

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**October 24, 2023 at 1:30 p.m.**

1. [23-22845-E-13](#)  
[PGM-1](#)

**GEORGENE HICKS AND  
RICARDO ESPARZA**  
Peter Macaluso

**CONTINUED AMENDED MOTION TO  
IMPOSE AUTOMATIC STAY**  
9-20-23 [[42](#)]

1 thru 2

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order Setting the Hearing on the Motion to Impose the Automatic Stay was served by the Clerk of the Court on Debtor (*pro se*), Creditors, and Chapter 13 Trustee as stated on the Certificate of Service on August 29 and 30, 2023. The court computes that 14 and 13 days' notice has been provided.

<b>The Motion to Impose the Automatic 362(a) Stay is <span style="color:red">XXXXXXXXXXXX</span></b>
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On August 22, 2023, Debtors Georgene Hicks and Ricardo Esparza, Jr. delivered to the court a letter requesting "an automatic 30 day bankruptcy stay." The letter describes some family matters the Debtors have been addressing and difficulty using the online filing program. Additionally, it states that Debtors are seeking to engage counsel to represent them in this Bankruptcy Case.

Debtors have filed two prior cases which were pending and then dismissed within one year of the August 22, 2023 filing of the current Bankruptcy case. The two prior cases and their dismissal dates are: 23-21587, dismissed on June 14, 2023, and 22-22894, dismissed on November 21, 2022.

Congress has provided that in the event of there having been two or more bankruptcy cases of an individual debtor that were pending and dismissed within one year of the subsequently filed bankruptcy case, then no automatic stay goes into effect into the subsequently filed bankruptcy case. 11 U.S.C. § 362(c)(4)(A). The statute further provides in 11 U.S.C. § 362(c)(4)(B) and (C) that the Bankruptcy Court may impose the stay provided for in 11 U.S.C. § 362(a), stating:

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; . . . .

With respect to the obligation on the debtor or other party in interest seeking imposition of the § 362(a) stay to show that the filing of the subsequent case is in good faith, 11 U.S.C. § 362(c)(4)(D) (emphasis added) provide for a presumption of the filing not being in good faith as follows:

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(I) as to all creditors if—

**(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;**

**(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or**

**(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or**

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

Looking at the Debtors' two prior cases that were pending and dismissed within the prior two years: (1) case 23-21587 was dismissed due to Debtors' failure to file the Schedules, Statement of Financial

Affairs, and a Chapter 13 Plan; and (2) case 22-22894 was dismissed due to Debtor's failure to file Schedules, Statement of Financial Affairs, and a Chapter 13 Plan.

The presumption of the subsequent case not being filed in good faith must be overcome by evidence demonstrating good faith filed by Debtors.

The court construes Debtor's Letter to be a Motion for the Imposition of the Automatic Stay as provided in 11 U.S.C. § 362(c)(4)(B). Such Motion must be set for noticed hearing; however, the court can consider imposing the automatic stay on an *ex parte* basis pending a hearing on the Motion. In reviewing the Motion, there is no evidence submitted in support of the Motion and it does not clearly state the grounds upon which the requested relief is proper.

### **September 12, 2023 Hearing**

The court's review of the Docket discloses that no supplemental pleadings were filed by Debtors by the September 6, 2023 deadline set by the court in the Interim Order imposing the Stay and setting the September 12, 2023 Hearing. Order; Dckt. 15.

Counsel for Debtor appeared at the hearing and explained how the diligent prosecution of this case will proceed. The court continues the hearing, with the Stay remaining in full force and effect, pending further hearing on this Motion.

### **DEBTOR'S AMENDED MOTION TO IMPOSE AUTOMATIC STAY**

Debtor filed an Amended Motion for an Order Obtaining and Imposing the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4)(B) on September 20, 2023. Dckt. 42. The Debtor notes that the original motion to obtain and impose the automatic stay was filed before the expiration of the initial 30 days required by statute. Further, the Debtor argues that under 11 U.S.C. § 362(c)(3)(B), the code allows for a party to request for an extension of the automatic stay upon motion from a party in interest, and the party must show that the most recent filing was filed in good faith. *Id.*

The Debtor cites to *In re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006) for the formula to evaluate whether a second bankruptcy was filed in bad faith. Amended Motion, Dckt. 42. The court in *In re Sarafoglou* considers the following factors: (1) whether the case was filed to "obtain legitimate bankruptcy law protection; (2) whether the debtor "is eligible for such protection and relief"; (3) whether the debtor "is pursuing such protection and relief honestly"; and (4) whether the debtor "has sufficient resources to render the pursuit meaningfully." *In re Sarafoglou*, 345 B.R. 19, 24 (Bankr. D. Mass. 2006)

The Debtor states the new filing was filed in good faith, that it has not acquired any new debt since the previous cases were dismissed, and it has proposed a 100% repayment Plan. Declaration, Dckt. 45. Now having retained counsel, Debtor believes they will be able to propose a solid Chapter 13 Plan that will allow the Debtor to pay the creditors to the best of their ability. *Id.* The Debtor asks the court to grant the Motion to allow the Debtor to be protected under the bankruptcy laws, reorganize their debts, keep their home, and pay their creditors. *Id.* The court also notes that Debtor has filed its Chapter 13 Plan, Form 122C-1, Schedules A/B, C, D, E/F, G, H, I, and J, Statement of Financial Affairs, and a Summary of Assets and Liabilities, correcting that defect in the case.

## TRUSTEE'S OPPOSITION TO DEBTOR'S AMENDED MOTION

On October 17, 2023 Trustee filed an Opposition to Debtor's Amended Motion. Dckt. 54. In its Opposition, Trustee states:

1. Trustee notes Debtor is current under plan payments as of September 25, 2023.
2. Trustee directs the court's attention to Debtor's two previous bankruptcy cases, both filed and dismissed within a year of this case.
3. Debtor still has not filed its most recent tax return information.

Dckt. 54.

Trustee's objections are well-taken; however, Debtor has taken substantial steps toward confirmation of a viable Plan, and Debtor is current on plan payments.

### October 24, 2023 Hearing

A review of the Debtor's proposed Chapter 13 Plan (Dckt. 38) discloses that the Debtor will fund the plan with a \$30,000 payment in month one and then \$3,000 a month for the next fifty-nine months of the Plan.

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.

The Motion to Impose the Automatic Stay filed by Georgene Hicks and Ricardo Esparza, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Impose the Automatic 362(a) Stay is **XXXXXXXXXX**

**Final Ruling:** No appearance at the October 24, 2023 hearing is required.  
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The Notice of Intent to Dismiss was served by the Clerk of the Court on Debtor, Chapter 13 Trustee, and creditors as stated on the Certificate of Service on August 24, 2023. The court computes that 61 days' notice has been provided.

The court issued a Notice of Intent to Dismiss based on Debtor's failure to file a Plan, any Schedules, or any lists of assets and liabilities. These documents were due on September 5, 2023.

**The Notice of Intent to Dismiss filed by the Clerk of the Court is discharged and this Chapter 13 Case is not dismissed.**

The court's docket reflects that the defects in Georgene Hicks and Ricardo Esparza (Debtor's) bankruptcy petition have been cured. The following required documents have been filed by Debtor: Chapter 13 Plan, Form 122C-1, Schedules A/B, C, D, E/F, G, H, I, and J, Statement of Financial Affairs, and a Summary of Asset and Liabilities filed on September 20, 2023 and October 12, 2023. Federal Rules of Bankruptcy Procedure 1007(c) requires Lists, Schedules, Statements, and Other Documents to be timely filed with the petition or within 14 days thereafter. Although Debtor is late of this required deadline, Debtor has since retained counsel and filed the necessary documents.

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.

Pursuant to the Notice of Intent to Dismiss filed by the Clerk of the Court, 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 Chapter 13 Case is not dismissed.

# FINAL RULINGS

3. [23-22693-E-13](#)      RUDOLF/JULIANA VOGT      MOTION FOR RELIEF FROM  
[SKI-1](#)      Mikalah Liviakis      AUTOMATIC STAY  
9-8-23 [\[25\]](#)

FORD MOTOR CREDIT COMPANY  
LLC VS.

**Final Ruling: No appearance at the October 24, 2023 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 8, 2023. By the court’s calculation, 46 days’ notice was provided. 28 days’ notice is required.

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

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

Ford Motor Credit Company LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Chevrolet Corvette, VIN ending in 3673 (“Vehicle”). The moving party has provided the Declarations of Pamela Rucker and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rudolf and Juliana Vogt (“Debtor”). Declaration, Dckts. 30, 31.

Movant concedes Debtor is current on post-petition payments, but has agreed to surrender the collateral in the Plan, Declaration, Dckt. 30.

David Cusick, Chapter 13 Trustee, filed a Non-Opposition on October 3, 2023. Dckt. 38.

## 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 \$96,273.23 (Declaration, Dckt. 30), while the value of the Vehicle is determined to be \$97,000.00, as stated in Schedules A/B and D filed by Debtor.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

As stated in the Plan, confirmed on October 1, 2023, Debtor provides for Movant’s secured claim as a Class 3 to surrender of the collateral to Movant. Plan, ¶ 3.09; Dckt. 3. With the confirmation of the Chapter 13 Plan, the stay has been terminated to allow Movant to proceed against its collateral. Plan, ¶ 3.11; *Id.*

Though a Plan may provide for termination of the Stay, it is not uncommon for a creditor to seek an order terminating the stay. This may be because third-parties may be involved in the process of a creditor selling its collateral (like a title company) or to protect the creditor from an amended plan or conversion of the case.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

However, for this Motion, the Stay was terminated by confirmation of the Plan. While 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), little would be served by the court creating the appearance that the stay has not been terminated. The fourteen day stay of enforcement of the order is waived.

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 Ford Motor Credit Company LLC (“Movant”) having been presented to the court, the Stay having been modified by confirmation of Debtor’s confirmed Chapter 13 Plan that provides for Movant secured claim as a Class 3 surrender of collateral, 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 2021 Chevrolet Corvette, VIN ending in 3673 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.



BUCKLEY REAL ESTATE INC. VS.

**Final Ruling:** No appearance at the October 24, 2023 hearing is required.

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Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 21, 2023. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Stay is dismissed without prejudice as moot, the Bankruptcy Case having been dismissed.**

Buckley Real Estate Inc. ("Movant") seeks relief from the automatic stay with respect to Isiah Lewis's ("Debtor") real property commonly known as 802 Ohio Street, Vallejo, California ("Property"). Movant has provided the Declaration of Sean Buckley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant seeks prospective relief from the automatic stay as provided in 11 U.S.C. § 362(d)(1) and (d)(2).

On October 19, 2023, the court entered its order on October 29, 2023 dismissing this Bankruptcy Case. Dckt. 58. The dismissal of the Bankruptcy Case terminates the automatic stay. 11 U.S.C. § 362(c)(2)(B). The termination of the stay by operation of law with the dismissal of this Bankruptcy Case renders the request for prospective relief moot.

The Motion for Relief from Stay is dismissed without prejudice.

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 Stay, having been presented to the court, this Bankruptcy Case having been dismissed by order of the court on October 19, 2023 (Dckt. 58) and upon review of the pleadings, evidence, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from Stay is dismissed without prejudice, having been rendered moot by the dismissal of this Bankruptcy Case.