

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

November 19, 2024 at 1:30 p.m.

1. [24-21440-E-13](#) ERIKA NORMAN
[RDW-2](#) Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
7-29-24 [[54](#)]

ARTHUR H. SUTTER, TRUSTEE OF
THE ARTHUR H. SUTTER
REVOCABLE TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 29, 2024. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The Motion is granted pursuant to the terms of the Stipulation at Exhibit A, Docket 149.

November 19, 2024 at 1:30 p.m.

November 19, 2024 Hearing

The court continued the hearing to allow Movant to file and serve a Notice of Continued Hearing that included the proposed stipulation terms that resolve this Motion. Order, Docket 151. Movant complied with the Order and filed those documents on November 6, 2024. Dockets 148, 149. The essential terms of the Stipulation are:

1. Debtor to maintain normal monthly payments to Sutter.
2. Debtor to maintain insurance coverage on the subject property and remain current on post-petition taxes with regard to the property.
3. Debtor to remain current under the terms of any confirmed Chapter 13 Plan in the case.
4. In the event that Debtor defaults under the terms and conditions of the Stipulation, Creditor must serve written notice of default to Debtor and Debtor's attorney. If the Debtor fails to cure the default within 10 days after service of such written notice, Creditor may file and serve a declaration that states under penalty of perjury specifying the default, together with a proposed order terminating the stay, which the court may grant without further notice or hearing.
5. If Creditor obtains relief from stay based on Debtor's defaults under the Stipulation, Creditor will also be granted relief under 11 U.S.C. § 362(d)(4), and any order granting relief from stay shall be binding in any other case under this title purporting to affect the subject Property filed within two (2) years of the date of entry of the order for relief.
6. If Creditor obtains relief from stay based on Debtor's defaults under the Stipulation, the order granting such relief will contain a waiver of the 14 day stay as provided in FRBP 4001(a)(3) and termination of the Co-Debtor Stay of 11 U.S.C. § 1301 as it pertains to the Co-Debtor's interest in the Property.

Notice 2:20-3:11, Docket 148.

The Erika Norman and Kevin Norman, 24-23545, are being substantively consolidated.

The Stipulation provides a good faith resolution of this Motion consistent with the rights of Debtor under Chapter 13.

The court makes one change. In the event of a default in the terms of the Stipulation, notice of the default being given, and then the Debtor not curing the default within 10 days of such notice, the relief from the stay will be requested by *ex parte* motion, not merely the filing of a declaration. The *ex parte* motion is filed using the Docket Control Number for this contested matter.

The Debtor is then given fourteen days to file an opposition, with the only opposition grounds being whether a default occurred, notice given, and the Debtor failing to cure within ten days. The hearing on the motion must then be set by the Debtor for the first regularly scheduled relief from stay calendar that is at least ten days after the timely filing and service of the opposition.

The court has utilized this *ex parte* procedure successfully to avoid post-order disputes over alleged non-defaults, cures being made, and other disputes after the fact via Federal Rule of Civil Procedure 60 and Federal Rule of Bankruptcy Procedure 9024.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees (“Movant”) seeks relief from the automatic stay with respect to Erika Lizeth Norman’s (“Debtor”) real property commonly known as 448 Royal Tern Drive, Vacaville, CA 95687 (“Property”). Movant has provided the Declarations of Christy Mathers (Docket 56) and Reilly Wilkinson (Docket 58) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three post-petition payments, with a total of \$10,946.82 in post-petition payments past due. Declaration 4:25-26, Dckt. 56. Movant also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of \$29,511.88, when adding other fees. *Id.* at 4:23. Movant also argues Debtor has not maintained property taxes. Mot. 3:7-8, Docket 54.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) so that any order for relief will be binding in any other case under this title purporting to affect the subject property filed within two years of the order for relief, as this bankruptcy was filed solely to hinder and delay Movant. Mot. 2:8-10, Docket 54. Movant argues Debtor does not hold an interest in the Property. *Id.* at 11-12. *See* Decl. ¶ 8, Docket 56 (stating that Debtor transferred her entire interest in the Property to her spouse by quitclaim deed dated February 7, 2018); Ex. 3, Docket 57.

Movant also moves this court for relief from the Co-Debtor stay of 11 U.S.C. § 1301 “out of an abundance of caution,” although Movant does not believe there is a Co-Debtor stay in place here. Mot. 2:16-23, Docket 54.

Movant further moves this court for its postpetition attorneys’ fees and costs incurred in bringing the Motion. *Id.* at 3:13-17. No specific amount of attorney’s fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 27, 2024. Dckt. 96. Debtor states:

1. Debtor's spouse, Kevin James Norman filed a Chapter 13 case, case number 24-23545 on August 10, 2024. *Id.* at 2:14-15.
2. Mr. Norman cured the entire prepetition arrearage of \$29,824.15 in a previous case before it was dismissed, case no. 20-22267. *Id.* at 2:25-26.
3. Debtor only signed the quitclaim deed to Mr. Norman as she believed it was a requirement of the title company, or the lender, as she was not going to be a co-signer on the loan. Debtor maintains she has a community property interest as well as a possessory interest in the property, having resided consistently in the property since its purchase. *Id.* at 3:10-14.
4. There is no cause for relief pursuant to 11 U.S.C. § 362(d)(4). The only other case affecting the Property was Mr. Norman's first case where he made substantial payments to Movant. Movant seeks extraordinary relief in a case with no extraordinary cause. *Id.* at 4:2-7.
5. Debtor understands that, since her husband filed his case on August 10, 2024, Mr. Norman's attorney Peter Macaluso, has conferred with Movant's attorney and has had fruitful conversations regarding a stipulation to resolve Movant's concerns regarding Debtor's case. Debtor understands that Mr. Macaluso will be filing a motion to consolidate the two cases, for better administration of same. Debtor is agreeable to the consolidation as well as the administration of the cases under the experienced guidance and expertise of Mr. Macaluso. Debtor believes it would be prudent to continue this matter until such time as the intended stipulation is completed, and the court has an opportunity to review it. *Id.* at 4:7-16.

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 \$430,816.49 (Declaration ¶ 15, Dckt. 56), while the value of the Property is determined to be \$760,000.00, as stated in Schedules A/B filed by Debtor. Schedule A/B 11:1.1, Docket 1.

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

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

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

In this case, relief from the stay would not allow Movant to pursue a foreclosure where Mr. Norman's bankruptcy case is currently ongoing, there being a stay present there. Debtor's case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman's cases into one.

Co-Debtor Stay

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor's spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was not part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The only case to affect the Property was Mr. Norman's first case, case no. 20-22267, which resulted in making substantial payments on Movant's claim. It is true that Mr. Norman has filed a new case recently, case no. 24-23545. However, it appears the court will soon be consolidating that case and Debtor's current case into one. This behavior does not amount to a series of filings affecting the Property in an attempt to hinder or delay Movant's foreclosure proceedings. Relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

Continuance of September 10, 2024 Hearing

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The Parties requested a short continuance to allow for the stipulation to be documented.

September 24, 2024 Hearing

The court continued this hearing to afford parties time to document their Stipulation, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Order, Docket 114. A review of the Docket on September 20, 2024 reveals that no such Stipulation has been filed with the court.

Though it has been represented to the by the Debtor and her spouse Kevin Norman, a debtor in his separately filed Chapter 13 Case, 24-23545, that the Erika Norman case will be consolidated with the Kevin Norman case to be prosecuted as a joint case. No motions to consolidate had been filed as of the court's September 22, 2024 review of the files in these two cases.

At the hearing, counsel for the Creditor reported that a stipulation has been worked out, documented, and it has been circulated for signatures.

The hearing is continued to 1:30 p.m. on October 8, 2024.

October 8, 2024 Hearing

The court continued the hearing to afford the parties the opportunity to have the Stipulation filed and proposed Order uploaded to the court. A review of the Docket on October 2, 2024 reveals no stipulation has been filed with the court.

However, Debtor filed a Motion for Joint Administration to administer this case with the related case no. 24-23545. Docket 126.

The hearing on the Motion is continued to 2:00 p.m. on November 5, 2024, to be conducted in conjunction with the hearing on the Motion for Joint Administration.

November 5, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Motion for Joint Administration. As of the court's review of the Docket on October 30, 2024, nothing new has been filed with the court under this Docket Control Number.

The Parties report that they have settled this Matter, with the Settlement Agreement having been filed in the Kevin Norman Bankruptcy Case.

The hearing on the Motion Relief from the Automatic Stay and Motion for Adequate Protection is continued to 1:30 p.m. on November 19, 2024.

On or before November 6, 2024, Movant shall file and serve a Notice of Continued hearing that includes the proposed settlement terms.

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 Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees (“Movant,” “Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted pursuant to the terms of the Stipulation at Exhibit A, Docket 149. The essential terms of the Stipulation, as having been modified in paragraph 4 below, are as follows:

1. Debtor to maintain normal monthly payments to Sutter, Movant herein.
2. Debtor to maintain insurance coverage on the subject property and remain current on post-petition taxes with regard to the property.
3. Debtor to remain current under the terms of any confirmed Chapter 13 Plan in the case.
4. In the event that Debtor defaults under the terms and conditions of the Stipulation, Creditor must serve written notice of default to Debtor and Debtor’s attorney. If the Debtor fails to cure the default within 10 days after service of such written notice:
 - a. Creditor may file and serve an *ex parte* motion and declaration that states under penalty of perjury specifying the default, and lodge with the court a proposed order terminating the stay.
 - b. Within fourteen (14) calendar days after service of the *ex parte* motion, Debtor may file and serve an opposition to the *ex parte* motion, with the only opposition grounds being whether there was such a default and if so, whether the default was not cured within the ten day period, and set a hearing on the *ex parte* motion for the first regular law and motion day for Chapter 13 cases that is at least after ten days from the timely filing and serving of the opposition.
 - c. The only issue for opposition of the *ex parte* motion is whether there was a default under the terms of the Stipulation, and if so, whether it was not cured within ten (10) days of notice of such default.

5. The right to seek *ex parte* relief from the stay pursuant to the terms of the Stipulation is without prejudice to Creditor seeking relief from the automatic stay for other grounds, with such motion set for hearing as provided in Local Bankruptcy Rule 9014-1.
6. If Creditor obtains relief from stay based on Debtor's defaults under the Stipulation, Creditor will also be granted relief under 11 U.S.C. § 362(d)(4), and any order granting relief from stay shall be binding in any other case under this title purporting to affect the subject Property filed within two (2) years of the date of entry of the order for relief.
7. If Creditor obtains relief from stay based on Debtor's defaults under the Stipulation, the order granting such relief will contain a waiver of the 14 day stay as provided in FRBP 4001(a)(3) and termination of the Co-Debtor Stay of 11 U.S.C. § 1301 as it pertains to the Co-Debtor's interest in the Property.

PENTAGON FEDERAL CREDIT
UNION VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 17, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Pentagon Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to Larry Delvecchio Henderson's ("Debtor") real property commonly known as **1313 Falsetto Drive, Fairfield, CA 94534** ("Property"). Movant has provided the Declaration of Maurice Lowe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 33.

Movant argues Debtor has not made multiple post-petition payments, and when combined with pre-petition arrearage, leave a total outstanding arrearage of \$12,054.60. Declaration ¶ 8, Docket 33. The total indebtedness secured by the Property is \$546,316.05. *Id.* at ¶ 9.

The Chapter 13 Trustee filed a nonopposition on November 5, 2024. Docket 41.

The case was recently converted to one under Chapter 7 on November 12, 2024, by the Debtor. Dckt. 43. Nikki B. Farris has been appointed as the Interim Chapter 7 Trustee in this Case. Dckt. 44.

The Chapter 7 Trustee has not responded to this Motion.

Relief Requested Re Co-Debtor

Movant further seeks relief pursuant to 11 U.S.C. § 1301(a) of the co-debtor. Movant has not identified a co-debtor on the Property in the Motion. The court will not grant relief as to an unknown party.

At the hearing, **XXXXXXX**

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 \$546,316.05, while the value of the Property is determined to be \$724,600, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 11, Docket 1.

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.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

**Conversion: Part 1 for Denying the Requested Relief
Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Pentagon Federal Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1313 Falsetto Drive, Fairfield, Ca 94534 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on October 9, 2024. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion for Relief from the Automatic Stay is XXXXXXX.</p>
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New American Funding, LLC (“Movant”) seeks relief from the automatic stay with respect to Patrick Blue Wong Jocson and Celeste Maria Gil Jocson’s (“Debtor”) real property commonly known as 6704 Rawley Way, Elk Grove, CA 95757-4035 (“Property”). Movant has provided the Declaration of Robert Moreno to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 51.

Movant argues Debtor has not made three post-petition payments, with a total of \$7,153.73 in post-petition payments past due. Declaration ¶ 9, Docket 48. Debtor had been making payments under the terms of the confirmed Plan until falling behind on June 1, 2024.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 17, 2024. Docket 50. Debtor explains that the reason for the delinquency in payments arose due to a severe and unexpected medical issue preventing Debtor from working. Debtor has offered a compromise to Movant to cure the arrearage over a four month period.

At the hearing, **XXXXXXX**

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 \$447,858.36 (Declaration ¶ 10, Docket 48), while the value of the Property is determined to be \$555,398.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 12, Docket 1.

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.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by New American Funding, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 6704 Rawley Way, Elk Grove, CA 95757-4035 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

FINAL RULINGS

4. [23-23216-E-13](#) **CLIFTON ROBERTS** **MOTION FOR RELIEF FROM**
[KPC-1](#) **Mo Mokarram** **AUTOMATIC STAY**
10-21-24 [34]

ROCKY TOP RENTALS. LLC VS.

Final Ruling: No appearance at the November 19, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2024. By the court’s calculation, 29 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.

Rocky Top Rentals, LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a Portable Storage Unit, described as a Lofted Playhouse measuring 10 X 16 (“Property”). The Property was purchased by Clifton Lee Roberts for a rent-to-own lease agreement, which is not a true lease as Movant suggests. Ex. 1 attached to Declaration, Docket 37. The moving party has provided the Declaration of Maria D. Boudreaux to introduce evidence to authenticate the documents upon which it bases the claim. Decl., Docket 37.

Movant argues Debtor has not made a single post-petition payment with the case being filed over a year ago. Declaration ¶ 6, Dckt. 37. Movant provides evidence the total amount in default and owing on the contract is \$12,428.90. *Id.*

The Chapter 13 Trustee filed a Nonopposition on November 5, 2024. Docket 42.

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 \$12,428.90. There is no value of the Property asserted by Movant, nor did Debtor list the Property in his Schedules.

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

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

The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 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.

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Rocky Top Rentals, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a Portable Storage Unit, described as a Lofted Playhouse measuring 10 X 16 (“Property”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property 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.