

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

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

**December 7, 2021 at 1:30 p.m.**

1. [19-23558-E-13](#)      **KENNETH SCAMMON**  
[JCW-1](#)              **Mark Briden**  
**NATIONSTAR MORTGAGE LLC VS.**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
9-21-21 [[37](#)]**

**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, creditors, on September 21, 2021. 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.

<b>The Motion for Relief from the Automatic Stay is <span style="color:red">xxxxxx</span>.</b>
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Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Kenneth Kip Scammon's ("Debtor") real property commonly known as 22484 Lake Helen Pl, Cottonwood, California ("Property"). Movant has provided the Declaration of Mary Garcia 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 nine post-petition payments, with a total of \$11,525.97 in post-petition payments past due and a total of \$12,763.97 in post-petition delinquencies. Declaration,

Dckt. 39. The additional costs include attorneys fees and th bankruptcy filing fee. *Id.*

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed an Response on October 12, 2021. Dckt. 43. Trustee asserts that Debtor is current under the confirmed plan. Movant is classified as a Class 1 creditor. Trustee has disbursed \$25,368.78 towards the Debtor’s ongoing mortgage and \$8,181.38 in arrears. Additionally, Trustee confirms two payments of \$1,284.87 to Movant for July and August payments. Trustee asserts this would put Debtor only six payments behind instead of nine. However, only two payments would put Debtor seven payments behind, not six.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on October 14, 2021. Dckt. 46. Debtor asserts they had a six month forbearance, of which Debtor was not notified of until March 2021. Debtor further asserts that a loan modification request to move three missed post-petition payments to the end of the loan period, and Debtor claims they will file a declaration itemizing payments made to date.

## **DEBTOR’S DECLARATION**

Debtor filed a Declaration on October 26, 2021. Debtor states they have made every Chapter 13 Plan Payment from July 2021 through October 2021. Nationstar sent Debtor a loan modification to place arrears at the end of the loan. Exhibit 2, Dckt. 50. Debtor disagrees they are six months delinquent. Debtor requests the court continue the Motion for Relief for an appropriate date to obtain Court Approval for a loan modification.

## **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 \$178,796.76 (Declaration, Dckt. 39), while the value of the Property is determined to be \$210,000.00 as stated in Schedules A/B and D filed by Debtor.

At the hearing, counsel for Debtor requested a 30 day continuance, with adequate protection payments made as a Class 1 Claim. Counsel for Movant concurred. This is to allow for the documentation of the loan modification.

## **DECEMBER 7, 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 for Relief from the Automatic Stay filed by Nationstar Mortgage 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 **xxxxxxx**.

# FINAL RULINGS

2. [21-23830](#)-E-13 JAMES POWE MOTION FOR RELIEF FROM  
[CJC-111](#) Pro Se AUTOMATIC STAY  
UMER MALIK VS. 11-10-21 [\[9\]](#)

**DEBTOR DISMISSED: 11/19/2021**

**Final Ruling:** No appearance at the December 7, 2021 hearing is required.

The case having previously been dismissed, **the Motion is dismissed as moot.**

The bankruptcy case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute 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 Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

3. [20-25657](#)-E-13 LOREN GODFREY MOTION FOR RELIEF FROM  
[JHK-1](#) Fred Ihejirika AUTOMATIC STAY AND/OR MOTION  
HYUNDAI CAPITAL AMERICA VS. FOR RELIEF FROM CO-DEBTOR STAY  
11-1-21 [\[41\]](#)

**This hearing has been vacated and removed from the calendar pursuant to the court order entered on November 24, 2021. Dckt. 56.**