

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

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

**December 12, 2023 at 1:30 p.m.**

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1. [23-21332-E-13](#)  
[DPC-3](#)

**BENJAMEN VERMA**  
**Peter Macaluso**

**CONTINUED MOTION TO DISMISS  
CASE AND/OR MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7  
11-1-23 [\[58\]](#)**

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Persons who have filed a Request for Notice on November 1, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss and Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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| <b>The Motion is <span style="color:red">XXXX</span>.</b> |
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**December 12, 2023 Hearing**

A review of the Docket on December 8, 2023 reveals that no new documents have been filed. At the hearing, XXXXXXX

**A REVIEW OF THE MOTION**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal or conversion to Chapter 7 of the case on the basis that:

1. The debtor, Benjamin Krishtopher Verma (“Debtor”), is delinquent in Plan payments to the Trustee. The Debtor owes \$15,600.00 and the next scheduled payment of \$5,200.00 is due on November 25, 2023. The Debtor last paid on July 31, 2023 and the Plan calls for payments to be received by the Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$15,203.00 into the Plan to date.
2. The Debtor has no confirmed Plan, has proposed two Plans to date where the last Plan was denied confirmation on September 13, 2023, and no new Plan has been proposed.
3. There is at least \$55,691.83 in non exempt equity in the assets listed on Schedules A/B. Where the Plan proposes to pay 100% to unsecured creditors, the Trustee believes that conversion to a Chapter 7 is not in the best interests of the creditors or the estate. However, the Trustee also states that the Debtor’s original plan called for a refinance of their real property, so it would appear that sufficient equity may exist that creditors will be better off in a Chapter 7 proceeding.

## **CREDITOR’S RESPONSE**

Barry W. Morse, Inc. (“Creditor”) filed a Response on November 14, 2023. Dckt. 62. Creditor states it supports the Trustee’s motion, but it is unclear whether conversion is in the best interest of the creditors under 11 U.S.C. § 1307(c). Response, Dckt. 62. The Creditor notes that the Trustee stated that there may be \$55,691.83 in non-exempt equity, appearing to be based on a Mercedes S63 AMG Coop (“Vehicle”) valued at \$53,495.00. *Id.* The Creditor has sought confirmation from the Debtor that the Vehicle is unencumbered, and is awaiting a response. *Id.* The Creditor seeks Discovery as allowed under Federal Rule of Bankruptcy Procedure 9014(c) to see if the Vehicle is encumbered. *Id.* If the Vehicle is fully encumbered, the Creditor asserts that dismissal would be the best interest of the estate. *Id.*

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on November 15, 2023. Dckt. 65. Debtor states that to date, the Debtor has paid a total of \$15,203.00 to the Trustee. Declaration, Dckt. 66. Further, the Debtor notes that he just started a new job, with a mandatory full-time training without pay for the months of September and October, which is now his second source of income. *Id.* The Debtor will file, set, and serve an amended Plan before the hearing on this matter. *Id.*

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## **DISCUSSION**

### **Delinquent**

Debtor is \$15,600.00 delinquent in plan payments, which represents multiple months of the \$5,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Prior Plan Denied, New Plan Filed**

A review of the docket on November 27, 2023 reveals that Debtor did file a new Plan on November 22, 2023. Plan, Dckt. 70.

### **Amended Plan and Motion to Confirm Filed**

On November 22, 2023, the Debtor filed a Second Amended Chapter 13 Plan and Motion to Confirm. The terms of the Second Amended Plan are summarized as follows:

- A. Plan term.....60 months. Second Amd Plan, ¶ 2.03; Dckt. 70.
- B. Plan Payments; *Id.*, § 7:
  - 1. Months 1-6.....\$15,203.00 aggregate.
  - 2. Months 7 - 60.....\$13,856.02 per month.
  - 3. Unsecured Claims Interest.....4.72%
- C. No Class 1 Claims.
- D. Class 2.....(\$10,285) monthly claim payments. *Id.*, ¶ 3.08.
- E. No Class 2, 3, 4, 5, or 6 claims.
- F. Class 7 General Unsecured Claims.....100% Dividend + 4.72% interest.

## Conversion

In this case, under the original Plan that was denied, the Debtor sought to refinance his real property, showing there could be enough equity in real property that conversion to a Chapter 7 may be in the best interest of creditors. Motion, Dckt. 58. On the other hand, Creditor believes the equity stems from the Vehicle, dependent on whether the Vehicle is encumbered. Response, Dckt. 62.

The evidence of assets of the Debtor and their value which has been presented to the court consists of the Debtor's Schedules. These assets of significant value include:

### A. Vehicles

#### 1. 2013 Lexus (138,000 miles)

- a. Value.....\$10,438
- b. Liens.....(\$ 3,126) POC 4-1
- c. Exemption.....(\$ 7,311) § 703.140(b)(2)

#### 2. 2011 Ford F150 (131,000 miles)

- a. Value.....\$ 9,800
- b. Liens.....\$ 0.00
- c. Exemption.....(\$7,414) § 703.140(b)(5)
- d. Exemption.....(\$ 188) § 703.140(b)(2)

#### 3. 2016 Mercedes (30,000 miles)

- a. Value.....\$53,495
- b. Liens.....\$ 0.00
- c. Exemption.....\$ 0.00

#### 4. Residence

- a. Value.....\$535,000
- b. Liens
  - (1) DOT.....(\$464,865) POC 5-1
  - (2) Sac County.....(\$ 1,842) POC 8-1
  - (3) Prop Taxes.....(\$ 13,416) POC 9-1
- c. Exemption.....(\$ 24,034)

Amd Sch A/B, Dckt. 52; and Amd Sch C, Dckt. 42.

Based on Debtor's Amended Schedules A/B and C, the Bankruptcy Estate has \$53,495 in non-exempt equity in the 2016 Mercedes. Even after allowing for costs of sale, there is a significant recoverable amount for the Estate.

#### Supplemental Schedules I and J

Debtor has filed Supplemental Schedule on which he lists his new employment and projects having \$10,000.00 a month in net income from his business. Dckt. 74 at 4-5. Debtor also lists an additional \$3,550 in after tax income from a life insurance policy. *Id.* On the Business Income and Expenses attachment to Supplemental Schedule I, Debtor lists (\$1,500) a month in income and self employment taxes for a projected \$12,400 a month in gross income. *Id.* at 8.

On Supplemental Schedule J, Debtor lists a family unit of three persons - Debtor and two teenage children. *Id.* at 6-7. For these three persons, Debtor lists having reasonable and necessary monthly expenses of only (\$2,000.00). *Id.* Some of these expenses appear to be questionably low, including:

- A. Home maintenance and repair expenses.....(\$ 0.00)
- B. Food and housekeeping supplies.....(\$800)
  - 1. Assuming (\$50) a month for housekeeping supplies, then that leaves (\$2.77) per person per meal in a thirty day month.
- C. Medical and dental expenses.....(\$25)
- D. Clothing and laundry.....(\$50) [(\$16.65) per person]
- E. Transportation (fuel, maintenance, repair).....(\$350)
- F. Health insurance.....(\$ 0.00)

These are the expenses for the sixty (60) months of the Plan.

#### Debtor's Declaration

Debtor discusses in his Declaration income from a "second job," though non second job source of income is shown on Supplemental Schedule I.

At the November 29, 2023 hearing Debtor's counsel says that this will be a 100% unsecured dividend case, with a new Plan being filed.

The Chapter 13 Trustee reported at the hearing having \$13,800.56 in plan payment monies in hand. Debtor's counsel reported that an additional \$11,000+ payment is in process and the court should receive the payment shortly.

While Debtor's finances are questionable, and Debtor appears to be failing to address expenses relating to unnecessary, non-exempt assets (such as the Mercedes work \$53,000+), Debtor may be able to fund the Plan.

The court continues the hearing, conditioned on the following payments being made to Creditor Barry W. Morse, Inc on its Class 2 Secured Claim each in the amount of \$9,850, which is the monthly payment amount stated in the proposed Second Amended Chapter 13 Plan (Dckt. 7); ¶ 3.08, credit three listed on the Class 2 Claim Creditor Chart in the Plan. These payments provide adequate protection and demonstrate Debtor's good faith in seeking a further delay in these proceedings.

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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), 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 to Dismiss is denied without prejudice.

**IT IS FURTHER ORDERED** that the Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is **xxxx**.

2. [21-23841-E-13](#)  
[DPC-3](#)

**DENNIS FRAZIER**  
**Peter Macaluso**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**9-20-23 [116]**

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on September 20, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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| <b>The Motion to Dismiss is <b>xxxxx</b>.</b> |
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## **December 12, 2023 Hearing**

A review of the Docket on December 5, 2023 reveals that an assignment of Claim 4-1 has been filed. Dckt. 129. This assignment explains that Claim 4-1 has been transferred to Rushmore Loan Servicing Management services, LLC. At the hearing, **xxxxxxx**

### **REVIEW OF THE MOTION**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Dennis Frazier (“Debtor”), is delinquent \$4,800.00 in plan payments.
2. Another payment of \$1,750.00 will come due before the hearing date.
3. Debtor has not filed an amended/modified plan since the court denied Debtor’s Motion to Confirm an Amended Plan on January 10, 2023. Dckt. 115.

### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on October 3, 2023. Dckt. 120. Debtor states it is awaiting the court’s ruling on a disputed claim before he files an amended/modified plan. Debtor does not discuss the delinquency.

### **DISCUSSION**

#### **Delinquent**

Debtor is \$4,800.00 delinquent in plan payments, which represents multiple months of the \$1,750.00 plan payment. Before the hearing, another plan payment will be due. Although Debtor explains why he has not filed an amended plan, Debtor has not addressed the outstanding delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, counsel for the Debtor reported that they resolved the dispute with the main creditor (the “Foreclosure Consultant” secured claim), a stipulation has been filed waiving rights to post-judgment fees and costs in the Adversary Proceeding, and that Debtor will promptly be moving forward with prosecution of a Plan.

The Trustee concurred in the request for a continuance.

## **November 29, 2023 Hearing**

On October 11, 2023, the court entered its Memorandum Opinion and Decision, and Judgment pursuant thereto in Adversary Proceeding 22-2008, determining that: (1) Carl Dexter, Trustee of First Trust has a claim for (\$39,705.53) in this Bankruptcy Case; (2) Carl Dexter, Trustee, does not have any interest in any property of the Bankruptcy Estate, other than a lien to secure the (\$39,705.53) claim; and (3) that the (\$39,705.53) claim obligation is dischargeable. 22-2008; Dckts. 57, 59.

It may be, with the court having resolved by final judgment the dispute between the Debtor and Carl Dexter, Trustee, the Parties may be proceeding with a non-bankruptcy resolution of this debt.

At the hearing, Debtor's counsel reported that the Debtor and the mortgage creditor have been negotiating a loan modification. The mortgage creditor communicated with the Debtor directly and Debtor has made two payments directly to Freedom Mortgage. This was due to a communication error.

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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), 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 to Dismiss is **xxxx**.

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| 3. <a href="#"><u>19-26957-E-13</u></a><br><a href="#"><u>DPC-5</u></a> | <b>MARK HAYNES</b><br><b>Mark Shmorgon</b> | <b>CONTINUED MOTION TO DISMISS</b><br><b>CASE</b><br><b>10-26-23 <a href="#"><u>160</u></a></b> |
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**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on October 26, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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| <b>The Motion to Dismiss is <b>xxxxx</b>.</b> |
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**December 12, 2023 Hearing**



A review of the Docket on December 8, 2023 reveals that no new documents have been filed. At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Mark Haynes (“Debtor”), is \$5,727.00 delinquent in plan payments.

### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on November 15, 2023. Dckt. 165. Debtor admits to the delinquency but states the delinquency will be cured prior to the hearing date. Declaration, Dckt. 166.

### **Delinquent: November 29, 2023 Hearing**

Debtor is \$5,727.00 delinquent in plan payments, which represents multiple months of the \$1,909.00 plan payment.

Counsel appearing at the hearing reported that on November 30, 2023, a transaction to pay \$1,915 to the Trustee is being processed. At the hearing, the Trustee reported that the delinquency has been reduced to \$1,915.

Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor’s counsel could not attend the hearing, but had substitute counsel present. Substitute counsel reported that the Debtor was in process of making the cure payment.

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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), 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 to Dismiss is **XXXX**.

4. [23-23777](#)-E-12      BRENDAN SMITH

[CAE-1](#)

STATUS CONFERENCE RE:  
VOLUNTARY  
PETITION  
10-24-23 [\[1\]](#)

Debtor's Atty: Jenny L. Doling

Notes:

[JDL-1] Motion to Extend Time to File Schedules, Statement of Financial Affairs, and Related Documents filed 10/25/23 [Dckt 9]; Order granting filed 10/25/23

Trustee's Final Report and Account filed 10/31/23 [Dckt 24]

[JDL-2] Application for Order Authorizing Employment of Jenny L. Doling of J. Doling Law, PC as Counsel for Debtor filed 11/10/23 [Dckt 30]; Order granting filed 11/21/23 [Dckt 36]

Trustee Report at 341 Meeting lodged 11/20/23

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| <b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span> , 2024.</b> |
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#### DECEMBER 12, 2023 STATUS CONFERENCE

On October 24, 2023, Brendan Smith, the Debtor commenced this voluntary Chapter 12 Case. In his Status Conference Statement filed on December 5, 2023, the Debtor in Possession reports that there is substantial litigation over claims of the Estate against the Glenn-Colusa Irrigation District for alleged damage to the Debtor's 2021 crop. In the Status Report the Debtor in Possession provides the court with an analysis of Debtor's eligibility to seek relief pursuant to Chapter 12 of the Bankruptcy Code.

At the Status Conference, XXXXXXX

**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). On December 6, 2023, the court issued an Order directing Movant to use the court’s Certificate of Service form and continuing this matter to December 12, 2023, giving Movant an opportunity to comply. Dckt. 56. A review of the docket on December 8, 2023 reveals the Movant has not uploaded the proper Certificate of Service form.

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.

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

# FINAL RULINGS

6. [23-23508](#)-E-13

KRISTIN VRABLICK

CONTINUED ORDER TO SHOW CAUSE

Peter Macaluso

-  
FAILURE TO PAY FEES

11-9-23 [[21](#)]

**Final Ruling:** No appearance at the December 12, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 9, 2023. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 6, 2023.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured, the filing fee installment having been paid on November 29, 2023.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.