

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

December 5, 2023 at 1:30 p.m.

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1. [23-23206-E-13](#)      **DENAE BENNETT**      **MOTION FOR RELIEF FROM**  
[VC-1](#)      **Stephan Brown**      **AUTOMATIC STAY**  
           **11-3-23 [26]**  
**ALLIANT 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.

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

**NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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.

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

Alliant Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2013 Holiday Rambler 36PFT, VIN ending in 0029 (“Vehicle”). The moving party has provided the Declaration of Maureen Strube to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Denae Bennett (“Debtor”).

Movant provides testimony that Debtor has not made twelve payments of \$824.86, with there being one post-petition default as of the filing of the Declaration. Declaration, Dckt. 30 ¶ 3. Movant also provides evidence that pending return and liquidation of the Vehicle, the amount of \$110,721.77 is currently due. *Id.* Movant informs the court that Debtor has already surrendered the Vehicle to Movant. *Id.* at ¶ 6.

In the Declaration, testimony is also provided that this vehicle has been surrendered to Movant.

### **Black Book Valuation Report**

Movant has also provided a copy of the Black Book Valuation Report for the Vehicle. Exhibit 2, Dckt. 29. 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).

### **Trustee Non-opposition**

David Cusick (“Trustee”) filed a response indicating non-opposition on November 17, 2023. Dckt. 47. In his statement, Trustee notes that Movant is not listed in Debtor’s Schedule A/B, and that Movant did not file a proof of claim, but still does not oppose Movant’s motion. *Id.*

### **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 \$110,721.77 (Declaration, 30 ¶ 3), while the value of the Vehicle is determined to be \$108,850 clean wholesale (\$139,300 retail), as stated on the Black Book Valuation Report, which is slightly more than the retail value as stated in Schedule D filed by Debtor. Schedule D, Dckt. 17. The Vehicle is not listed in Debtor’s Schedule A/B.

### **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 notes that in the subsequently filed proposed Chapter 13 Plan, Debtor provides for Movant's claim in Class 3, which is for the surrender of the collateral. Plan, ¶ 3.09; Dckt. 50.

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 Alliant 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** 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 2013 Holiday Rambler 36PFT, VIN ending in 0029 ("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.