

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

December 12, 2024 at 10:00 a.m.

1. [24-90504-E-7](#) **WALLACE ALBRIGHT AND LUNA MOTION FOR RELIEF FROM ORDER**
[JMC-1](#) **HART** **DATED OCTOBER 10, 2024**
 Pro Se **11-26-24 [74]**
DEBTORS DISMISSED: 10/18/24

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, attorneys of record, and Office of the United States Trustee on November 26, 2024. By the court's calculation, 16 days' notice was provided. The court set the hearing for December 10, 2024. Dckt. 79.

The Motion for Relief from Order Dated October 10, 2024 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 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 -----

<p>The Motion for Relief from Order Dated October 10, 2024 is granted.</p>

On November 26, 2024, at approximately 11:30 a.m. this court was notified by a case manager that a Motion for Order Shorting Time had been filed in the above-captioned case. No proposed order

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shortening time had been filed by the Party requesting such relief. When the court reviewed the Docket in this Bankruptcy Case, the relief requested goes well beyond that of “merely” shortening time.

A Renewed Motion for Relief From Order Dated October 10, 2024 was filed by Martin Kacin and Laura Kacin. Dckt. 74. They are renewing their Motion for Relief from this court’s Order in the above captioned case granting relief from the automatic stay which included relief pursuant to 11 U.S.C. § 362(d)(4). Order; Dckt. 39.

In the Renewed Motion, Martin Kacin and Laura Kacin include and incorporate their prior grounds, but add the following grounds:

- A. Martin Kacin and Laura Kacin withdrew the Original Motion requesting this relief based on a Settlement reached with Creditors (a defined term in Part II below) concerning the Los Altos Hills Property (defined term in Part II below), which is the Kacins’ residence.
- B. Creditors were to seek approval of the settlement in the Martin Kacin and Laura Kacin Chapter 11 Case filed in the Northern District of California. However, Creditors have not filed the Settlement and have not obtained court authorization (Fed. R. Bankr. P. 9019) for Martin Kacin and Laura Kacin, as the debtors in possession in their Chapter 11 Case, to enter into the Settlement.
- C. Under the terms of a Settlement a \$50,000.00 payment was to be made on November 24, 2024. That payment has not been made, but Creditors have agreed to accept the payment if made by wire transfer as of 2:00 p.m. on November 25, 2024.
- D. The Los Altos Hills Property has a value of Nine to Ten Million Dollars for a sale to be completed by January 31, 2025. The Los Altos Hills Property is encumbered by Creditors’ deed of trust to secure an obligation of approximately (\$7,500,000.00). See Creditors’ Points and Authorities, ¶ 11; Dckt. 30.
- E. Martin Kacin and Laura Kacin assert that they had arranged for a loan to make the Settlement payment, but now believe they were defrauded by the person who was arranging the loan. The information concerning the alleged loan is now being provided to the FBI.
- F. A Realtor has been selected and Martin Kacin and Laura Kacin will proceed to sell the Los Altos Hills Property by January 31, 2025.

Renewed Motion, p. 2:10 - 4:7; Dckt. 74.

This court has reviewed the Docket for the Martin Kacin and Laura Kacin Chapter 11 Case in the Northern District of California. In their Case, a Motion seeking the imposition of the § 362 Stay was filed by Martin Kacin and Laura Kacin. 24-51568; Motion, Dckt. 16. That Motion was filed on October 20, 2024. Various Declarations and Exhibits were filed with the Motion. These appear to parallel the pleadings filed by Martin Kacin and Laura Kacin in this Eastern District Case. It does not appear that any hearings were conducted in the Northern District of California or that the Motion seeking the imposition of

the 11 U.S.C. § 362(a) stay was prosecuted by Martin Kacin and Laura Kacin in the Northern District Chapter 11 Case.

On November 26, 2024, the lender \$500,000 or 10% interest TO American Overseas Trading Corporation; \$500,000 or 10% interest TO James P. Mills, Jr., Trustee of the James P. Mills, Jr. Living Trust dated 11/6/2001; \$375,000 or 7.5% interest to Steven Alpert and Nancy Alpert, husband and wife as joint tenants; \$250,000 or 5% interest to James P. Mills, Jr. MD Money Purchase Plan; \$250,000 or 5% interest to LC Equity Group, Inc., A California Corporation; \$250,000 or 5% interest to Melvin Plutsky, Trustee of the Melvin Plutsky Living Trust; \$250,000 or 5% interest to Eagle Cal S.C. Inc., A California Corporation; \$250,000 or 5% interest to Janice L Piraino & John K. Piraino, Trustees of the Piraino Family Trust; \$250,000 or 5% interest to Josef Cernik and Caroline Cernik, Trustees of the Josef and Caroline Cernik Trust; \$250,000 or 5% interest to David Abramson, Trustee of the Earl Abramson 2010 Exempt Descendants Trust; \$250,000 or 5% interest to Dall LLC; \$250,000 or 5% interest to Earl B. Abramson, Trustee of the Earl B. Abramson 1998 Trust; \$250,000 or 5% interest to Timothy Cloughesy, Trustee of the Cloughesy Family Trust of 1996; \$250,000 or 5% interest to EM Card Services, LLC Defined Benefits Trust; \$250,000 or 5% interest to Abraham Katz Revocable Trust Dated 10/10/2010, Abraham Katz, Trustee; \$250,000 or 5% interest to Medimetrix Group, Inc.; \$250,000 or 5% interest to NLBD Cohen Family Partnership LP; \$125,000 or 2.5% interest to Steven Baer, a single man, its successors and/or assignees (“Lender,” “Creditor”), ultimately filed the Stipulation with the bankruptcy court in the Northern District of California. Case no. 24-51568, Northern District of California, Docket 41. The Stipulation provided for a series of payments that would resolve the Order Dated October 10, 2024, ending in Lender’s claim being paid in full by January 31, 2025. Case no. 24-51568, Northern District of California, Docket 41.

On December 3, 2024, Martin Kacin and Laura Kacin filed an Objection to that Stipulation, stating that Stipulation is now moot where the Kacins were never able to make the payment under the Stipulation, so the Stipulation is no longer in existence. Case no. 24-51568, Northern District of California, Docket 44.

The Kacins filed an Amended Schedule A/B on December 3, 2024, valuing the Property at \$12,000,000. Case no. 24-51568, Northern District of California, Docket 45.

The Kacins filed a Motion to Employ on December 6, 2024, seeking to employ a real estate broker to sell the Property. Case no. 24-51568, Northern District of California, Docket 47.

On December 9, 2024, the Kacins filed a Status Report with this court. Docket 90. The Kacins inform the court they are in the process of listing their home for sale. There is a real estate brokerage firm engaged and a signed listing agreement in place. However, the Kacins are looking for short term funding to pay for repairs to the Property and to pay the expenses of Mr. Kacins latest start-up. *Id.* at 2:20-3:2. The Kacins may also be seeking refinancing arrangements that would result in paying all creditors in full, which is a back up plan if the home cannot be timely sold.

Creditor’s Opposition

Creditor filed an Opposition to this renewed Motion on December 9, 2024. Creditor states:

1. This court does not have jurisdiction. A Motion for Relief from the court’s October 10, 2024 Order should be brought in the second bankruptcy ongoing in the Northern District. *Id.* at 2:26-28.

2. The Kacins are engaging in gamesmanship. Specifically, the moving papers allege that the Kacins were not aware of this current fraudulent bankruptcy being filed, when the record shows they were aware of it at least the day before it was filed. *Id.* at 3:1-4.
3. Moreover, the Kacins failed to tender any payments pursuant to the Stipulation, did not communicate with Creditor about this, then filed this renewed Motion instead. *Id.* at 3:5-11.

DISCUSSION

As an initial matter, the court finds it has jurisdiction to hear this Motion. This court issued the Order for 11 U.S.C. § 362(d)(4) relief against the Property, and so the Kacins have brought their request to the proper venue for seeking relief from that portion of the Order. 28 U.S.C. § 1409(a) states:

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 **or arising in or related to a case under title 11** may be commenced in the district court in which such case is pending.

The parties are aware that the bankruptcy court is a unit of the district court. 28 U.S.C. § 151. As the proceeding the Kacins have brought now is related to the case of Debtors here, the court has jurisdiction to determine the proceeding. It is true that the Kacins could have brought their Motion in their bankruptcy in the Northern District, *In re Black*, 514 B.R. 605, 607 (Bankr. E.D. Cal. 2014), where that court also has jurisdiction, but that fact does not deprive the court of jurisdiction to hear this proceeding.

The allegations in this Motion raise some serious issues relating to possible fraud being committed on this Court (the court not saying by Martin Kacin and Laura Kacin or the Creditors, or their respective attorneys). Some serious issues arise concerning Due Process and the truncating of the rights of Martin Kacin and Laura Kacin through the proceedings in this Eastern District of California Case.

The court is now presented with an *Ex Parte* Motion on November 26, 2024 (Thanksgiving Eve-Eve) with a story that Martin Kacin and Laura Kacin will lose their home and millions of dollars of equity on Thanksgiving Eve if this court's order is not vacated. While presenting in the style of a Motion for Order Shortening Time filed at 7:50 a.m. on November 26, 2024, there is no time in which a hearing could be conducted before a foreclosure date and time of 10:00 a.m. on November 27, 2024.

In reviewing the Northern District Docket for Martin Kacin and Laura Kacin's Chapter 11 Case, the court notes that not only has Creditor, as alleged by the Kacins, failed to seek authorization for Martin Kacin and Laura Kacin to enter into a Settlement involving rights and interests of the Bankruptcy Estate in the Northern District of California Case, but Martin Kacin and Laura Kacin have been moot in seeking to seek such approval or seek relief (such as injunctive relief) in that court.

In his Declaration in Support of the Renewed Motion, Martin Kacin testifies that they have run out of money and are content with selling the Los Altos Hills Property, now being in survival mode. Dec., ¶ 15; Dckt .75.

On the Relief From Stay Summary Sheet (which is not evidence), Creditors state that they have a \$7,155,400.00 valuation of the Los Altos Hills Property. Dckt. 32. The Motion for Relief From the Stay was not based on value, and the absence of such evidence is not improper. However, it appears that during a short period that the court will address this issue, Creditors should be adequately protected.

At this juncture, Martin Kacin and Laura Kacin state that they will seek the immediate sale of the Los Altos Hills Property. That will have to be done in their Chapter 11 Bankruptcy Case in the Northern District of California. The court is unaware of the terms of any Settlement between Creditors and Martin Kacin and Laura Kacin, that all being the subject of the Northern District of California Bankruptcy Case.

Here, there appears to be a valuable property that can be sold, with Martin Kacin and Laura Kacin stating that they will proceed with the immediate sale of the Los Altos Hills Property. If the earlier Settlement is something that the Parties cannot agree to, then a “simple” stipulation for relief from the stay in Martin Kacin’s and Laura Kacin’s Chapter 11 Case in the Northern District of California can be put into place. Possibly the marketing and sale of the Los Altos Hills Property would need to put into the hands of a third party (whether a trustee or third-party court appointed limited purposes representative) to sell the Los Altos Hills Property .

Movant’s make their prayer pursuant to 11 U.S.C. § 362(d)(4), which states:

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, **except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown**, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(emphasis added).

It is apparent that this case has been fraught with facts supporting fraud on the court. Mr. Kacin engaged the services of a Mr. Andrew Garcia to pause a foreclosure sale of the Property. Mot. 4:23-5:5, Docket 74. However, unbeknownst to Mr. Kacin, Mr. Garcia appears to have orchestrated a fraudulent bankruptcy case (case no. 24-90504) to halt the foreclosure, including by transferring a fractional interest in the Property to the two fictional Debtors in this chapter 7 case. *Id.* Mr. Kacin never intended to halt the

foreclosure sale by fraud, instead thinking Mr. Garcia was going to negotiate with the lenders on his behalf. *Id.*

The court granted relief from stay to sell the Property pursuant to 11 U.S.C. § 362(d)(4) based upon the apparent fraudulent bankruptcy case. However, with the facts now before the court, the court does find that good cause has been shown for granting relief from the court's Order dated October 10, 2024 at Docket 39.

INTERESTING CONDUCT OF THE PARTIES

As the court has addressed on prior occasions, this matter is quite “interesting,” and could well be presenting the court with a larger fraud being committed on the court. It still appears to the court that the respective counsel are working in good faith, but there appears to not be follow up on the “details.”

In prior proceedings the Parties and their counsel worked diligently to achieve a stipulation to be taken to the bankruptcy judge in the Martin and Laura Kacin Chapter 11 case in the Northern District of California, Case No. 24-52568. Martin and Laura Kacin are the Debtors in Possession in their Chapter 11 case, exercising the rights and duties of a bankruptcy trustee as fiduciaries with respect to the property of that Bankruptcy Estate.

The Stipulation that Creditors reached with Martin and Laura Kacin, the fiduciary Debtors in Possession in their Chapter 11 Case, is provided as Exhibit A in opposition to this Motion. Dckt. 85. Some things the court notes with respect to this Stipulation:

- A. The parties to it are identified as the Creditors (“Lenders”) and Martin and Laura Kacin, specifically identified as “Debtors.” As one knows, “debtors” is a statutorily defined term in 11 U.S.C. § 101(13) as being the person who files bankruptcy.
- B. The “Debtors” agreed that the amount owed Creditors was \$5,757,174.45.
- C. “Debtors” agree that the loan terms remain in full force and effect.
- D. “Debtors” acknowledge that the 11 U.S.C. § 362(d)(4) relief granted by this court is in full force and effect.
- E. “Debtors” and Creditors stipulate there is no stay in effect in the Martin and Laura Kacin Chapter 11 Case.
- F. The following payments will be made by Debtors to Lender:
 - 1. \$50,000 by October 25, 2024;
 - 2. \$50,000 by November 25, 2024;
 - 3. \$50,000 by December 23, 2024; and
 - 4. \$50,000 by January 23, 2025.

G. No later than January 31, 2024, “Debtors” shall payoff Creditors’ claim in full.

In looking at the above, the “Debtors” were not in control of the property of their Chapter 11 Bankruptcy Estate, including the issues relating to this court’s 11 U.S.C. § 362(d)(4) Order. Further, without approval of the bankruptcy court in the Northern District Chapter 11 Case they, as the Debtors in Possession, could not enter into a stipulation, agree to make payments, and waive rights of that Bankruptcy Estate.

Martin and Laura Kacin, as the Debtors in Possession in their Chapter 11 Case, stumbled back into this case with the filing of a Renewed Motion on November 26, 2024. Dckt. 74. In it they recount events, including:

- A. While a Stipulation was entered into, Creditors’ counsel did not obtain authorization for it from the bankruptcy court in the Northern District Chapter 11 Case.
- B. A foreclosure sale was set for November 26, 2024, less than 24 hours after the Renewed Motion was filed. The court itself “stumbled” on the Renewed Motion when an proposed order shortening time had been uploaded to this court.

It is unclear how or what would be expected by the Debtors in Possession for a hearing on shortened time. They did not have their counsel contact the court and request an emergency hearing.

- C. The Debtors in Possession could not make the first \$50,000 payment under the Stipulation and the foreclosure was imminent. However, no explanation is given as to why or how the Debtors in Possession could raise \$50,000 without approval of the bankruptcy court in their Chapter 11 Case or make a payment to Creditors without an order from that court.
- D. It states that the “Debtors” were to receive a \$500,000 loan repayment from Victor Hobson et al. on November 25, 2024. It is unclear how the “Debtors” could get this payment, as opposed to the Bankruptcy Estate in their Chapter 11 Case.

It appears that both the Creditors and Martin and Laura Kacin are ignoring the Bankruptcy Code, the existence of the Chapter 11 Bankruptcy Case in the Northern District of California, and the fiduciary and legal duties of Martin and Laura Kacin as the Debtors in Possession.

In the Renewed Motion, Martin and Laura Kacin cite to 11 U.S.C. § 362(d)(4) as the basis for relief. As Creditors note, relief pursuant to 11 U.S.C. § 362(d)(4) is sought from the judge in the subsequent case filed – which would be the judge in the Martin and Laura Kacin Chapter 11 Case filed in the Northern District of California.

This court has approached this issue as one arising under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 - whether there has been a fraud committed on this court. From the court’s initial research, the Social Security Numbers listed for Wallace Albright and for Luna Hart in this bankruptcy case are not tied to persons with those names. In searching the names Wallace Albright and Luna Hart in California, they do not appear to tie back to real people. It appears time for this to advance to the U.S. Attorney.

Looking at the Docket in the Martin and Laura Kacin Chapter 11 Case; N.D. Cal. Case No. 24-51568; Judge Johnson did not sign the order approving/authorizing the Stipulation. Thus, it appear that there is no Stipulation that can be enforced at this time.

On December 6, 2024, the Debtors in Possession in the Chapter 11 Case filed an Application to employ a real estate broker for the marketing and sale of the property that secures Creditors' claim in that case. 24-51568; Dckt. 47. The property is to be listed at \$9,998,000, with a 5% commission to be divided between the buyer's and seller's real estate agents. No order has been entered on the Application.

It may well be that the time has come for the Debtors in Possession to hand over the reigns in the Chapter 11 case to someone who not only knows (presumably their Chapter 11 attorney has advised them) of the fiduciary duties of a debtor in possession, but who will actually fulfill those fiduciary duties and properly exercise the rights and powers of a Chapter 11 trustee.

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 Order Dated October 10, 2024 filed by Martin Kacin and Laura Kacin ("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 court's Order dated October 10, 2024, at Docket 39 is vacated as to the relief that was granted pursuant to 11 U.S.C. § 362(d)(4). Therefore, the Motion for Relief at Docket 39 no longer grants relief as to 11 U.S.C. § 362(d)(4) for good cause shown.~~

**BORIS A. & MARINA S.
CHECHELNITSKY, TRUSTEES OF
THE BORIS A. & MARINA S.
CHECHELNITSKY REVOCABLE
LIVING TRUST DATED JANUARY**

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 7 Trustee, other parties in interest, and Office of the United States Trustee on November 18, 2024. By the court’s calculation, 24 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 xx 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, -----

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitzsky and Marina S. Chechelnitzsky, Trustees of the Boris A. Chechelnitzsky and Marina S. Chechelnitzsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common (“Movant”) seeks relief from the automatic stay with respect to David Martinez’s (“Debtor”) real property commonly known as 425 Osprey Drive, Patterson, CA 95363 (“Property”). Movant has provided the Declaration of Chris Boulter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 120.

Movant argues Debtor has not made 17 monthly installment payments, including multiple postpetition payments, with a current payment delinquency of \$35,872.72. Mot. 3:14-20, Docket 117; Decl. ¶ 9, Docket 120. Good through December 1, 2024, the total outstanding payoff balance on Movant's loan has increased to approximately \$242,691.46, which consists of a principal balance of \$181,000.00, accrued interest of \$38,156.29, late charges of \$4,009.38, and total fees, costs and charges in the sum of \$19,525.79. Decl. ¶ 10, Docket 120.

TRUSTEE'S RESPONSE

Peter L. Fear, the Chapter 7 Trustee ("Trustee") filed a Response on December 2, 2024, noting Debtor has failed to appear at either of the 341 Meetings in this case. Docket 137. Trustee states:

1. Debtor's schedules disclose an interest in another parcel of real property, located at 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property"), which Trustee believes has equity available for distribution to creditors of the bankruptcy estate. *Id.* at ¶ 5.
2. Trustee intends to sell the Las Palmas Property, but the bankruptcy estate would be prejudiced if the Property were foreclosed upon, and Debtor subsequently amended his exemptions to claim an exemption in the Las Palmas Property. *Id.* at ¶ 6.
3. Trustee has brought a motion (the "Exemption Motion") to limit the time for Debtor to amend his claimed homestead exemption in the Property or to amend any portion of the Las Palmas Property, which is set for hearing on December 12, 2024, at 10:30 a.m. *Id.* at ¶ 8.
4. Until the Exemption Motion is granted, Trustee believes the estate would be prejudiced if the Property was foreclosed upon. *Id.* at ¶ 9.
5. As a result, Trustee requests that the granting of the Motion be delayed unless and until the Exemption Motion is granted, and any foreclosure by Movant delayed until after the time period for the Debtor to amend his exemptions has expired pursuant to that motion. *Id.* at ¶ 10.

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 \$242,691.46 (Declaration ¶ 10, Docket 120), while the value of the Property is determined to be \$500,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B 3, Docket 15.

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.

Regarding Trustee’s Response, the court would note Trustee has not provided any law that would support the court delaying granting such a motion. In order for a debtor to be eligible to claim the homestead exemption, the property must be that debtor’s domicile, not mere residence. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.06 (discussing requirements for a “domicile” and for a “residence,” noting a homestead exemption may only be applied to a debtor’s domicile). It appears to the court Debtor would be unable to simply change the homestead exemption if Movant forecloses on the Property as Debtor has testified under penalty of perjury his homestead, his domicile, is the Property. Trustee expresses concern over Debtor amending the Schedules to claim an exemption in the Las Palmas Property, but Trustee does not cite which exemption Debtor may attempt to claim. As discussed, debtor cannot claim the homestead exemption in the Las Palmas Property if it is not his domicile.

California law defines a “homestead” in which an exemption may be claimed to as follows:

(c) “Homestead” means the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor’s spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, “homestead” also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor’s spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). The homestead exemption is not one that can be moved at whim, but must fulfill certain statutory requirements.

At the hearing, **XXXXXXX**

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.

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 Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common (“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 425 Osprey Drive, Patterson, CA 95363 (“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

3. [24-90516-E-7](#)
[JCW-1](#)

DALE DEL ROSARIO
Michael Reid

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-14-24 [\[12\]](#)

LAKEVIEW LOAN SERVICING LLC
VS.

Final Ruling: No appearance at the December 12, 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 7 Trustee, and Office of the United States Trustee on November 14, 2024. 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). 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.
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Lakeview Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Dale Soliman Del Rosario's ("Debtor") real property commonly known as 1918 Freida Ct, Modesto, CA 95350 ("Property"). Movant has provided the Declaration of Melissa Riley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 14.

Movant argues Debtor has not made three post-petition payments, with a total of \$4,898.97 in post-petition payments past due. Declaration ¶ 11, Docket 14.

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 \$304,724.64, while the value of the Property is determined to be \$414,900 as stated in Schedules A/B and D filed by Debtor. Schedule A/B 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.

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 Lakeview Loan Servicing 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 1918 Freida Ct, Modesto, CA 95350 (“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.

No other or additional relief is granted.

4. [24-90618](#)-E-11 **JEFFERY ARAMBEL** **MOTION FOR RELIEF FROM**
[COR-1](#) **Chris Kihner** **AUTOMATIC STAY**
 11-26-24 [31]
SBN V AG I LLC VS.

Final Ruling: No appearance at the December 12, 2024 hearing is required.

The Hearing on the Motion for Relief is continued to December 19, 2024 at 10:00 a.m., by request of the Parties for a continuation. Docket 39.

5. [24-90578](#)-E-7 **CHARLES/JUANITA BUSH** **MOTION FOR RELIEF FROM**
[DVW-1](#) **Flor Tataje** **AUTOMATIC STAY**
 11-25-24 [21]
21ST MORTGAGE CORPORATION
VS.

Final Ruling: No appearance at the December 12, 2024 Hearing is required.

21st Mortgage Corporation having filed a Notice of Withdrawal of Motion for Relief, Dckt. 29, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the Motion for Relief was dismissed without prejudice, and the matter is removed from the calendar.