-046-0000, and 012-0151-047-0000, 2701-2729 Swanston Oak Lane, Sacramento, CA 95818~~

~~(“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 Movant having established that the value of the Property subject to its lien not 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. 11 U.S.C. § 506(b).

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

**CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 20, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2725 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 118.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 8, Dckt. 118. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 11. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 9.

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 \$1,004,746.01 (Declaration ¶ 14, Dckt. 118), while the value of the Property is determined to be in the range of \$669,000 to \$744,000 (Declaration ¶ 13, Dckt. 118, Ex. 9 at 56, Docket 119).

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 and a failure to pay property taxes. 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 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).

~~—————Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.~~

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 6:25-7:5, Docket 116.

~~—————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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2725 Swanston Oak Lane, Sacramento, California 95818 (“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.~~

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

**CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 10, 2024. By the court's calculation, 44 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.

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

Election to Convert Case to Chapter 7

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(1) the debtor is not a debtor in possession;

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(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

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REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2729 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 100.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 8, Dckt. 100. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 11. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 9.

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 \$949,217.72 (Declaration ¶ 13, Dckt. 100), while the value of the Property is determined to be in the range of \$509,000 to \$584,000 (Declaration ¶ 12, Dckt. 100, Ex. 9 at 54, Docket 101).

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re JE Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments,

or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

~~—————The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due and a failure to pay property taxes. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 7:1-7, Docket 98.

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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~————— **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2729 Swanston Oak Lane, Sacramento, California 95818 (“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.~~

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

CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 9, 2024. By the court's calculation, 45 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.

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2709 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 94.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 7, Dckt. 94. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 10. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 8.

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 \$948,318.72 (Declaration ¶ 13, Dckt. 94), while the value of the Property is determined to be in the range of \$519,000 to \$594,000 (Declaration ¶ 12, Dckt. 94, Ex. 9 at 47, Docket 95).

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re JE Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments,

or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

~~—————The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due and a failure to pay property taxes. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 6:17-23, Docket 92.

~~—————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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2709 Swanston Oak Lane, Sacramento, California 95818 (“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.

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

**CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 12, 2024. 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). 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.

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2717 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 106.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 7, Dckt. 106. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 10. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 8.

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 \$1,008,538.91 (Declaration ¶ 13, Dckt. 106), while the value of the Property is determined to be in the range of \$659,000 to \$734,000 (Declaration ¶ 12, Dckt. 106, Ex. 9 at 50, Docket 107).

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 and a failure to pay property taxes. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 7:19-25, Docket 104.

~~—————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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~————— **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2717 Swanston Oak Lane, Sacramento, California 95818 (“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.~~

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

**CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 12, 2024. 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). 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.

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2713 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 114.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 7, Dckt. 114. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 10. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 8.

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 \$1,000,366.99 (Declaration ¶ 13, Dckt. 114), while the value of the Property is determined to be in the range of \$659,000 to \$734,000 (Declaration ¶ 12, Dckt. 114, Ex. 8 at 50, Docket 112).

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re JE Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments,

or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due and a failure to pay property taxes. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 6:21-7:1, Docket 110.

~~—————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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2713 Swanston Oak Lane, Sacramento, California 95818 (“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.

No other or additional relief is granted.

**CENTER STREET LENDING VIII
SPE 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 6, 2024. By the court's calculation, 48 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.

Election to Convert Case to Chapter 7

On October 4, 2024, the Debtor in Possession filed a Motion to Convert this Bankruptcy Case to one under Chapter 7. Dckt. 131. The hearing on the Motion has been set by the Debtor in Possession for November 19, 2024. Congress provides in 11 U.S.C. § 1112(a) the right of a Debtor, when serving as the Debtor in Possession to convert a Chapter 11 case to one under Chapter 7.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Here the Debtor is serving as the Debtor in Possession. This case was voluntarily filed by the Debtor under Chapter 11 of the Bankruptcy Code.

It may be that the Debtor in Possession has filed the Motion to Convert not as the Debtor's right to convert the case, but provide the parties in interest "notice of what may be coming" and the opportunity to see if the parties can prosecute a Chapter 11 reorganization.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Swanston Oak, LLC's ("Debtor in Possession") real property commonly known as 2721 Swanston Oak Lane, Sacramento, California 95818 ("Property"). Movant has provided the Declaration of Luis Montero to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 88.

Movant argues Debtor in Possession defaulted under the terms of the loan starting in September of 2023. Declaration ¶ 7, Dckt. 88. Movant also provides evidence Debtor in Possession failed to pay property taxes on the Property. *Id.* at ¶ 10. Movant's foreclosure sale was scheduled for April 25, 2024, the date this petition was filed. *Id.* at ¶ 8.

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 \$1,004,949.61 (Declaration ¶ 13, Dckt. 88), while the value of the Property is determined to be in the range of \$679,000 to \$754,000 (Declaration ¶ 12, Dckt. 88, Ex. 8 at 49, Docket 89).

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 and a failure to pay property taxes. 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 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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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.~~

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there “exists absolutely no justifiable cause for postponing the enactment of any order favoring the Motion.” Mot. 6:21-7:1, Docket 86.

~~—————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 Center Street Lending VIII SPE, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~————— **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2721 Swanston Oak Lane, Sacramento, California 95818 (“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.~~

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

FINAL RULINGS

8. [22-20264-E-7](#)
[AP-1](#)

AMANDA HILL
Douglas Jacobs

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-13-24 [[121](#)]

LAKEVIEW LOAN SERVICING, LLC
VS.

Final Ruling: No appearance at the October 24, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 13, 2024. 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). 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.

Lakeview Loan Servicing, LLC (“Movant”) seeks relief from the automatic stay with respect to Amanda Ashley Hill’s (“Debtor”) real property commonly known as 2591 Tom Polk Ave, Chico, California 95973 (“Property”). Movant has provided the Declaration of Linda Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 126.

Movant argues Debtor has not made at least 8 post-petition payments, with a total of \$9,007.51 in post-petition payments past due. Declaration ¶ 12, Docket 126. This is a Chapter 7 Case where Debtor received a discharge on July 31, 2024. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

The Chapter 7 Trustee filed a nonopposition on October 20, 2024.

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 \$267,941.16 (Declaration ¶ 14, Docket 126), while the value of the Property is determined to be \$363,900, as stated in Amended Schedules A/B filed by Debtor. Am. Schedule A/B at 2, Docket 100.

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 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).

Based upon the evidence submitted, the court determines that there is equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). By Movant’s own calculation there is approximately \$14,512.52 in equity in the Property. Mot. 3:16, Docket 121. The court does not grant the relief pursuant to 11 U.S.C. § 362(d)(2).

Prior Discharge

Debtor was granted a discharge in this case on July 31, 2024. Docket 119. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 Lakeview Loan Servicing, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2591 Tom Polk Ave, Chico, California 95973 (“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 to the extent the Motion seeks relief from the automatic stay as to Amanda Ashley Hill (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

No other or additional relief is granted.