

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

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

**November 22, 2022 at 1:30 p.m.**

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1. [22-22743](#)-E-13  
[JKB-1](#)

**TIMOTHY WILLIAMS**  
**Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
10-28-22 [\[12\]](#)**

**SEAN IE 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).**

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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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee, on October 28, 2022. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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. At the hearing, -----

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<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Sean F. Ie ("Movant") seeks relief from the automatic stay with respect to Timothy Robert Williams's ("Debtor") real property commonly known as 7936 Sunrise Greens Drive, Sacramento,

California (“Property”). Movant has provided the Declaration of Sean F. Le 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 six pre-petition payments, with a total of \$21,732.72 in post-petition payments past due. Declaration and Movant’s Information Sheet, Dckts. 14, 17.

## **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 \$436,575.03 (Declaration, Dckt. 14), while the value of the Property is determined to be approximately \$480,000.00 as stated in Movant’s Motion and supporting documents. Debtor has not filed their Schedules yet.

### **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)(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.* Movant claims this is Debtor’s second skeletal bankruptcy petition. Debtor has not filed their required Schedules and Plan, which was the reason the court dismissed the prior bankruptcy case.

- A. Case No. 22-22381
  - 1. Filed: September 21, 2022
  - 2. Chapter 13

3. Dismissal Date: October 20, 2022
4. Reason for Dismissal: Failure to timely file Chapter 13 documents.

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, given this is only the second bankruptcy case filed, and Debtor is navigating the bankruptcy proceedings in *pro se*, the court does not find that this is an attempt to scheme, hinder, or delay Movant from taking action on the Property. If, however, this case is dismissed due to a failure to prosecute and files again, the court may very well find Debtor acting in bad faith to enforce the automatic stay and delay creditors from taking action against Debtor's assets.

The court does not find proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). <sup>Fn.1.</sup>

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FN. 1, Debtor's prior case was dismissed on October 20, 2022. Movant is obtaining relief from the automatic stay in this case. If this case is dismissed and Debtor files a third case prior to October 20, 2023, then 11 U.S.C. § 362(c)(4) precludes the stay from going into effect in the third case (not merely as to the Debtor). Functionally, Movant has protection from an automatic stay in a third case for a period in which it could diligently enforce its rights in its collateral.  
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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.

### **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.

### **“Motion to Sell Property”**

The court notes that a strange one page document was filed by Debtor on November 14, 2022. Dckt. 29. It is titled Motion to Sell Property, however it fails to comply with the basic pleading requirements

established by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9013 and the Local Bankruptcy Rules, including, 9004-2, 9014.

The “Motion” has no caption and no docket control number. It does , in a chart, identify that the Sunrise Greens Drive Property is sought to be sold for \$469,00 and is a short sale. The “Motion” is an unsigned document.

A copy of a residential listing agreement is filed (Dckt.30), however, there this document has not been authenticated by the Federal Rules of Evidence. Another unauthenticated exhibits, an Estimated Seller’s Statements, is filed at Docket 31.

The “Motion” states no legal authority for Debtor seeking to sell property of the bankruptcy estate. Such may be 11 U.S.C. § 363, with the Chapter 13 Debtor exercising the powers of a bankruptcy trustee in administering property of the bankruptcy estate.

Further, Debtor has not sought authorization to employ a professional, such as a Realtor, and no request to authorize allowance of compensation for an employed professional. Thus, at this point, the Realtor/agent hired by Debtor are providing pro bono services to the bankruptcy estate.

A “Notice for Selected Hearing Date for Motion to Sell real Estate Property” has been filed (Dckt. 32). This appears to be a letter to the court “requesting a hearing date.” No certificate of service has been filed.

Debtors has not filed Schedules in this case and did not in the prior case. It is not clear as to what Debtor’s ability to fund a plan (income and expenses), as well as the income from Debtor’s too businesses. Given the Debtor’s struggles, the court wonders why Debtor is not obtaining the services of a bankruptcy attorney (for which a substantial amount of fees can be paid through the bankruptcy plan).

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 Sean F. Ie (“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 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 7936 Sunrise Greens Drive, Sacramento, California (“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.

The automatic stay, as it applied to the Debtor, terminated by operation of law pursuant to 11 U.S.C. § 362(c)(3) effective October 1, 2022.

**IT IS FURTHER ORDERED** that relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

**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.

2. [19-22258-E-13](#)  
[AP-1](#)

**LELAND PAPA**  
**Douglas Jacobs**

**ROCKET MORTGAGE, LLC VS.**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
10-11-22 [\[3+3\]](#)**

**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.

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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, and Office of the United States Trustee on October 11, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Relief from the Automatic Stay is denied without prejudice.</b></p>
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Rocket Mortgage, LLC f/k/a Quicken Loans, LLC f/k/a Quicken Loans Inc. ("Movant") seeks relief from the automatic stay with respect to Leland Phillip Papa's ("Debtor") real property commonly known as 319 Circle Drive, Oroville, California ("Property"). Movant has provided the Declaration of Shaina Smith 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 multiple post-petition payments. After this case was filed, Debtor executed a subordinate note for the principal amount of \$26,537.27, payable to the Secretary of Housing and Urban Development (“Subordinate Note”).

Movant states that the Subordinate Note addresses delinquent payments owed to Movant on its existing loan with the Debtor. Dckt. 33. Movant’s Declaration states that the Subordinate Note, identified as Exhibit E (Dckt. 36 at 36-41), is secured by a Partial Claims Mortgage, identified as the Subordinate Deed of Trust evidenced in Exhibit F (Dckt. 36 at 42-48), which encumbers the Property. Declaration, Dckt. 37 ¶ 10.

Movant states the actual purpose of this Motion as follows:

This motion is made pursuant to 11 U.S.C. § 362(d)(1), for the limited purpose of ratifying the New Loan and permitting Movant to record the Subordinate Deed of Trust in the public records.

Motion, p. 2:6-7; Dckt. 33.

In substance, it appears that the real purpose of this Motion is to obtain retroactive authorization for Debtor obtaining a loan and encumbering property of the bankruptcy estate or property of the bankruptcy estate. Such would appear to be grossly improper in a motion for “relief from the stay.”

## **CHAPTER 13 TRUSTEE’S REPLY**

The Chapter 13 Trustee, David P. Cusick (the “Trustee”) filed a Reply, on November 8, 2022, stating opposition to the Motion if the below is not clarified. Dckt. 43 at 2, ¶ 24. Trustee notes that:

1. Movant is listed under Class 4 in Debtor’s confirmed Plan.
2. Movant has not filed a Relief from Stay Summary Sheet.
3. Debtor’s case was filed April 11, 2019, and the Plan was confirmed June 5, 2019.
4. Debtor is currently delinquent \$873.00 under the confirmed Plan.
5. Creditor’s Claim, no. 1-1, reflects a monthly mortgage payment of \$2,093.16, which contains \$1,511.39 for principal and interest, a note dated February 27, 2019 with an April 1, 2019 first payment due date, and with \$0.01 in pre-petition arrears.
6. This Motion concerns a subordinate note dated August 10, 2021, for \$26,537.27, executed by Debtor and Chelsea K. Papa, and payable to the Secretary of Housing and Urban Development.
7. Debtor’s Schedule J reflects a \$2,093.00 mortgage, and the record reflects a Notice of Forbearance on August 24, 2020, for three months.

8. Debtor's confirmed Plan does not provide for the Subordinate Note, which was obtained after this case was filed.
9. Trustee does not know how many mortgage payments Debtor has made to date, nor has Movant explained why it is the proper party to seek relief from stay on behalf of the Secretary of Housing and Urban Development's. Movant has not explained the purpose of the subordinate note.
10. Trustee is not entirely opposed to a potential loan modification concerning a subordinate note, to the extent Debtor was delinquent to Movant, but additional detail is needed.

## DISCUSSION

The court agrees with Trustee's concerns. More detail is needed to ascertain whether relief from the automatic stay should be granted to allow the Subordinate Note to be recorded.

Movant filed its Proof of Claim for \$287,955.56 on April 30, 2019, secured by the Property in its entirety, including a 4.75% fixed interest rate and \$0.01 in pre-petition arrears, and late charges for overdue payments. Proof of Claim 1-1. The modified stay is for the Subordinate Note dated August 10, 2021. Exhibit E, Dckt. 36 at 36.

From the courts review of the docket, Debtor did not seek permission from the court to incur post-petition debt or encumber property of the Bankruptcy Estate or property of the Plan Estate (which loan is not provided for in the Chapter 13 Plan). The court does not know what this Subordinate Note was for. As Trustee addresses, the Plan does not provide for the Subordinate Note. Additionally, under applicable bankruptcy provisions, a Debtor may not incur new debt without court approval. 11 U.S.C. § 364(d).

Reviewing the Motion and Supporting Pleadings, the court fundamental facts and terms for the post-petition credit and purported encumbrance, either of which the court has authorized, include the following:

- A. Movant, not the Debtor pursues this Motion. Motion, p. 1:21-12; Dckt. 33.
- B. Relief from the automatic stay is sought as to the Circle Drive Property. *Id.*, p. 1:24-25.
- C. On August 10, 2019, after this bankruptcy case was filed, Debtor executed a Note in the principal sum of \$26,537.27 payable to HUD. *Id.*, p. 26-28.

The Modified Chapter 13 Plan in this case, stating the binding terms on Debtor and creditors, was confirmed on September 25, 2019 (Dckt. 27). The Modified Plan does not provide for any post-petition loans or credit to be obtained by the Debtor/Plan Administrator.

- D. The Note addresses delinquent amounts on an existing loan with Movant (not HUD). *Id.*, p. 2:1.

- E. The Motion for Relief from the Stay only for the purpose of “ratifying the New Loan (HUD note) and to record the deed of trust for the new loan. *Id.*, p. 8-9. The court is directed to read the Notice of Motion, Points and Authorities, Declarations, all of the pleadings filed in this case, and any other evidence that Movant will introduce.
- F. The 2021 Promissory Note is filed as Exhibit E (Dckt. 36). Information in and terms of the 2021 Promissory Note include:

1. The Parties to the Note are:
  - a. Debtor and Secretary of Housing and Urban Development and its successors and assigns. Note, ¶ 1.
  - b. In return for a “loan,” Debtor will pay HUD (\$26,537.27). *Id.*, ¶ 2.

The Motion does not identify how Rocket Mortgage, LLC f/k/a Quicken Loans, LLC, f/k/a Quicken Loans, Inc., the Movant, is a real party in interest to seek relief in federal court for Debtor and for HUD.

- G. The Declaration of Shaina Smith, identified as a Loss Mitigation Officer for Movant, provides per personal knowledge testimony (Fed. R. Evid. 601, 602), which includes:
1. She is familiar with Movant’s books and records. Declaration, ¶¶ 1, 2.
  2. She authenticates the \$289,733 Note and Deed of Trust securing that Note based on Movant’s books and records. *Id.*, ¶¶ 5, 6, 7.
  3. She testifies that based on MOvant’s books and records the 2021 Note and Deed of Trust were issued. She does not testify how she or Movant has records of or any personal knowledge of a note between Debtor and HUD. *Id.* ¶ 9.
  4. She then testifies as to the 2021 Note and her legal opinion of how it is secured by a Deed of Trust. *Id.*, ¶¶ 9, 10.

Ms. Smith provides no testimony how she and Movant show that Movant is a real party in interest to seek the relief (merely modification of the stay and not authorization for a post-petition loan, credit, or financing).

- H. Movant’s Points and Authorities, Dckt. 35, includes the following:
1. A page and one-half of factual allegations (which would be grounds that are required to be stated in particularity in the Motion, Fed. R. Bank. P. 9013). P&A, p. 1-2.
  2. It states that Movant is “**ENTITLED**” to modification of the stay. *Id.*, p. 3:2 (emphasis in original).
  3. Movant wants to obtain modification so that the 2021 Loan and granting of the Deed of Trust may be “ratified” (apparently believing that the court has no role



with respect to post-petition credit, financing, and property of the bankruptcy and plan estate). *Id.*, p. 3:14-18.

4. Movant asserts that it needs the stay modified to protect the security interest (not authorized by the court) from being perfected for a 2021 loan (not authorized by the court).
5. The factual allegations include, “Movant, directly or through an agent, has possession of the promissory note, which is indorsed and payable in blank.(See Exhibit A; see also Declaration).” *Id.*, p. 2:6-7.
  - a. The Declaration does not provide testimony that Movant is in possession of the 2021 Note or whether an “agent,” and who that agent is, possession of the 2021 Note.

The 2021 Note is signed only by Debtor as the borrower. Exhibit E, p. 2 of 2021 Note; Dckt. 36 at 36-37. The copy of the 2021 Note is not endorsed in blank.

### **November 22, 2022 Hearing**

It appears that there are some substantial legal and evidentiary defects in Movant’s Motion and the sufficiency of the relief sought. It could well appear that Movant is not a real party in interest and that it is trying, with the assistance of counsel, to create an illusion that Debtor has validly obtained post-petition credit and given an interest in property of the bankruptcy and Plan estates to HUD. Granting relief from the stay to record a Mortgage would only cause others to fall prey to a void lien, the Debtor having been authorized to grant such.

Debtor and HUD, or a successor in interest to HUD, have not simply sought a retroactive authorization for the Debtor to obtain secured credit.

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 for Relief from the Automatic Stay filed by Rocket Mortgage, LLC f/k/a Quicken Loans, LLC f/k/a Quicken Loans Inc. (“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 denied without prejudice.

# FINAL RULINGS

3. [22-20137-E-13](#) **RAYMOND WILLIAMS AND** **MOTION FOR RELIEF FROM**  
[SKI-1](#) **DARCELL HASKINS** **AUTOMATIC STAY AND/OR MOTION**  
**Paul Bains** **FOR RELIEF FROM CO-DEBTOR STAY**  
**10-19-22 [22]**  
**FORD MOTOR CREDIT COMPANY**  
**LLC VS.**

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.

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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 19, 2022. 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.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Ford Motor Credit Company LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Ford Fusion, VIN ending in 9952 (“Vehicle”). The moving party has provided the Declaration of Sonya Grahl to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Raymond Frank Williams and Darcell Renee Haskins (“Debtor”) and non-filing co-debtor, Raymond Williams (son of Debtor, Raymond Frank Williams).

Movant argues Debtor has not made three post-petition payments, with a total of \$1,265.91 in post-petition payments past due. Declaration, Dckt. 26, p. 2.

## 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 \$15,437.05 (Declaration, Dckt. 26), while the value of the Vehicle is determined to be \$0.00, as stated in Schedules A/B and D filed by Debtor. Dckt. 1. The court notes Movant has not provided a third-party valuation, such as Kelly Blue Book or JD Power. Debtor's Schedules value the vehicle at \$0.00 because, "Debtor's son's vehicle his son pays for it and it is in his son's possession." The court acknowledges the value is likely higher than \$0.00.

### 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 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.

### Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Debtor's son is a co-signer and payments are past due and the account is in default for the payments due August 9, 2022 through October 9, 2022. Movant would exercise its rights and remedies under state law, but for the automatic stay related to the bankruptcy petition.

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.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Ford Motor Credit Company LLC (“Movant”) having been presented to the court, 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 2019 Ford Fusion, VIN ending in 9952 (“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 request to terminate the co-debtor stay of Raymond Williams of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

4. <a href="#">21-23139</a> -E-13 <a href="#">APN-1</a>	NICOLE/MICHAEL SADLER Michael Hays	<b>CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 9-12-22 [23]</b>
NISSAN MOTOR ACCEPTANCE COMPANY LLC VS.		

**Final Ruling:** No appearance at the November 22, 2022 hearing is required.

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<p><b>The Motion is Dismissed without prejudice.</b></p>
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Nissan Motor Acceptance Company LLC (“Movant”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss Without Prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 7041, the Motion for Relief is dismissed without prejudice, and the matter is removed from the calendar.

The court notes that the “Withdrawal” was filed by Movant’s very experienced bankruptcy counsel. Based on the court’s review of the Federal Rule of Bankruptcy Procedure enacted by the U.S. Supreme Court, there is an a process or right to just “withdraw” a pleading from the court. However, in

Federal Rule of Civil Procedure 41(a)(1)(A)(I), which is incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014(c), a party may **dismiss without prejudice** a motion or application without prejudice so long as no responsive pleading was filed.

Here, the Parties and their counsel have productively and responsibly addressed the matters in this Contested Matter, reducing unnecessary legal expenses (having stipulated to continuance, affording the Debtor time to cure the delinquency).

No authority was stated in the “Withdrawal” as to how the Movant could just “withdraw” a pleading filed with the court.

The court makes this point of noting the absence of a right to “withdraw” pleadings from the court, but that there is a right to dismiss for a couple very practical purposes. First, to acknowledge when the Supreme Court sets Rules, the court, counsel, and parties must follow them.

Second, to highlight that there could be a very unfortunate situation where an attorney believed that a motion could be withdrawn to avoid an “uncomfortable” contested matter, think that “disaster” had been avoided, and then learn the unfortunate news (which the attorney then has to communicate to a grumpy client) that the matter adjudicated and an adverse (to the attorney’s client) ruling was issued.

To avoid any confusion about the dismissal, the court construes the “Withdrawn” as an *ex parte* motion to dismiss without prejudice (Fed. R. Civ. P. 41(a)(2); Fed. R. Bankr. P. 7004, 9014).

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 Nissan Motor Acceptance Company (“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 dismissed without prejudice.

In the Civil Minutes for the November 22, 2022 hearing the court provides a review of there not being a Rule permitting a party to “withdraw” a pleading from the court, that Federal Rule of Civil Procedure 41(a)(1)(I) and (ii) allow for the parties to dismiss a motion or jointly dismissal (if a response has been filed) and Federal Rule of Civil Procedure 41(a)(2) allows a party to request that the court dismiss a motion or application if a response has been filed and no stipulation can be reached. Federal Rule of Civil Procedure is incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014 (motion and application practice).