UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 16, 2021 at 1:30 p.m.

1.	**17-22214-E-13** **DPC-1**	**RICHARD CRABTREE** **Douglas Jacobs**	**CONTINUED MOTION TO DISMISS CASE** **9-15-21 [63]**

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Richard L. Crabtree ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 67. Debtor states the delinquency will be cured by the middle of November 2021.

DISCUSSION

Delinquent

Debtor is $3,776.00 delinquent in plan payments, which represents multiple months of the $1,888.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee reports that Debtor is still delinquent, but agreed to a continuance in light of the medical issue

Trustee also wants to note that the Stipulation filed on July 13, 2017 is inconsistent with the Proof of Claim filed by the Internal Revenue Services ("IRS"). Dckt. 45, Proof of Claim 2-2. Trustee contends that if the numbers are inconsistent and increased the amount being paid to the IRS, then the Plan will run longer than the required 60 months.

Given the age of this case, it being filed in 2017, the Trustee agreed to a continuance to allow Debtor the opportunity to address the default.

November 16, 2021 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), 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 to Dismiss is xxxxx.

2. **21-23154-E-13 ETW-1** **RAKESHNI SHARMA**
Richard Jare

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
9-14-21 [11]

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

2 thru 3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on September 14, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxx.

Charmain Mark and Matthew Mark ("Movant") seeks relief from the automatic stay with respect to Rakeshni Devi Sharma's ("Debtor") real property commonly known as 7101 Lyndale Circle, Elk Grove, California ("Property"). Movant has provided the Declaration of Charmain Mark to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

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

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee" filed a Reply on October 12, 2021. Dckt. 25. The

Chapter 13 Trustee would like the court to consider:

A. The bankruptcy case was filed after the following prior cases:

1. 20-22540, (dismissed August 6, 2021), and

2. 20-21739, (dismissed April 2, 2020.)

B. Debtor's Meeting of Creditor's will be held October 14, 2021, with the first plan payment coming due on October 25, 2021. The Chapter 13 Trustee believes the stay expires prior to the meeting under 11 U.S.C. § 362(c)(3).

C. Creditor, USRE Trust, is included in Class 1 of Debtor's proposed plan and has filed Claim No. 2-1 in the secured and arrears amount of $433,936.52.

D. Trustee's records show creditor received disbursements under Debtor's previous case, 20-22540, in the amount of $26,316.00.

DEBTOR'S DECLARATION

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

DEBTOR'S OPPOSITION

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

1. The automatic stay survives past the 30th day of the case, even though the stay as to the person expires.

2. The Property is Debtor's personal residence, and therefore essential to her rehabilitation.

3. Equity cushion is sufficient to justify denial of the motion.

4. There are various errors with the Motion itself.

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

> The specified Beneficiary is USRE Trust. Property interests cannot be held in the name of a Trust, only in the name of the trustee. Should the trustees wish to enforce this Note and Deed of Trust, it must first go to state court to reform the note. It is in state court that the Trustor, the debtor should defend, and state that the designating exhibits were not present when she signed the documents if she is to make that contention. Until the documents are reformed in state court, the [sic]

> should not even be a foreclosure. The debtor requests that the court take judicial notice of her exhibit in opposition, which contains docket item 46 in the prior dismissed case.

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

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

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

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

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

> C. Only last year, long after the closing of the loan, upon seeing the Documents attached by movant to documents filed by them with this court is she aware that USRE Trust is entitled to enforced the note. The note does not state the payee in the normal place. She believes that the lender attached the name of the payee to the note after she signed the note. She has no recollection that the exhibit naming the payee was present when she signed the note. The Exhibit designating the payee was probably added after she signed the note. She sees that the Deed of Trust recites that Exhibit D names the lender. She sees that the notarization page says there are 16 pages. She sees that the Exhibit A and the Exhibit D are not numbered correctly and cause the page count to exceed 16 by 2 pages.
> . . .
> E. The lender violated the Dodd Frank act with this loan. I was misrepresented to by the lender. She was told that in order to qualify that they needed a different address and that they needed for me to say that this was business purpose. However, she basically got $0 zero cash out from this loan. It merely refinanced the old 1st mortgage on the house. There is mortgage fraud in that this is NOT business purpose and does not exempt the lender from the Dodd Frank Consumer

protection act.

. . .

J.

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

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

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

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

DISCUSSION

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

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

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

As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

11 U.S.C. § 362(d)(1): Relief Because of Lack of Adequate Protection/Equity Cushion

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

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

In the Motion, though seeking relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) Movant fails to state any grounds that there is not an equity in the Property for the Debtor or the bankruptcy estate. Movant does allege that the Note, with a principal balance as July 11, 2019 of $297,000. Motion, p. 2:15-16; Dckt. 11. Movant further states that the loan matured August 1, 2021, with the total balance due as of then being $433,936.52. *Id*., p. 3:18-19. This is a 46% increase over a two year period.

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

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

LENDER VESTING

USRE TRUST

Lenders	% Ownership	Amount
USRE TRUST	100.0%	$297,000.00

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

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

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

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

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

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

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

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

At the hearing, Debtor continued to equivocate concerning the prosecution of the case. While on the one had Debtor's counsel asserted that affirmative claims existed against creditor, he state that Debtor may or may not prosecute such claims which are property of the estate, instead just electing to possibly pay creditor. If such claims exists (as Debtor states under penalty of perjury), it may be necessary to convert this case to one under Chapter 7 to have a trustee prosecute such claims, rather than have the Debtor, as a fiduciary of the bankruptcy estate, "forfeit" them through inaction.

Debtor's counsel further stated that Debtor needs this bankruptcy case to prevent foreclosure on the Property in which she has significant equity ($200,000+). However, Debtor's inability to prosecute a plan to pay this debt appears to be an act to only temporarily stop the foreclosure sale, but then lose hundreds of thousands of dollars in equity to an ultimate foreclosure.

The court, with the consent of Creditor continues this hearing to allow Debtor to either "fish or cut bait, but not just linger on the dock."

November 16, 2021 Hearing

As of the court's November 14, 2021 review of the Docket, nothing further has been filed in this case by Debtor.

The Chapter 13 Trustee has filed his Objection to Confirmation of the proposed Chapter 13 Plan in this case. Dckt. 36. The Objection grounds include: (1) Debtor has not provided copies of pay advices, (2) Debtor has not provided copies of tax returns, (3) the Plan provides for making "adequate protection payments to Creditor, but Creditor's Proof of Claim states that the obligation matured in August 2021, (4) Creditor's Plan includes Debtor seeking a refinance of Creditor's debt, but at the First Meeting of Creditor's Debtor stated that no steps have been taken to seek a refinance, (5) the Plan term, based on claims filed, would require a 101 month term, and (6) Debtor does not explain the change in circumstances of Debtor's ability to perform this case in light of her two recent prior Chapter 13 cases that were dismissed.

A review of the court's files discloses that Debtor has not commenced, as of November 14, 2021, an adversary proceeding to prosecute any bona fide dispute concerning the obligation asserted to be secured by the Property.

At the hearing, **xxxxxxx**

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 Stay filed by Charmain Mark and Matthew Mark, Trustees of the USRE Trust, ("Movant") having been presented to the court, Movant having consented to the continuance of this hearing as ordered by 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 for Relief from the Automatic Stay is xxxxx.

3.	**21-23154-E-13** **ETW-2**	**RAKESHNI SHARMA** **Richard Jare**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CHARMAINE MARK AND MATTHEW MARK AS TRUSTEES OF USRE TRUST** **9-14-21 [17]**

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 Objection. 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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on September 14, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, 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 Objection.

The Objection to Confirmation of Plan is xxxxx.

Charmaine Mark and Matthew Mark as Trustees of USRE Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor failed to provide for Creditor's full claim.

B. The plan is no feasible.

C. The Debtor filed a previous Chapter 13 and the case was dismissed.

Debtor's Opposition

The Debtor opposes the Creditor's Objection to Confirmation of Plan. The Debtor filed their Opposition on September 29, 2021. Dckt. 30. The Debtor argues that the Creditor provided insufficient notice. The Debtor states that the rules have required twenty-five (25) to twenty-eight (28) days for filing of a written response, where as the movant has only provided fourteen (14). Debtor's authority for

this argument is stated as:

> The notice given is insufficient. Over the recent decades, the rules have required 25 to 28 days for the filing of written response. The movant has only provided 14 days.

Opposition, p. 1:25-27; Dckt. 30.

Local Bankruptcy Rule 3015(c)(4) provides that an Objection to Confirmation of a debtor's original plan shall comply with various other provisions of the Local Bankruptcy Rules, including Rule 9014-1(f)(2). That Local Rule provides that at least 14 days notice be given and that opposition may be presented orally at the hearing. It further provides that:

> The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $433,936.52 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $436,664.00 and indicates that it is secured by a first deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)©).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor mentions contributions by other people but does not provide evidence. Debtor plans on paying less than the amount owed monthly and refinancing the loan in a years time. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Previous Chapter 13

Debtor filed a previous Chapter 13 petition on May 15, 2020, and was dismissed on August 6, 2021. Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), as they apply to the Debtor, but is not by itself reason to deny confirmation.

The court continues the hearing to allow it to be conducted in conjunction with a hearing on a Motion for Relief From the Stay in this case.

At the hearing, **xxxxxxx**

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 Objection to the Chapter 13 Plan filed by Charmaine Mark and Matthew Mark as Trustees of USRE Trust ("Creditor") holding a secured claim

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 Objection to Confirmation of Plan is xxxxx.

4.	**21-23780-E-13 RHS-1**	**ESTATE OF HARRIET O. LINSCOTT**	**ORDER TO SHOW CAUSE 11-3-21 [9]**

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:

The Order to Show Cause was served by the Clerk of the Court on Administrator, Chapter 13 Trustee on November 3, 2021. The court computes that 15 days' notice has been provided.

The Order to Show Cause was issued due to an ongoing proceeding in the California Superior Court for the Administration of Deceased-Debtor's Estate.

The Order to Show Cause is ~~sustained, and the case is dismissed.~~

The court' requested this order to show cause for Douglas E. Linscott, Deceased-Debtor's Estate Administrator, to appear in person and show cause as to why the court does not dismiss this case. Dckt. 9. The court notes the Petition relates to decedent's estate and it has long been established that the administrator of a decedent's estate or a decedent's estate is not a "person" eligible to file bankruptcy. *Id.* at 2. Additionally, there is an ongoing proceeding in the California Superior Court for the administration of Deceased-Debtor's estate, and property to be administered in the State Court is at immediate peril of loss unless and until the State Court acts to stay the foreclosure sale. *Id.* at 4.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.~~

5. 21-23803-E-13 RHS-1 ESTATE OF ALTHA RUTH DAVIS ORDER TO SHOW CAUSE 11-8-21 [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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Estate Administrator, Bankruptcy Trustee, and Attorney for the Trustee on November 8, 2021. The court computes that 8 days' notice has been provided.

The Order to Show Cause was issued due to an ongoing proceeding in the California Superior Court for the Administration of Deceased-Debtor's Estate.

The Order to Show Cause is ~~sustained, and the case is dismissed.~~

The court requested this order to show cause for Lambert Davis, identified as the "Administrator for the Estate of Altha Ruth Davis," and Tonya Nygren, Esq. to appear in person to show cause as to why the court does not dismiss this bankruptcy case. Dckt. 7. The court notes the Petition relates to decedent's estate and it has long been established that the administrator of a decedent's estate or a decedent's estate is not a "person" eligible to file bankruptcy. *Id.* at 2.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.~~

FINAL RULINGS

6.	**21-23624-E-13** **RHS-1**	**ESTATE OF RUSSEL WETTLIN** **Pro Se**	**ORDER TO SHOW CAUSE** **10-27-21 [11]**

Final Ruling: No appearance at the November 16, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on October 27, 2021. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on why the court does not dismiss this bankruptcy case.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on November 3, 2021 (Dckt. 14), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause having been presented to the court, this bankruptcy case having been previously dismissed by order of the court, and upon review of the pleadings, the file in this case, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

7. **21-23134-E-7 JHW-1** **MICHAEL/CAROLINE PANOPIO** **Richard Jare** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **9-17-21 [15]**

AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling: No appearance at the November 16, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 17, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 DODGE CHALLENGER, VIN ending in 8581 ("Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by MICHAEL MARK PANOPIO and CAROLINE MACARAEG PANOPIO ("Debtor"). It is stated in the Motion that Debtor entered into the contract to purchase this vehicle December 16, 2018. Motion, ¶ 1; Dckt. 15. Exhibit A is a copy of the Contract, for which Debtor agreed to pay $61,506.63 to purchase the vehicle, financing $59,506.63 of the purchase price at 15.75% interest over six years, for a total purchase price in excess of $100,000. Dckt. 20 at 2.

Movant argues Debtor has not made 16.36 pre-petition payments, with a total of $19,327.91 in pre-petition payments past due. Declaration, Dckt. 18; Information Sheet, Dckt. 21

J.D. Power Market Values Guide Provided

Movant has also provided a copy of the J.D. Power Market Values Guide for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication

generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DEBTOR'S OPPOSITION

On October 18, 2021, Debtor filed an opposition claiming:

1. They would like to convert the case in order to save the car from repossession.

2. They need two automobiles and this automobile is essential to their rehabilitation.

3. They will be changing their budget in order to pay for needs essential such as this automobile.

Although Debtor's opposition was filed four days late, the court notes Debtor filed a declaration indicating good faith attempts to file their opposition on time and unanticipated obstacles. Dckt. 35. Therefore, the court allow the Motion to proceed as if the opposition was filed on time.

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 $67,928.51 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be $53,825.00, as stated on the J.D. Power Market Values Guide Valuation Report, which is more than the Debtor's opinion of retail value stated in Schedules A/B and D, $45,000.00.

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

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

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 no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

However, the court has converted this case to one under Chapter 13 that will afford Debtor the opportunity to pay Creditor through a bankruptcy plan. At the hearing, Debtor repeated that they would commence making immediate adequate protection payments, which would be in excess of $1,000 a month based on Debtor's valuation of the vehicle.

The court continued the hearing to 1:30 p.m. on November 16, 2021, to afford Debtor the opportunity to get on file a Reply that proposes either an agreed or unilateral adequate protection payment amount, with that payment beginning in October 2021.

November 16, 2021 Hearing

On November 10, 2021, Debtor filed a Status Report. Dckt. 53. Debtor has substituted out their former counsel and new counsel has undertaken representation of Debtor in this case. Debtor's new counsel reports that there could likely need to be substantial corrections. The Statu Report also notes that Debtor's former counsel did not obtain documentation from Debtor for the documents filed in this case, nor have any original signatures of any documents for Debtor.

Counsel reports that upon his review and meetings with Debtor, there may be substantial challenges to confirming and performing a Chapter 13 Plan, and that Debtor may reconvert this case to Chapter 7.

The Status Report affirmatively states that Debtor, in light of their finances, now do not oppose the Motion for Relief From the Stay. Status Report, Dckt. 3; Dckt. 54.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

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 AMERICREDIT FINANCIAL SERVICES, INC. DBA GM FINANCIAL ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 DODGE CHALLENGER, VIN ending in 8581 ("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.

8. **20-20841-E-13 JHK-1** **RYAN/CHARITY FLOYD** **Michael Benavides** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **10-13-21 [44]**

HYUNDAI CAPITAL AMERICA VS.

Final Ruling: No appearance at the November 16, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 13, 2021. 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.

Hyundai Capital America ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Kia Niro, VIN ending in 4159 ("Vehicle"). The moving party has provided the Declaration of Wesley Wiley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ryan Wayne Floyd and Charity Anne Floyd ("Debtor").

Movant argues Debtor has not made 16.93 post-petition payments, with a total of $10,126.52 in post-petition payments past due. Declaration, Dckt. 47.

TRUSTEE NONOPPOSITION

Trustee, David Cusick, filed a nonopposition on November 1, 2021. Dckt. 52. Trustee requests the court considers the following matters:

1. The creditor is included in Debtor's confirmed plan (Dckt. 12, Section 4.02) and on Schedule G (Dckt. 13, Page 31) and is to be paid directly to the Creditor by the Debtor.

2. Creditor has filed Claim No. 26-1 in the unsecured amount of $12,060.47.

3. Trustee has not disbursed any funds to creditor Hyundai Lease Titling Trust to date.

DISCUSSION

In Trustee's nonopposition, Trustee confirms creditor filed Claim 26-1 in the unsecured amount of $12,060.47 (Nonopposition, Dckt. 52), while the value of the Vehicle is determined to be $40,000.00, as stated in Schedules A/B and D filed by Debtor. However, this is lease, and Creditor has provided evidence that Debtor is in default for lease payments for the period from May 2020 through September 2021 (sixteen months) as of the filing of this Motion.

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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has plead adequate facts in their Memorandum of Points and Authorities 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 Hyundai Capital America ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Kia Niro, VIN ending in 4159 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.