UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 13, 2022 at 1:30 p.m.

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1. 17-25114-E-7 RHS-1 | **HSIN-SHAWN SHENG** | **STATUS CONFERENCE RE: MEMORANDUM/LETTER 11-2-22 [293]**

Debtor's Atty: Richard Jare

Notes:
Set by order of the court filed 11/4/22 [Dckt 294] for purposes of administration. No appearances are ordered for the Status Conference; the court anticipating the administration of the case to be completed.

The Status Conference is xxxxxxx

DECEMBER 13, 2022 STATUS CONFERENCE

On November 2, 2022, a letter from Debtor Hsin-Shawn Cyndi Sheng was filed in this case. Dckt. 293. In it, Debtor states that in the Final Report of the Trustee it shows that there is a balance in the "trust account." Debtor states that she has not received those monies from the Trustee. Debtor included a copy of the Final Report as an attachment to the letter.

Debtor also references a hearing in a subsequent Chapter 7 case she filed in *pro se*, in which the court ordered a hearing on her motion to dismiss and required her attendance. 22-21152; Order Setting Hrg, Dckt. 13. As stated in that Order, the court set the hearing and required the Debtor to appear, the court using the potential $2,500.00 corrective sanction if Debtor did not appear to ensure that Debtor attended the hearing. The court required Debtor's attendance because if the case was dismissed, then the provisions of 11 U.S.C. § 362(c)(4) would prevent the automatic stay from going into effect in a subsequent case for the next ten months. If Debtor filed a case during that period, the affirmative duty would be on Debtor to seek the imposition of the stay. The court wanted to make sure the Debtor understood this limitation on the automatic stay.

In this Chapter 7 Case, on March 3, 2022, the Chapter 7 Trustee filed his Final Report. Dckt. 284. The Trustee reports having gross receipts of $65,307.72 and having made disbursements of

($32,830.41) for administrative expenses, ($563.19) for bank service fees, and ($22,525.41) for other payments to creditors. Id., p. 1. It further states that leaves a balance on hand of $9,388.71.

Exhibit D states the Trustee's Proposed Distribution of the $9,388.71. Id., p. 16. ($3,066.62) is to be distributed to the Chapter 7 Trustee for his allowed fees and expenses leaving $6,322.09 of remaining monies. From this, the Trustee states that post-petition interest on the claims may be paid.

The court notes that the order approving the Trustee's fees and expenses was not entered until October 21, 2022. Dckt. 292. With that being approved, the Trustee's Order of approval of the Final Report may soon be lodged with the court, then entered, and thereafter the Trustee disburse any surplus money.

For administrative purposes, the court sets this Status Conference on Debtor's Letter inquiring about any surplus to be disbursed to Debtor. The court will set it far enough out for the Trustee to get the order approving the Final Report entered and all of the monies disbursed.

2. **21-23778-E-7** **CAREN SPAULDING** **CONTINUED PRE-TRIAL CONFERENCE**
22-2006 **RE: COMPLAINT**
CAE-1 **1-25-22 [1]**

RICHARDS V. SPAULDING ET AL

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Jeffrey S. Ogilvie

Adv. Filed: 1/25/22
Reissued Summons: 1/25/22
Answer: 2/18/22

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Continued from 12/8/22 due to a scheduling conflict.

[DNL-3] Trustee's Pretrial Conference Statement filed 12/2/22 [Dckt 25]

Defendant Thomas L. Spaulding's Pretrial Conference Statement filed 12/2/22 [Dckt 27]

The Pre-Trial Conference is xxxxxxx

SUMMARY OF COMPLAINT

The Complaint filed by Geoffrey Richards ("Plaintiff-Trustee"), Dckt. 1, asserts claims for avoidance and recovery of an asserted fraudulent conveyance transfer. It is alleged that on November 4,

2020, (with Defendant asserting that the transfer occurred in October 2020) Debtor transferred to Defendant by an Interspousal Transfer Grant Deed the Debtor's interest in the Yreka, California Real Property (the "Property"). It is alleged that the transfer of the interest was without consideration. Then on the same day Defendant transferred title to the Property to himself for the benefit of a Trust.

On November 2, 2021, eleven months and twenty-nine days after the transfer, the bankruptcy debtor Caren Spaulding filed her Chapter 7 bankruptcy case.

SUMMARY OF ANSWER

Defendant Thomas Spaulding, named individually and as trustee for the Spaulding Family Living Trust (collectively referenced as "Defendant') filed and admitting and denying specific allegations in the Complaint. Answer, Dckt. 14.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Geoffrey Richards alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Complaint ¶¶ 2,4, 5, Dckt. 1. In the Answer, Defendant Thomas Spaulding, individually and as trustee of the Spaulding Family Trustee, admit the allegations of jurisdiction and that this is a core proceeding, but denies that it is a core matter for an "non-bankruptcy causes of action," Answer ¶¶ 2, 4, 5 Dckt. 14. Further that Defendant "does not consent to the entry of final orders by the bankruptcy court on nonbankruptcy causes of action." Id., ¶ 5.

However, at the Status Conference Plaintiff-Trustee and Defendant both stated on the record that to the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

REQUEST FOR CONTINUANCE OF PRE-TRIAL, AMENDMENT OF COMPLAINT, AND REOPENING DISCOVERY

In the Plaintiff-Trustee's Pretrial Conference Statement (and not in a motion; Fed. R. Civ. P. 7(b); Fed. R. Bankr. P. 7007) a request is made to allow Plaintiff-Trustee to amend the Complaint, to reopen discovery, and continue the Pretrial Conference eight months.

The grounds for the above requested relief are stated to be as follows:

1. The relief is sought pursuant to Federal Rule of Civil Procedure 16(c)(2)(B) and (F). Pretrial Stmt, p. 2:4-6; Dckt. 25.

2. In conducting discovery, the Plaintiff-Trustee has learned that the Debtor and the Defendant have remained married since 2006 and did not legally separate until 2013. *Id*., p. 10:16-19.

3. The Plaintiff-Trustee now believes that it is likely that there are substantial community property or community property interests that "inure to the benefit of the bankruptcy estate." (Presumably this means are property of the bankruptcy estate as provided in 11 U.S.C. § 541(a)(2).) *Id*., p. 10:19-23.

4. The Trustee seeks to amend the Complaint "to effectively prosecute and resolve these additional and related theories of liability against the Defendant and purported separate property." *Id*., p. 10:23-25.

5. After conducting discovery, the Plaintiff Trustee asserts:

> However, after having conducted discovery, it has become apparent that the Defendant and Debtor remain married and have not ever legally separated. Instead, they appear to have maintained joint accounts, filed joint taxes, shared a homestead, and otherwise conducted themselves as a married couple. To date, the Debtor remains the sole beneficiary of the Family Trust and appears to have a community interest in several assets held therein. Amendment and additional discovery is critical at this stage in order to properly determine the scope of what is and is not property of the estate.

Id., p. 11:22-28.

Re-reviewing the Complaint, the court notes that it is a very focused claim for relief – avoid the transfer of the 531 Outsen Road property as provided in 11 U.S.C. §§ 544(b), 548(a)(1), and 550(a)(1). Dckt. 1. It does not seek the turnover of property of the bankruptcy estate or damages for converting property of the bankruptcy estate.

It appears that the requested amendment would broadly expand the scope of the Complaint, asserting claims and seeking to recover property the Bankruptcy Estate, and venture out into areas that are not included in the Complaint and are not claims related thereto.

Defendant's Opposition

In the Opposition Defendant admits that the various new claims, rights, and interest stating

> The Trustee's untimely request appears to be based solely upon unsupported additional theories which simply do not apply in this case

Opp., p. 2:10-11; Dckt. 29.

Defendant then raises points in which Defendant asserts that the various other claims, right, and interests that Plaintiff-Trustee seeks to assert are subject to *bona fide* dispute.

Defendant argues that requiring Defendant to address these unrelated claims, rights, and interests in this Adversary Proceeding is unfair, stating:

> For the Trustee to request to add additional unmeritorious causes of action at this date is a waste of everyone's time and is upsetting to Mr. Spaulding who is an 86 year old disabled veteran in ill health.

Id., p. 2:7-9.

Thus, rather than having the Plaintiff-Trustee to expand the Complaint to include claims for recovery of other property of the Bankruptcy Estate and other rights, which are not part of this currently narrow Adversary Proceeding, Defendant elects to have the Plaintiff-Trustee bring other, possible multiple adversary proceedings against Defendant, and Defendant litigate those other adversary proceedings.

Amendment of Pleadings

This Adversary Proceeding was filed on January 25, 2022, and now eleven months later is at a pre-trial setting conference. This rapid processing is part of the "bankruptcy court magic" in getting parties to trial very quickly, as opposed to the multiple years in the District Court or the State Court. In many respects, as compared to the District Court or the State Court, this Adversary Proceeding is a "mere adolescent" and not an "adult lawsuit."

2 Moore's Federal Practice - Civil § 16.78 provides a detailed discussion of the modification of pre-trial conference orders, which discussion includes (emphasis added):

> **[a] Modification to Prevent Manifest Injustice**
>
> A final pretrial conference order may be **modified only to prevent manifest injustice**. Rule 16(e) does not define manifest injustice.[16] It is clear, however, that the manifest injustice standard is more stringent than the standards courts apply when deciding whether to grant motions to modify orders entered after conferences held earlier in the pretrial period (see §§ 16.14, 16.37).[17] It is also clear that many motions to modify final pretrial orders have been denied under this stringent standard.[18]
>
> Nonetheless, the intensity of judicial reluctance to modify final pretrial orders appears to vary considerably among trial judges. Similarly, different courts of appeal appear to send different messages about how receptive trial courts should be to motions to modify these orders.
>
> . . .
>
> The **Ninth Circuit** also **applies a four-factor test**, much like that of the Seventh Circuit, to determine whether or not to permit modification of a pretrial order that sets forth the parties and issues for trial. District courts should consider the following factors:[21.1]
>
> - The **degree of prejudice or surprise** to the nonmoving parties if the order is modified.
>
> - The **ability of the nonmoving parties to cure any prejudice**.
>
> - The **impact of the modification on the orderly and efficient conduct of the case.**

• Any degree of **willfulness or bad faith on the part of the party seeking modification**.

. . .

[b] Factors to Consider

In all circuits, however, trial judges are **called on to consider the specific circumstances of the case at hand and to weigh many factors** when determining whether a party has shown that it is necessary to modify a final pretrial order in order to prevent manifest injustice. The Court of Appeals for the Seventh Circuit succinctly summarized many of the pertinent factors when it stated that trial courts should weigh the possible hardships imposed on the respective parties and balance the need for doing justice on the merits between the parties against the need for maintaining orderly and efficient procedural arrangements.[22]

A review of trial and appellate court opinions suggests that the following factors may be considered when courts determine whether the "manifest injustice" standard has been satisfied:[22.1]

•Should the **moving party have anticipated the circumstances that give rise to the motion for modification** and should that party have taken steps to ensure that the terms of the original final pretrial order did not serve as an obstacle to the course of action that party now wants to follow at trial?[23]

•Whether or not granting the **motion unfairly impairs the opposing party's ability to litigate the merits of the case**.

•**Whether or not the party resisting the proposed change should have known that the moving party intended to proceed in the manner proposed in the motion for modification**. Did the party resisting the proposed change in fact know that the moving party intended to proceed as it now proposes? Had the moving party manifested its intent to proceed in the proposed manner in earlier papers or statements, even though it failed to have that intention reflected in the final pretrial order?[24]

•**Whether or not granting the motion would reward or encourage excessively tactical approaches to litigation (such as sandbagging or surprise).** Is the need for the change the result of a good faith oversight, or is it accompanied by a more culpable state of mind?

•The **degree of harm to the moving party's ability to fairly litigate the merits if the motion were denied**. Or, stated from a positive perspective, **how much would making the change enhance the moving party's ability to present the merits of its case**? How likely is it that the proposed change would have an affect on the outcome at trial?[25]

•Whether or not modifying the order as proposed by the moving party would **impose unjustifiable expenses or disruptions on another party**.[26]

•Whether or not the **proposed changes are extensive or modest**.

•The **amount of litigation investment that would be wasted if the motion were denied**.[26.1] Did the parties, or the moving party, devote substantial pretrial resources (such as discovery and motion work) to developing for trial the matter omitted from the final pretrial order?

•The **amount of harm that granting the motion to modify the pretrial order would do to the efficiency and orderliness of the trial process**. How much additional burden would be imposed on jurors or court staff?

•The amount of harm that granting the motion would do to the courts' interest in maximizing the care and energy with which parties prepare for final pretrial conferences. How well, generally, did the moving party prepare for and participate in the final pretrial conference? How seriously did the moving party take its pretrial responsibilities overall?

This list of possible considerations, while substantial, cannot be exhaustive because courts must take into account the specific circumstances presented by each case, and the variables from all possible circumstances are virtually limitless.

16 Fed. R. Civ. P. 16(e).

17 **"Manifest injustice" is stringent standard**. See Fed. R. Civ. P. 16 advisory committee note of 1983 (reproduced verbatim at § 16App.03[2]); *Hasan v. AIG Prop. Cas. Co.*, 935 F.3d 1092, 1101–1102 (10th Cir. 2019) (when request to amend complaint would in effect modify final pretrial order, plaintiff must satisfy "stricter" standard of Rule 16(e)).

18 **No manifest injustice.**

. . .

9th Circuit *Malhiot v. Southern Cal. Retail Clerks Union*, 735 F.2d 1133, 1136–1137 (9th Cir. 1984) (no manifest injustice to correct typographical error in final order that could not affect outcome of case).

. . .

21.1 **Ninth Circuit: Four-factor test**. *Galdamez v. Potter*, 415 F.3d 1015, 1020 (9th Cir. 2005) (trial court properly denied plaintiff's motion to amend pretrial order to add retaliation claim in employment discrimination action because plaintiff had evidence available to plead that claim well before entry of pretrial order, but filed motion only after close of evidence, thus depriving defendant of opportunity to present additional evidence or examine witnesses on this issue); *Byrd v. Guess*, 137 F.3d 1126, 1131–1132 (9th Cir. 1998) (moving party bears burden of showing that manifest injustice would result if pretrial order is not modified)

22 **Balancing interests.** *Gorlikowski v. Tolbert*, 52 F.3d 1439, 1444 (7th Cir. 1995).

22.1 **Factors for determining manifest injustice.** *See Krys v. Aaron*, 312 F.R.D. 373, 377 (D.N.J. 2015) (in determining existence of manifest injustice, court considers**: (1) prejudice or surprise to nonmoving party**; (2) ability to cure prejudice; (3) extent to which **amendment would disrupt trial schedule**; (4) whether proposed amendment results from bad faith or willfulness; (5) ability of **movant to have discovered witnesses, evidence, or claims or defenses earlier**; (6) validity of excuse offered by dilatory party; (7) **relative importance of the additional evidence**; and (8) whether decision to amend is new strategy or tactic).

23 **Movant knew or should have known**.

. . .

9th Circuit *Acorn v. City of Phoenix*, 798 F.2d 1260, 1272–1273 (9th Cir. 1986) (legal theories not set forth in order not ordinarily permitted to be raised at trial).

. . .

24 **Omitted matter raised generally in pleadings but not in final order**. *Spence v. Miles Lab., Inc.*, 810 F. Supp. 952, 966 (E.D. Tenn. 1992), *aff'd,* 37 F.3d 1185 (6th Cir. 1994) (final order amended two weeks before trial to add statute of repose defense; the issue, although not in final order, was raised in defendant's answer).

25 **Modification when manifestly unjust to hold defense waived.** *Spence v. Miles Labs., Inc.*, 810 F. Supp. 952, 966 (E.D. Tenn. 1992), *aff'd,* 37 F.3d 1185 (6th Cir. 1994) (final order amended two weeks before trial to add statute of repose defense; the issue, although not in final order, was raised in defendant's answer).

26 In some circumstances, a trial court might grant a motion to modify the pretrial order on the condition that the moving party compensate its opponent in full for all expenses the opponent is constrained to incur as a result of the change in the original order.

26.1 **Modification to avoid wasted litigation effort.** *See Carroll v. Pfeffer*, 262 F.3d 847, 849–850 (8th Cir. 2001) (in civil rights action against police officer, district court properly modified final pretrial order when it realized shortly before trial that officer had never filed answer or raised defense; not allowing officer to raise defense of qualified immunity would have been "manifest injustice," and had case proceeded to trial, plaintiff likely would have been prejudiced, as she would have put on her entire case-in-chief only to have it later dismissed for failure to establish submissible claim). [Fn.1.]

FN. 1. Rather than the court citing, quoting, and summarizing various cases, the court has taken advantage of the Moore's Federal Practice Treatise having already done a substantial part of the work.

In considering the request to modify the Pre-Trial Conference Order, the court notes that this litigation is quickly getting to trial setting (when compared to District Court and State Court). This ability to promptly get trials set and diligently prosecuted is one of the hallmarks of the bankruptcy process created

by Congress and the U.S. Supreme Court. If this were a District Court or State Court proceeding, a motion to amend the complaint would not appear unusual. But, this is not District Court or State Court.

In this Adversary Proceeding there has been a quick discovery period, originally four months for non-expert discovery and two months for expert discovery, and then extended an additional month for non-expert and expert discovery pursuant to the Stipulation of the Parties. Orders, Dckts. 20 and 24.

The amendments the Plaintiff-Trustee seeks to make to the current Complaint and expand the claims and relief requested are stated as:

> (1) the estate's claims that several assets held in the Family Trust are community assets in whole or in part,
>
> (2) the estate's fraudulent transfer claims against the Defendant,
>
> (3) the estate's claims for contribution against the Defendant, and
>
> (4) name the Debtor insofar as may be necessary

Pretrial Stmt, p. 2:8-12; Dckt. 25. Some of the assets and what has been discovered through the discovery stated by the Plaintiff-Trustee are:

> On May 30, 2013, the Defendant and the Debtor executed an interspousal grant deed in connection with their refinancing of 531 Outsen Road, Yreka, California ("Subject Property") to take title to the Subject Property as "husband and wife as joint tenants."
> . . .
> On October 28, 2020, the Defendant and the Debtor executed a series of grant deeds to effect the transfer title to the Subject Property from the themselves jointly, to the Family Trust.
> . . .
> On January 26, 2021, the Defendant and the Debtor caused the Debtor to be removed from their joint savings and checking account.
>
> On February 17, 2021, the Family Trust was modified to make the Debtor its sole beneficiary pursuant to a purported spendthrift provision.
>
> On September 9, 2021, the plaintiffs in the Labor Cases conducted their debtor's examination of the Debtor in as part of enforcement of judgment efforts.

Id., p. 4-5.

The Plaintiff-Trustee further asserts that the narrow scope of the Complaint filed on in this Adversary Proceeding was based on:

> That narrow pleading was informed in large part by the repeated assertions that the Defendant and Debtor had been separated for years—including claiming they had been living separately during that time—and the seemingly clear-cut fraudulent transfer of the Subject Property in 2020.

Id., p. 11:18-21. Further, that it was only through the discovery in this Adversary Proceeding did the Plaintiff-Trustee uncover facts (though disputed by Defendant) of greater claims for the Bankruptcy Estate that involved Defendant, and possibly the Debtor.

As noted above, which Defendant states that many of these "facts" are disputed, the "prejudice" cited is only that Defendant asserts that such other claims that the Plaintiff-Trustee seeks to conduct discovery and add to the Complaint are "unmeritorious, but upsetting the 86 year old Defendant.

This "prejudice" of Defendant believing that such discovery will not be fruitful or having to respond to and defend such claims is a waste of Defendant's time, such belief that such claims are pre-ordained to be without merit is not a bar to the Plaintiff-Trustee from asserting the rights and interests of the Bankruptcy Estate and recovering possession of property of the Bankruptcy Estate.

As the court perceived above, it appears Defendant prefers to prosecute at least one more, if not multiple other adversary proceedings concerning property asserted by the Plaintiff-Trustee to be property of the Bankruptcy Estate and recovery thereof.

At the Pretrial Conference, **xxxxxxx**

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before **--------, 2023**.

C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before **--------, 2023**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before **----------, 2023**.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before **----------, 2023**.

F. The Trial shall be conducted at **----x.m. on ----------, 2023**.

The Parties in their respective Pretrial Conference Statements, Dckts. 25, 26, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
Jurisdiction and Venue: 1. 2.	Jurisdiction and Venue: 1. 2.

3.	3.
Undisputed Facts: 1. 2. 3.	Undisputed Facts: 1. 2. 3.
Disputed Facts: 1. 2. 3.	Disputed Facts: 1. 2. 3.
Disputed Evidentiary Issues: 1. 2. 3.	Disputed Evidentiary Issues: 1. 2. 3.
Relief Sought: 1. 2. 3.	Relief Sought: 1. 2. 3.
Points of Law: 1. 2. 3.	Points of Law: 1. 2. 3.

Abandoned Issues: 1. 2. 3.	Abandoned Issues: 1. 2. 3.
Witnesses: 1. 2. 3.	Witnesses: 1. 2. 3.
Exhibits: 1. 2. 3.	Exhibits: 1. 2. 3.
Discovery Documents: 1. 2. 3.	Discovery Documents: 1. 2. 3.
Further Discovery or Motions: 1. 2. 3.	Further Discovery or Motions: 1. 2. 3.
Stipulations: 1.	Stipulations: 1.

2. 3.	2. 3.
Amendments: 1. 2. 3.	Amendments: 1. 2. 3.
Dismissals: 1. 2. 3.	Dismissals: 1. 2. 3.
Agreed Statement of Facts: 1. 2. 3.	Agreed Statement of Facts: 1. 2. 3.
Attorneys' Fees Basis: 1. 2. 3.	Attorneys' Fees Basis: 1. 2. 3.
Additional Items 1. 2. 3.	Additional Items 1. 2. 3.

Trial Time Estimation:	Trial Time Estimation:

FINAL RULINGS

3. **22-20433-E-7** **MORGAN DEAN** **MOTION FOR RELIEF FROM THE AUTOMATIC STAY**
SKI-1 **Mikalah Liviakis** **11-14-22 [28]**

CREDIT ACCEPTANCE CORPORATION VS.

CASE CONVERTED 11/14/22

Final Ruling: No appearance at the December 13, 2022 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 13 Trustee, and Office of the United States Trustee on November 14, 2022. By the court's calculation, 29 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 having been dismissed by Movant (Dckt. 42), **the Matter is Removed from the Calendar.**

Credit Acceptance Corporation ("Movant") filed a Motion seeking relief from the automatic stay with respect to an asset identified as a 2015 Ram 3500, VIN ending in 2610 ("Vehicle"). Dckt. 28. However, on November 30, 2022, Movant filed a "Notice of Withdrawal of Motion for Relief From the Automatic Stay." Dckt. 42. The court construes this "Withdrawal" to be a voluntary dismissal without prejudice by Movant as permitted by Federal Rule of Bankruptcy Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014(c).

The Motion having been dismissed, this matter is removed from the Calendar.

4. **22-20350-E-13 EAT-2** | **EILEEN HECHT** **Gary Saunders** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 11-7-22 [78]**

U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling: No appearance at the December 13, 2022 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 Trustee, Mortgagor and Office of the United States Trustee on November 7, 2022. By the court's calculation, 36 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.

U.S. Bank National Association, as Trustee for Sasco Mortgage Loan Trust 2006-FW3 ("Movant") seeks relief from the automatic stay with respect to Eileen Leona Hecht's ("Debtor") real property commonly known as 225 Creekside Way, Winters, California ("Property"). Movant has provided the Declaration of O'Don V Reese 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 four (4) post-petition payments, with a total of ($8,200.68) in post-petition payments past due. Declaration, Dckt. 81.

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee filed a Response (Dckt. 84) advising the court that the Debtor is currently delinquent $16,009.50 (five monthly payments). The Trustee reports having received a payment of $3,201.90 (the monthly plan payment amount) on November 28, 2022.

The Chapter 13 Trustee "requests the Court grant the [Movant's] Motion for Relief from the Automatic Stay." Response, p. 2:10-11; Dckt. 84.

NO RESPONSE FILED BY DEBTOR

No response to this Motion has been filed by Debtor to this Motion for Relief.

DISCUSSION

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.

In this Case, while Debtor's Plan provides for Movant's secured claim, Debtor is in default under the Plan and in the payments required to be made to Movant. Cause exists for relief from the stay.

Debtor has not opposed this Motion. Debtor is not seeking to modify the Chapter 13 Plan and address these defaults.

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.

Request for Relief From Co-Debtor Stay

At the start of the Motion and in the Prayer a request is made for relief from the 11 U.S.C. § 1301 co-debtor stay. In the Motion, ¶ 4, Movant states that the Note which is the basis of its secured claim has been singed by Debtors Thomas Hecht and Eileen Hecht.

Thus, it appears that the non-bankruptcy co-debtor for purposes of 11 U.S.C. § 1301 is Thomas Hecht.[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(c)(3), that it would be irreparably harmed if relief from the co-debtor stay were not granted. This include showing that the Chapter 13 Plan is not being performed and it is not receiving payments required under the confirmed Chapter 13 Plan. The reason the co-debtor stay exists is because Eileen Hecht, the Chapter 13 Debtor, has filed bankruptcy. The stay is being terminated as to the estate and Debtor due to her defaults. The non-debtor cannot continue to benefit from the co-debtor stay when there is no longer stay protection being afforded the Debtor and bankruptcy estate in this case.

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 U.S. Bank National Association, as Trustee for Sasco Mortgage Loan Trust 2006-FW3 ("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 225 Creekside Way, Winters, 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.
>
> **IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Thomas Hecht 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).

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.

5. 22-22063-E-13 DBJ-1
LYLE/SHARON SHEPHERD
Scott Johnson
AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-1-22 [46]

IRA ADAMS VS.
WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 13, 2022 Hearing is required.

Movant having Dismissed without prejudice the Motion (Dckt. 55), **the Motion is removed from the Calendar.**

On November 29, 2022, Ira Adams, the Movant, filed a "Withdrawal" of the Motion for Relief From the Automatic Stay. The court construes the "Withdrawal" to be a voluntary dismissal without prejudice of the Motion by Movant as provided in Federal Rule of Civil Procedure 31(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041, 9014(c).

The Motion having been dismissed, the matter is removed from the Calendar.

6. **22-22001-E-13 JCW-1** | **PRAKHONG CHANTHORN** | **James Keenan** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **11-1-22 [26]**

AMERICAN HONDA FINANCIAL CORPORATION VS.

Final Ruling: No appearance at the December 13, 2022 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 13 Trustee, and parties requesting special notice on November 1, 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). 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.

American Honda Financial Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Civic, VIN ending in 2170 ("Vehicle").

Movant argues that the contract with the Debtor has "expired," with there remaining ($2,367.90) to be paid. Further, the Debtor has "excluded" the Vehicle and Movant's claim from the Plan. This is causing Movant from being unfairly delayed from proceeding with the repossession and sale of the Vehicle.

Movant has provided the Declaration of "Ken [illegible last name]." Dckt. 29. Ken [illegible last name] states under penalty of perjury:

a. "I am a/n Team Lead for American Honda Financial Corporation . . . ." Declaration, ¶ 2; Dckt. 29.

b. "I am familiar with the manner and procedure by which the records of [Movant] are obtained prepared, and maintained." *Id*. ¶ 3.

c. "[Movant] is the real party in interest in this pending motion as they are the current beneficiary under the terms of a Contract attached hereto." *Id*., ¶ 4.

This testimony appears to be less personal knowledge testimony but rather making findings of fact and conclusions of who is a "real party in interest."

d. "To date the Contract expired with a balance remaining in the amount of $2,367.90." *Id*., ¶ 8.

In testifying that the "Contract expired," it is unclear whether Ken [illegible last name] is testifying that the monthly payment term has come to an end and there remains a balance of ($2,367.90) to be paid, or whether the Contract has "expired" and is "unenforceable" by Movant.

Movant offers no argument for relief other than that there is ($2,367.90) owing on an expired Contract.

In looking at Debtor's Chapter 13 Plan, which now has been ordered to be confirmed, it does not "exclude" Movant's claim, but fails to provide for Movant's claim.

Looking at Schedule D filed by Debtor, Movant is not listed as a creditor. Dckt. 10 at 12-13.

On Schedule A/B Debtor does list a 2015 Honda Civic as a vehicle Debtor and another person have interests. Amd Sch A/B; Dckt. 32 at 5. Additionally, Debtor claims an exemption in the Honda Civic. *Id*. at 11. The Honda was listed on and an exemption claimed on Original Schedules A/B and C.

DEBTOR'S OPPOSITION

Debtor has not filed an opposition to the Motion.

CHAPTER 13 TRUSTEE'S RESPONSE

The Trustee notes that the Chapter 13 Plan failed to provide for Movant's secured claim and that Movant is not listed on Schedule D. Dckt. 36. Based on that failure and the Proof of Claim filed by Movant, the Chapter 13 Trustee "requests the Court grant the [Movant's] Motion for Relief From the Stay." Reply, p. 2:7-8; Dckt. 36.

DISCUSSION

From the evidence provided to the court, Movant's secured claim, while modest in amount, is not provided for in Debtor's Plan. Movant filed its Proof of Claim 3-1 on August 17, 2022. This Motion for Relief From the Stay was filed on November 11, 2022. Even if Debtor neglected to review the proofs of claim filed in prosecuting confirmation of his Plan, in Mid-November 2022 Debtor and Debtor's counsel were served with this Motion for Relief.

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.

Here, Debtor is obtaining the benefits of Chapter 13, but is failing to provide for (or object to) Movant's secured claim. Failing to provide for, or otherwise address Movant's secured claim is cause for granting relief from the Stay.

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.

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.

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 American Honda Financial Corporation ("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 2015 Honda Civic, VIN ending in 2170 ("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 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.