

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 15, 2022**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**November 15, 2022 at 1:00 p.m.**

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- |    |                                       |                |                                      |
|----|---------------------------------------|----------------|--------------------------------------|
| 1. | <a href="#"><u>19-25214</u></a> -B-13 | MICHAEL YBARRA | MOTION TO MODIFY PLAN                |
|    | <a href="#"><u>DEF</u></a> -4         | David Foyil    | 9-1-22 [ <a href="#"><u>79</u></a> ] |

**Final Ruling**

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

**November 15, 2022 at 1:00 p.m.**

2. [22-21126](#)-B-13 DOUGLAS/NYLA STONE  
[CRG](#)-3 Carl R. Gustafson

CONTINUED MOTION TO CONFIRM  
PLAN  
9-9-22 [[56](#)]

Final **Ruling**

No appearance at the November 15, 2022, hearing is necessary. This matter is continued to November 29, 2022, at 1:00 p.m. The court will issue an order.

3. [18-22949](#)-B-13 GEORGE MOSQUEDA MOTION TO APPROVE LOAN  
[KMB](#)-4 G. Michael Williams MODIFICATION  
10-28-22 [[57](#)]

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to approve loan modification and continue the matter to November 22, 2022, at 1:00 p.m.**

U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust ("Movant") seeks court approval of a loan modification. Movant is the holder of the Note dated May 6, 2005, on property located at 2247 N. Stockton Street, Stockton, California. The loan modification reduces the principal and interest payment from \$2,106.75 to \$2,085.32, and reduces the interest rate from 5.125% to 5.000%. Movant approved the loan modification on October 4, 2021, subject to approval by the bankruptcy court. The motion is supported by the Declaration of Marissa Fuller.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is conditionally granted.

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, November 18, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 22, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on November 22, 2022, at 1:00 p.m.

4.     [22-21557](#)-B-13   MARINA GALINDO                               MOTION TO CONFIRM PLAN  
          [GEL](#)-3               Gabriel E. Liberman                           10-11-22 [[72](#)]

CONTINUED TO 12/06/22 AT 1:00 P.M. IN SACRAMENTO COURTROOM TO BE HEARD IN CONJUNCTION  
WITH THE CONTINUED OBJECTION TO CLAIM OF STOCKTON MORTGAGE, CLAIM NO. 6, GEL-2.

**Final Ruling**

No appearance at the November 15, 2022, 1:00 p.m. hearing is required. The court will  
issue an order.

TOYOTA LEASE TRUST VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from stay.

Toyota Lease Trust, as serviced by Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Toyota Highlander (the "Vehicle"). The moving party has provided the Declaration of Ana Marquina to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Marquina Declaration states that the lease matured on September 9, 2022, and that a balance of \$26,155.89 is due and owing.

### **Discussion**

[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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [20-23467](#)-B-13 JOSEPHINE APIGO  
[VC-1](#) David S. Van Dyke

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-12-22 [[21](#)]

REGIONAL ACCEPTANCE  
CORPORATION VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from stay.

Regional Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Escape (the "Vehicle"). The moving party has provided the Declaration of Joann Farmer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Farmer Declaration states that there are three post-petition payments in default totaling \$1,706.85.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$10,423.81, as stated in the Farmer Declaration, while the value of the Vehicle is determined to be \$8,703.00, as stated in Schedules A/B and D filed by Debtor.

### **Discussion**

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.



**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 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). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtor has failed to make any payments as proposed in the plan, specifically the October 2022 payment in the amount of \$900.00. As such, Debtor is delinquent under the proposed plan.

Second, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors' proposed plan payments are only \$900.00 per month beginning October 2022. However, the total to be paid to secured creditors is \$1,039.41 per month not including Trustee's compensation and expenses.

Third, the Debtor has not filed a change of address form despite stating in her declaration that she had unexpected moving expenses and rental increase.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

8. [22-21184](#)-B-13 BERTHA VALENTINE  
Fred A. Ihejirika

MOTION TO CONFIRM AN 11 U.S.C.  
362(A) & (B) EXCEPTION TO THE  
AUTOMATIC STAY RELATING TO A  
STATE COURT CASE  
10-29-22 [[21](#)]

### **Final Ruling**

The court has before it a motion for relief from the automatic stay and/or motion to confirm applicability of an exception to the automatic stay filed on October 29, 2022, by Shawn O'Connor & Yelena Ostrovsky, as Trustees of the Alliance Roth 401(k) Profit Sharing Plan and Trust ("Movant").

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket in the Chapter 13 case and in the related adversary proceeding. See Fed. R. Evid. 201(c)(1). The court has determined that oral argument will not assist in the resolution of the motion or in the decision-making process. See Local Bankr. R. 9014-1(h), 1001-1(c). No appearance on November 15, 2022, is required.

The court's decision is to continue the hearing and establish a briefing schedule.

The notice of hearing, motion, memorandum of points and authorities, and declaration are all filed as one document. See dkt. 21. These documents must be filed separately. See Local Bankr. R. 9014-1(d)(4).

Notice of the hearing is also inaccurate. The motion is filed, set, and served under Local Bankr. R. 9014-1(f)(2) which, with regard to opposition and other hearing-related matters, states as follows:

**When fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.**

Local Bankr. R. 9014-1(f)(2)(C) (emphasis added).

The notice of hearing inaccurately states as follows:

**PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy Rule 9013-1(f) [sic] any party who opposes the Motion must, not later than 14 days before the hearing on this Motion, file and serve an opposition.**

**If a party fails to file a written opposition with the Court and serve it on the moving party by the date indicated, the Court may enter an order granting the relief requested in the Motion.**

Dkt. 16 at 2:16-21 (emphasis added).

Rather than dismiss the motion, the court will overlook the first procedural defect and remedy the second by continuing the hearing on the motion and establishing a briefing schedule as Local Bankr. R. 9014-1(f)(2)(C) permits.

Because the motion was filed, set, and served under Local Bankr. R. 9014-1(f)(2), the time limits of 11 U.S.C. § 362(e) are deemed waived. See Local Bankr. R. 9014-1(f)(2)(B) ("The use of this alternative procedure in connection with a motion for relief from the automatic stay shall be deemed a waiver of the time limitations

contained in 11 U.S.C. § 362(e)."). Therefore, good cause appearing, the court orders a briefing schedule as follows:

- (1) The Debtor or any other party in interest shall have to December 13, 2022, to file and serve an opposition or other response to the motion;
- (2) Movant shall have to and including January 10, 2023, to file and serve an optional reply; and
- (3) The hearing is continued to January 24, 2023, at 1:00 p.m.

The court will issue an order.

9. [18-27085](#)-B-13 ANGELA EALY-HALE AND CONTINUED MOTION FOR RELIEF  
[ASW-2](#) DONNIE HALE FROM AUTOMATIC STAY  
Peter G. Macaluso 10-3-22 [[82](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

### **Final Ruling**

The motion for relief from stay was continued from November 1, 2022, to allow any payment from debtors Angela Ealy-Hale and Donnie Hale ("Debtors") to process and moot the motion.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion for relief from stay.

Deutsche Bank National Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3443 Phelps St, Stockton, California (the "Property"). Movant has provided the Declaration of Heather Johnson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Johnson Declaration states that there are 3 post-petition payments in default totaling \$4,266.39.

Opposition has been filed by Debtors stating that a payment was sent to the Chapter 13 Trustee and requested a continuance for the payment to process and resolve the delinquency on the mortgage. It appears that the default has not been cured.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$508,775.23 as stated in the Movant's filed documents. The value of the Property is determined to be \$330,000.00 as stated in Schedules A/B and D filed by Debtors.

### **Discussion**

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *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 which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtors have failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012). [This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

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.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 6, 2022, for failure to timely file documents (case no. 22-22054, dkt. 9). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if 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 chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the previous case failed because she had hired a "Premier Services" company to assist with a loan modification and prepare chapter 13 documents, but the company did not represent Debtor after she filed the chapter 13 documents. Debtor's circumstances have changed because she has retained an attorney to represent her in this case. Debtor has also filed a chapter 13 plan that she believes is confirmable and likely to complete given her income and expenses.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.