UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 22, 2024 at 1:30 p.m.

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1. 24-22605-E-7 BRIAH BROADWAY

CONTINUED PRO SE REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT UNION
8-30-24 [17]

Set Automatically - Pro Se

Interest rate set at 18%

The Reaffirmation Agreement with Navy Federal Credit Union is xxxxxxx.

October 22, 2024 Hearing

The court continued the hearing on this Reaffirmation Agreement, affording Debtor more time to negotiate a lower interest rate in reaffirming her debt and obligation on her vehicle.

At the hearing, **xxxxxxx**

REVIEW OF THE HEARING ON THE REAFFIRMATION AGREEMENT

An agreement to reaffirm a debt owed to Navy Federal Credit Union, which is secured by a 2017 Honda Accord having a value of $21,552, was filed by Brian Broadway ("Debtor"). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 18% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is ($21,435.18) which has not been reduced from the pre-petition claim.

Debtor having income of $5,295 and expenses of ($4,853), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise in connection with this reaffirmation agreement. The proposed monthly payment is $518.52 for 61 months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

At the hearing, the court addressed with Debtor the 18% interest rate and questioned whether the Debtor had addressed that with creditor, seeking to reduce it to a more commercially reasonable rate of less than 10%.

The Debtor requested a continuance to allow for him to address this with the Creditor.

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 Reaffirmation Agreement between Debtor Briah Broadway and Navy Federal Credit Union having been presented to the court, the court addressing with Debtor the 18% interest rate provided for in the Reaffirmation Agreement, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the Reaffirmation Agreement with Navy Federal Credit Union is **xxxxxxx**.

2. 21-20814-E-13 RAS-1

ARLEANER COLLINS
Peter Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-24 [45]

MORTGAGE ASSETS MANAGEMENT, LLC 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 18, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxx .

Mortgage Assets Management, LLC ("Movant") seeks relief from the automatic stay with respect to Arleaner Collins' ("Debtor") real property commonly known as 1828 Jamestown Dr, Sacramento, California 95815 ("Property"). Movant has provided the Declaration of Carlene Reid to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 48.

Movant states that on June 16, 2024, Debtor passed away. Mot. 3:12-13, Docket 45. Movant is still owed $330,501.41 on the reverse mortgage Note that is secured by the deed of trust in the Property. *Id.* at 4:1; Decl. ¶ 9, Docket 48. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) as Movant's death has caused the loan to go into default, and the terms of the reverse mortgage permit the balance of the loan to be due and payable upon death of Debtor. Decl. ¶ 7.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on October 8, 2024. Docket 52. Debtor's counsel states he has been unable to determine for himself whether Debtor has passed away and asks the court for a continuance until he can find if Debtor has truly passed away.

TRUSTEE'S OPPOSITION

On October 11, 2024, David Cusick, the Chapter 13 Trustee ("Trustee") filed an Opposition. Trustee opposes on the ground that Movant has not elaborated how Movant learned of Debtor's death, and Trustee has not been presented with evidence of Debtor's death.

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 $330,501.41, while the value of the Property is determined to be $375,000 as stated in Schedules A/B filed by Debtor. Am. Schedule A/B 4, Docket 29.

Absence of Evidence

In the Motion, the grounds for the requested relief is that the Debtor has died. Motion, p. 5:1-7; Dckt. 45. The Declaration of Carlene Reid, a "Contract Management Coordinator of PHH Mortgage," includes the following testimony:

> 8. Arleaner Collins ("Debtor") is the only borrower on this Note. Debtor passes away on June 15, 2024; thus, calling the Note all due and payable upon such date. The total amount due remains due and owing."

Dec., ¶ 8; Dckt. 48. This testimony is provided under penalty of perjury. It is also provided by Movant and Movant's counsel subject to the Federal Rules of Evidence. As counsel knows, witness testimony must be based on that witnesses personal knowledge and not mere speculation or hearsay (with specific exceptions not applicable here).

Ms. Reid, in her testimony under penalty of perjury does not explain how she has personal knowledge of the death for which she provides her testimony. Possibly, she was present with the Debtor in her final minutes and personally witnessed the death.

At the hearing, counsel for Movant, **XXXXXXX**

~~**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).~~

~~Here, the terms of the reverse mortgage are such that the balance of the Note become due and payable once the Debtor passes away. In confirming whether Debtor has passed away, at the hearing, XXXXXXX~~

~~**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, as it is unclear whether the Property is being properly maintained, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:9-15, Docket 45.~~

~~Movant has 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 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.

11 U.S.C. § 362(d)(1) Relief

~~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 Mortgage Assets Management, 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 1828 Jamestown Dr, Sacramento, California 95815 ("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 waived for cause.~~

~~No other or additional relief is granted.~~

3. 24-23517-E-13 KENDRON FRYER CONTINUED MOTION FOR RELIEF
HRH-1 Peter Macaluso FROM AUTOMATIC STAY
8-20-24 [13]

CROSSROADS EQUIPMENT LEASE AND FINANCE 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.

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 20, 2024. By the court's calculation, 21 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, opposition was stated by the Debtor.

The Motion for Relief from the Automatic Stay is xxxxxxx.

October 22, 2024 Hearing

The parties agreed to a continuance at the prior hearing, affording Debtor time to address Movant's issues in this Motion. Debtor informed the court he hired counsel recently, and an Amended Chapter 13 Plan will be on file.

On October 17, 2024, an Amended Plan was filed, along with a Motion to Confirm, which is set for hearing on December 10, 2024. Dckts. 63-66.

There is no Plan on file. A review of the Docket on October 17, 2024 reveals nothing new has been filed with the court. Movant's claim is provided for as a Class 2 Claim, to be repaid over the term of the Plan with 12% interest. Amd. Plan., § 3.09; Dckt. 66.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Crossroads Equipment Lease and Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Freightliner CA125SLP tractor truck, VIN ending in 0593 ("Vehicle"). The moving party has provided the Declaration of Rebecca Elli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kendron Nisan Fryer ("Debtor"). Decl., Docket 16.

The Motion states that Movant and Debtor entered into a Master Lease Agreement (the "Agreement") on June 8, 2020, for the Vehicle. A copy of the Agreement is provided as Exhibit 1.

While titled as a Master Lease Agreement, this Agreement includes a provision whereby the Debtor may "purchase" the Vehicle from Movant. The terms of such purchase provided for in the Agreement are that the purchase price are the lease payments, and additional $101.00, and the sales tax for such purchase. The Agreement further states that it is "agreed" that the Vehicle has a value of only $101.00 at the end of the lease. Exhibit 1, Equipment Lease Schedule (TRAC Lease).

The lease commenced on June 8, 2020, and is for 54 months. The Lease, as computed by Movant, matures on June 22, 2025. There is less than one year remaining on this lease, the vehicle having already been exhausted through the first four years of the lease.

Movant argues Debtor defaulted under the terms of the loan agreement on March 22, 2024, and so Movant accelerated the balance of the loan in the amount of $23,071.70. Mot. 2:21-25, Docket 13. With fees and expenses, the total owed is $25,567.68 as of July 22, 2024. *Id.* at 2:26-3:3. Movant informs the court that this is the second Bankruptcy filing by Debtor in the past 30 days. In his first Chapter 13 case, case number 24-23792, Debtor did not file his Schedules and Plan, so the case was subsequently dismissed on August 6,2024. Movant moves this court for an order granting relief pursuant to 11 U.S.C. § 362(d)(1).

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 3, Docket 17. 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).

REVIEW OF BANKRUPTCY FILE

Debtor commenced this Chapter 13 Bankruptcy Case on August 9, 2024, and is prosecuting it in *pro se*. As Movant notes, Debtor had one prior bankruptcy case in this District, 24-23192, that was filed on July 22, 2024, and dismissed on August 6, 2024. Debtor attempted to prosecute that case in *pro se*.

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 $25,567.68 (Declaration ¶ 9, Docket 16), while the value of the Vehicle is determined to be $27,725, as stated on the J.D. Power Valuation Report.

Debtor filed a proposed Chapter 13 Plan on August 9, 2024. Dckt. 7. The basic terms of the Chapter 13 Plan are:

1. Monthly Plan payments of $881 for a term of thirty-six (36) months. Plan, ¶¶ 2.01, 2.03; Dckt. 7.

2. Movant's Claim is provided for in Class 1, with a stated arrearage of ($3,000), plus an 11% interest rate on the arrearage. No amount of arrearage dividend is stated and no amount of the regular post-petition monthly payment is stated to be paid. *Id*.; ¶ 3.07.

3. No claims are provided for in Classes 2, 3, 4,6, or 7, with those sections of the Plan left blank. *Id*.; ¶¶ 3.08, 3.09, 3.10, 3.13, 3.14.

4. Debtor states that there is ($26,000) in Class 5 priority claims to be paid. *Id*.; ¶ 3.12.

On August 26, 2024, the Debtor filed a Motion to Confirm the Chapter 13 Plan. Debtor set the hearing on the Motion to Confirm for October 8, 2024. Ntc of Hrg.; Dckt. 24. No Certificate of Service has been filed by Debtor.

Review of Schedules

On Schedule A/B (assets) filed by the Debtor, the only vehicle listed is a 2005 Ford Expedition. Dckt. 1 at 14-15. Nothing is listed for machinery or equipment used in a business. *Id*.; at 21. The 2016 Freightliner CA125SLP tractor truck is not listed as an asset of the Debtor on Schedule A/B.

The court notes that Debtor has not claimed any exemptions on Schedule C. *Id*. at 23-24.

Debtor does list Movant on Scheduled D (secured claims) as having a claim in the amount of ($25,637.68) which is secured by a "semitruck 2016 freightliner." *Id*. at 25.

No other creditors are listed on Schedule D, and no creditors are listed on Schedule E/F (priority and general unsecured claims. *Id*. at 25 - 31.

On Schedule I Debtor lists having $10,000 a month in income (which includes $1,000 a month from his non-debtor spouse). *Id*. at 38-39. This is gross income, with no deductions for taxes, insurance, or other amounts.

On Schedule J, Debtor lists having ($8,649) a month in expenses for his family unit of three persons (Debtor, non-debtor spouse, and one child). *Id*. at 40-42. No provision is made for payment of income or other taxes on Schedule J.

It is not clear from the Schedules whether Debtor is an employee (whereby the employer is making the mandatory withholding and deductions for taxes, Social Security, and the like), or whether the Debtor is self-employed or an independent contractor.

Motion to Extend Automatic Stay

On September 3, 2024, the Debtor filed a Motion to Extend Automatic Stay. Dckt. 25. Debtor also filed a Notice of Hearing on Motion to Extend Automatic Stay on September 3, 2024, and set the hearing on the Motion to Extend for 1:30 p.m. on September 10, 2024. Dckt. 26.

The grounds stated in the Motion to Extend are quite simple and straightforward, as follows (identified by paragraph number in the Motion):

> 1. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on 08/09/2024.
>
> 2. The automatic stay provided by 11 U.S.C. § 362(a) is set to expire on 09/09/2024.
>
> 3. The Debtor requires additional time to reorganize his/her financial affairs and has already filed a motion with this court to confirm chapter 13 payment plan. Debtor has also filed a notice of hearing with this court.
>
> 4. The Debtor has acted in good faith and has not previously requested an extension of the automatic stay in this case.

Motion, Dckt. 25. No Declaration or other evidence is filed in support of the Motion to Extend.

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).

In this case, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) for cause, and in the Motion states that cause exists because:

> [t]he interests of Movant in the Trust are not adequately protected. Debtor is not making any payments to Movant pursuant to the Agreement, Debtor has filed a second Bankruptcy case within the past 30 days, this case was filed in bad-faith, Debtor does not have any equity in the Truck after costs of sale and the Truck is not necessary for an effective reorganization, and the automatic stay will automatically expire on September 9, 2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Motion, p. 1:27-2:4; Dckt. 13.

It is true that the record shows a prepetition delinquency; however, Debtor has filed a Plan and proposes payments to Movant in that Plan. Plan, Docket 7. Movant does nothing to argue how the proposed plan payments do not provide adequate protection or provide for Movant's claim. Movant has merely stated that Debtor is in default, which is presumably why this Debtor (and all debtors) filed bankruptcy. There is no legal authority presented showing why a prepetition default is grounds for 11 U.S.C. § 362(d)(1) relief when a debtor has a plan and Motion to Confirm on file providing for that creditor's claim. Movant has not provided the court with grounds for relief under 11 U.S.C. § 362(d)(1).

Assertion that Stay Terminates 30 Days
After this Case Was Filed

In the Motion, Movant makes passing reference to 11 U.S.C. § 362(c)(3), stating:

> 13. Movant cannot proceed with its efforts to recover and sell the Truck in light of the automatic stay herein. Pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay will automatically expire on September 9,2024.

Motion, ¶ 13; Dckt. 13. This is repeated as a basis for asserting that there is cause to grant relief pursuant to 11 U.S.C. § 362(d)(1).

In the Points and Authorities filed by Movant, no legal analysis is provided, no authorities stated, for Movant's repeated proposition:

> [a]nd the automatic stay will automatically expire on September 9,2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Points and Authorities, p. 4:2-3; Dckt. 15.

The Debtor has filed a Motion to Extend the Automatic Stay, in connection with the court provides a detained analysis of the reading of the plain language of 11 U.S.C. § 362(c)(3)(A) providing for the automatic stay to terminate only as to the Debtor, but it does not terminate as to the property of the bankruptcy estate and other parties in interest, such as the trustee (or person exercising the powers of a trustee). That discussion includes the following.

The language in 11 U.S.C. § 362(c)(3) expressly is limited to the Automatic Stay as it applies to the Debtor, **and only the Debtor**. This court first addressed the issue a number of years ago and then more recently in *In re Burns*, 639 B.R. 761 (Bankr. E.D. Cal. 2022). In *Burns*, the court provides a detailed analysis of statutory construction, statutory definitions, specific applications of the Automatic Stay to different persons or property (such as certain protections given to a debtor and other protections expressly given to property of the bankruptcy estate), and the application of 11 U.S.C. § 362(c)(4) in which Congress expressly provides when no stay goes into effect in the "bankruptcy case," rather than merely stating it does not go into effect as to the debtor. *Id*.

In a Chapter 13 case, Congress provides in 11 U.S.C. § 1306 that in addition to all prepetition assets of the Debtor that become property of the Bankruptcy Estate pursuant to 11 U.S.C. § 541(a), the property of the Chapter 13 bankruptcy estate includes (emphasis added):

> § 1306. Property of the estate
>
> (a) Property of the estate includes, in addition to the property specified in section 541 of this title—
>
> > (1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and
> >
> > (2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.
>
> (b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

See, 7 Collier on Bankruptcy, Sixteenth Edition, ¶ 13.06.02[3].

In 11 U.S.C. § 362(a) Congress expressly provides for a multifaceted, multi-protected persons and properties in bankruptcy cases.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

> (1) the <u>commencement or continuation</u>, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding <u>against the debtor</u> that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

> (2) **the enforcement**, against the debtor or **against property of the estate, of a judgment obtained before the commencement of the case under this title**;
>
> (3) **any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate**;
>
> (4) **any act to create, perfect, or enforce any lien against property of the estate**;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; . . . .

11 U.S.C. § 362(a) [emphasis added].

Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I).

This termination of the stay as it applies to the debtor, but not property of the bankruptcy estate, is also discussed in 3 Collier on Bankruptcy ¶ 362.06[3][a], which includes the following (emphasis added):

> [a] Scope of Stay Limitation
>
> There are certain limitations arising from the express wording of subsection (c)(3). **First, the stay terminates under this provision only "with respect to the debtor."** As in other provisions in section 362, Congress sought in subsection (c)(3) to distinguish between actions taken against property of the debtor and property of the estate.[18] **This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)**[19] for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.[20] Thus, if there has been a **stay termination based on the operation of subsection (c)(3)** in a case filed within a year of a prior dismissal, **the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate**, but not as to actions against the debtor or property of the debtor that is not property of the estate.[21]

See referenced footnotes in the above quotation for case citations and statutory analysis.

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, in light of Debtor's lack of equity in the Truck, Debtor's failure to pay therefor, along with its depreciating nature, and his serial Bankruptcy filing, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:7-9, Docket 13.

September 6, 2024 Hearing

At the hearing, the Debtor stated his opposition to the Motion. The court addressed with the Debtor the shortcomings and challenges the Debtor faced in pursuing this Chapter 13 case in *pro se*.

The Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on October 8, 2024. Opposition pleadings by the Debtor or other party in interest shall be filed and served on or before September 24, 2024, and Reply pleadings, if any, shall be filed and served on or before October 1, 2024.

The Debtor having commenced Plan payments, and providing for Movant's secured claim in the proposed Plan, the Chapter 13 Trustee shall make a September 2024 disbursement of $1,484.99 to Movant on its secured claim based on the current proposed Chapter 13 Plan.

October 8, 2024 Hearing

The court continued the hearing on this Motion after Debtor appeared at the previous hearing and opposed the Motion. Opposition pleadings were to be filed and served on or before September 24, 2024, and Reply pleadings by the Debtor or other party in interest, if any, were to be filed and served on or before October 1, 2024. Docket 32. Trustee was also directed to make a disbursement of $1,484.99 to Movant on its secured claim.

On October 1, 2024, Debtor filed a late Opposition to the Motion. Docket 47. Debtor states his counsel was hired recently, on September 18, 2024, and they are working together on a new Plan. Docket 47.

At the hearing, the Parties agreed to a two week continuance to allow Debtor's counsel to address these issues.

The hearing is continued to 1:30 p.m. on October 22, 2024.

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 Crossroads Equipment Lease and Finance, 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 for Relief from the Automatic Stay is **XXXXXXX**.

4. **24-20837-E-13** **DPC-3** | **TERRI COOK PALACIOS AND JOSE PALACIOS** **Leo Spanos** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **8-20-24 [61]**

Item 4 thru 5

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 20, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is xxxxxxx.

October 22, 2024 Hearing

The court continued the hearing on this Objection to afford the parties time to decide how they wish to proceed with prosecuting and defending against the Objection. The court set the following dates in continuing the hearing: "[t]he Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing." Order, Docket 85.

On October 15, 2024, Trustee filed a Status Report that appears to represent the status of both parties. Docket 87. Trustee states:

1. The parties agree that both separate Debtors are respectively domiciled in separate states, and this no longer remains an issue. *Id.* at 1:23-27.

2. What remains an issue is whether the joint Debtors are entitled to claim two sets of exemptions, one for Arizona and one for California. Despite conducting extensive

research, the parties have been unable to find any cases on point beyond what the court has already found. Both parties agree that if the court would like for them to conduct further research and/or further brief the issue, then they are willing to do that, but they are also both willing to submit the matter to the court at this time on the remaining issue. *Id.* at 2:1-23.

3. Trustee argues that the Debtors cannot claim two states' exemptions as that would amount to stacking exemptions. Debtor would be required to pay much more to unsecured creditors if two sets of exemptions were not permitted. Trustee argues that, in this joint case, there is only one Bankruptcy Estate of which the community property constitutes, so only one set of exemptions may be used. *See Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987). Status Report 3:1-4:12, Docket 87.

4. Debtor argues that since the Debtors are claiming separate state exemptions, there is no stacking of exemptions, so Debtor should be entitled to claim both sets of exemptions. *Id.* at 4:13-17.

In the above, the Parties appear to state that the two debtors, husband and wife, and the parents of their one child, are permanently indefinitely residing in different locations, thus creating two different "domiciles." Thus, Debtor Terri Palacios presents to the court that she is and permanently intends to live separate and apart from children. (See discussion herein of domicile being more than where someone happens to currently reside.)

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Terri Lashai Cook Palacios and Jose Camacho Palacios' ("Debtors") claimed exemptions under both California and Arizona state laws. Trustee states:

A. Debtors are claiming different state exemptions under Arizona and California law, Ariz. Rev. State § 33 and C.C.P. § 704. Obj. 2:1-3, Docket 61.

B. Schedule C shows that 6255 N. Camino Pimeria Alta property as exempt, for "(Jose Camacho Palacios only)", under Arizona Rev. Stat. §33-1101(A) in the amount of $400,000.00, and the 5273 Cumberland Drive property is exempt, for "(Terri Lashai Cook Palacios only)", under C.C.P. § 704.730(A)(2) for $189,900.00. Obj. 2:4-7, Docket 61.

C. If Debtors reside in separate homesteads, they are only entitled to claim one of the spouses' homesteads as exempt. *Id.* at 2:8-9.

D. Debtors have not stated any authority that they can claim both properties exempt under Arizona Rev. Stat. § 33-1101(A) and C.C.P. § 704.730, or if

they are allowed to stack the homestead exemption by claiming both properties exempt with different state statutes. Obj. 2:10-13, Docket 61.

E. In addition to the above claimed exemptions, the Debtors have also duplicated all their community assets, and amounts, on Amended Schedule C, citing all assets are exempt under both Ariz. Rev. Stat. § 33 and C.C.P. § 704 exemptions. With the Court's previous ruling, the Debtors' Amended Schedule C does not appear proper and it does not appear that the Debtors are allowed Debtors to stack different state exemption codes for the same community assets using two different states simultaneously. Obj. 2:14-20, Docket 61.

DEBTORS' RESPONSE

Debtors filed a Response to Trustee's Objection on September 8, 2024. Docket 70. Debtors state:

A. Debtors lived at 5228 Whitetail Run Court, Antelope, CA 95843 ("Whitetail property") from July 2007 through December 2021. *Id.* at ¶ 1.

B. In July 2020, the Debtors purchased real property at 6255 N. Camino Pimeria Alta, #114, Tucson, AZ 85718 ("Camino property"). *Id.* at ¶ 5.

C. Debtor Mr. Palacios lives at the Camino Property for work and to be close to their children. *Id.*

D. In February 2022, Debtors purchased real property at 5273 Cumberland Drive, Roseville, CA 95747 ("Cumberland property").

E. Since purchasing it, Debtor Mrs. Palacios lives in the Cumberland Property, visiting the Camino Property occasionally for holidays, weekends, and to see the children. *Id.* at ¶ 10.

F. Debtor Mrs. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the California homestead exemption in the Cumberland Property. *Id.* at 4:11-5:10.

G. The language of Cal. Code Civ. P. § 704.720(c) states:

> "[i]f the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt."

Because Mrs. Palacios is not seeking a separate homestead exemption, the prohibition under § 704.720(c) does not apply. *Id.* a 5:1-4.

H. Debtor Mr. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the Arizona homestead exemption in the Camino Property.

I. Under Arizona Rev. Statute § 33-1101(A), Mr. Palacios is entitled to a homestead exemption of $400,000. Arizona Rev. Statute § 33-1101(B) states: "Only one homestead exemption may be held by a married couple or a single person under this section. . ." Because neither Mr. and Mrs. Palacios are seeking another homestead exemption under this section, the homestead exemption is properly claimed here. *Id.* at 5:13-6:5.

DISCUSSION

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

(b)

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption.

However, this is a unique case where it is asserted that these two debtors, a husband and wife, live in and are domiciled in two separate states, but they are filing jointly in California, which is their right. The venue statute for bankruptcy is broad, providing a potential debtor with various venues. *See* 28 U.S.C. § 1408 (stating venue is proper for a debtor where that debtor is domiciled, resides, or has a principal place of business).

Legal Basis, Analysis, and
Arguments Presented by the Parties

The court is presented with a very interesting and unique argument – two married Debtors who seek to assert that they are each domiciled in different States and can claim double exemptions, one under California Law and the other under Arizona Law.

The legal analysis for each sides position is thin and no evidence has been provided by Debtors for the Opposition.

Determination of Domicile

In this Bankruptcy Case what has been presented to this court is that the two Debtors and their children lived in California from July 2007 through December 2021, except as explained in the following. Opposition, ¶ 1; Dckt 70. In 2019, the Debtors rented property in Arizona and Jose Palacios and their two children moved to Arizona. *Id*.; ¶ 2. Debtors' two children began attending Arizona schools and Debtor Jose Palacios began looking for work in Arizona. *Id*.; ¶ 3.

However, Debtor Terri Palacios continued to work and live in California. *Id*.; ¶ 2.

In July 2020, the two Debtors purchased the 6255 N. Camino Pimeria Alta, #114, Tucson Arizona Property. Debtor Jose Palacios and the two children live in the Arizona Property. *Id*. ¶¶ 5,6.

Debtor Terri Palacios visits the Arizona Property on weekends and other occasions, but "continues to work and reside" in California. *Id*., ¶ 7.

In February 2022, the Debtors purchases the 5273 Cumberland Drive, Roseville California Property, and Debtor Terri Palacios lives there - splitting her time between the Roseville Property and the Arizona Property. *Id*., ¶ 10, 11.

For income taxes, the Debtors have in:

1. 2023 filed taxes in California as Nonresident or Part-Year Residents
2. 2022
   a. filed taxes in California as Nonresident or Part-Year Residents
   b. filed taxes in Arizona as Nonresidents.

What neither the Trustee nor Debtors provide the court is an analysis of the applicable law on several points. The first is how a person's domicile is determined. In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**."' *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore,

Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's].
. .

Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].

Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:

current residence,
voting registration and voting practices,
location of personal and real property,
location of brokerage and bank accounts,
location of spouse and family,
membership in unions and other organizations,
place of employment or business,
driver's license and automobile registration, and
payment of taxes.

Wright & Miller, *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp.*, 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); *Korn v. Korn*, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

"'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at

> 750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

Von Kennel Gaudin v. Remis, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

> "Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]
>
> . . .
>
> The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]
>
> [16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).
>
> [17] See 11 U.S.C. § 101.
>
> [18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss)*, 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S.

877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg)*, 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

[20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).

. . .

[26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06

While presented with arguments, the court has not been presented with objective evidence, buy either party, to make the determination of the domicile of each of the two Debtors.

Both California and Arizona Law provide that if a judgment debtor is married, one homestead exemption may be claimed.

> Arizona Revised Statute 33-1101. Homestead exemptions; persons entitled to hold homesteads; annual adjustment [emphasis added]
>
> A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding $400,000 in value, any one of the following:
>
> > 1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
> >
> > 2. The person's interest in one condominium or cooperative in which the person resides.
> >
> > 3. A mobile home in which the person resides.

> 4. A mobile home in which the person resides plus the land upon which that mobile home is located.

> B. **Only one homestead exemption may be held by a married couple or a single person under this section.** The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed $400,000 in value.

Debtors read this statute to say that one homestead exemption may be claimed under this Code section (Statute) and a second homestead exemption may be claimed under another statute or law. No case law, legislative history, or statutory analysis is provided for this interpretation. Alternatively, this statute could possibly be read to say that under this statute, a married couple may claim one homestead exemption if they seek to claim it under this Arizona statute.

> California Code of Civil Procedure § 704.720. Exemption from sale; Exemption of sale proceeds or indemnification [**emphasis** added]
>
> (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.
>
> . . .
>
> (c) **If the judgment debtor and spouse of the judgment debtor reside in separate homesteads**, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

California Code of Civil Procedure § 703.140, which provides for the California exemptions to apply in bankruptcy cases, provides [**emphasis** added]

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision
>
> (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:
>
> > (1) **If spouses are joined in the petition**, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

In *Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987), the Ninth Circuit Court of Appeals reviewed the California statutes which provide that for joint debtors there can be only one set of exemptions, and the joint debtors cannot "double up" on the exemptions. The Ninth Circuit's decision includes:

Section 703.140 is modeled on 11 U.S.C. § 522. However, unlike the guarantee in subsection 522(m), section 703.140 does not provide that joint debtors may each claim their own exemptions; it is silent as to whether a married couple is limited to a single set of exemptions. The only affirmative limitation of this kind is found in section 703.110, enacted prior to both sections 703.130 and 703.140, which provides:

> Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount . . . .

The primary issues in this case are whether California has in fact, via section 703.110, limited married debtors to a single set of exemptions, and if it has, whether the scheme adopted is constitutionally valid. We review the district court's conclusions of law *de novo*. *See Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986).

. . .

The relevant provisions are reproduced below, and the allegedly contradictory language is underscored. Section 703.110 provides in pertinent part:

> Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

Section 703.140(a)(1) provides:

> If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

. . .

The ordinary meaning of "jointly may elect" seems to be simply that husband and wife must come to an agreement on whether or not to choose the exemptions listed in subsection 703.140(b). There would have to be agreement between the husband and [**10] wife because section 703.110 specifically limits the two spouses to one set of exemptions. Any other reading would make section 703.110 a nullity. Moreover, the Senate Legislative Committee Comment to the underscored language in section 703.110 explains that "this new sentence makes clear how the exemption scheme works with respect to married persons." (Emphasis added). The general language in section 703.110, therefore, was intended to modify all of California's exemption statutes which do not specifically express a contrary intent.

In re Talmadge, 832 F.2d at 1123-1124.

On this statutory language, the court is presented with the question that in light of the married Debtors electing to file bankruptcy in California, for Debtor Terri Palacios desiring to claim a homestead exemption pursuant to California Code of Civil Procedure § 703.140, then joint Debtor Jose Palacios must "jointly may elect to utilize the applicable exemption provisions of [Chapter 7 of the California Code of Civil Procedure]."

This separate residing of spouses is discussed in 8 WITKIN CALIFORNIA PROCEDURE 6TH ENFORCEMENT OF JUDGMENTS § 248 (2024), stating:

> (3) Effect of Spouses Residing Separately. If a judgment debtor and the debtor's spouse reside in separate homesteads, only one homestead is exempt and only the proceeds of the exempt homestead are exempt. (C.C.P. 704.720(c).) (On application of exemptions to marital property, see C.C.P. 703.110, supra, § 199.)

SEPTEMBER 24, 2024 HEARING

Based on the pleadings filed to date, the court has not been presented with the legal authorities and analysis for the legal conclusions, and the evidence for the court to make necessary factual objective and subjective (which must be based on objective evidence) factual findings to determine where the Debtors are domiciled and whether there may be two different sets of statutory exemptions claimed in this Bankruptcy Case.

At the Hearing, the Parties agreed to continue the hearing for a Scheduling Conference to address the scope of any evidentiary hearing, the legal issues presented, the scope of their dispute, and other issues for the effective administration of this Contested Matter.

The hearing on the Objection to Claimed Exemptions is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) for a Scheduling Conference. The Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing.

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 Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is **XXXXXXX**.

5. **24-20837-E-13** **JLL-2** | **TERRI COOK PALACIOS AND JOSE PALACIOS** **Leo Spanos** | **CONTINUED MOTION TO CONFIRM PLAN** **7-16-24 [46]**

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 22, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is xxxxxxx.

October 22, 2024 Hearing

The court continued the Motion to Confirm to be heard in conjunction with the Objection to Exemptions. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay $3,125 per month for 4 months, then $3,590 for 46 months, then $4,496 for 10 months with general unsecured creditors receiving a 41% dividend. Amended Plan, Docket 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 27, 2024. Docket 65. Trustee opposes confirmation of the Plan on the basis that:

A. Unsecured creditors may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation, 11 U.S.C. §1325(a)(4). Debtors' First Amended Plan proposes to pay no less than 41% of $224,408.00 (or $92,007.28) to unsecured creditors and $68,896.00 to priority claims, for a total of $160,903.28. However, Trustee calculates Debtor has $245,481 of non-exempt assets listed in ths Amended Schedule A/B. This liquidation analysis relies in part on Chapter 7 Trustee's Objection to Claimed Exemptions which is set for hearing on September 24, 2024. Obj. 1:23-2:11, Docket 65.

B. Debtors Plan relies on the Motion to Avoid Lien of Regions Bank/Enerbank USA, which is to be heard in conjunction with this Motion. *Id.* at 2:12-17.

C. Debtors failed to attach a statement for property or business income. *Id.* at 2:18-19.

DISCUSSION

Liquidation Analysis

Trustee argues that Debtor may potentially fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 41% distribution, Am. Plan, Docket 49 § 3.12.

The Trustee estimates Debtor has $245,481 in non-exempt equity in assets of the estate. Trustee's calculation hinges on whether the court sustains trustee's Objection to Claimed Exemptions, which is set for hearing on September 24, 2024.

The Objection to Exemptions arises from the two Debtors attempting to claim exemptions under Arizona law and also under California law. Dckt. 61. In substance the two Debtor are seeking to claim two separate homestead exemptions. Additionally, the two Debtors seek to claim double exemptions in all assets, stating exemptions under California law and Arizona law for each asset on Schedule C.

The court has granted by final ruling the related Motion to Avoid Lien, so this part of the opposition is rendered moot.

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is

required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

At the hearing, counsel for the Trustee reported that the hearing on the Objection to Exemptions is set for 2:00 p.m. on September 24, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions.

At the Hearing, the Parties agreed to continue the hearing on this Motion to the same day and time of the Scheduling Conference on the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm the Amended Plan is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) , to be conducted in conjunction with the Scheduling Conference for the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on September 24, 2024, to be conducted in conjunction with the hearing on the Objection to Exemptions.

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 Confirm the Amended Chapter 13 Plan filed by the debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor") 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 Confirm the Amended Plan is **XXXXXXX**.

.

6. 23-23242-E-7 24-2038 CAE-1

BRYAN GALLINGER

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 7-31-24 [20]

GALLINGER V. LEVICK FAMILY TRUST ET AL

Plaintiff's Atty: Matthew V. Brady; Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 4/19/24
Reissued Summons: 6/10/24
Answer: none
Amd Complaint Filed: 7/31/24
Reissued Summons: 7/31/24

Nature of Action:
Recovery of money/property - other

Notes:
Continued from 9/18/24. Specially set date and time to be heard in conjunction with the continued order to show cause.

Notice of Hearing on Motion to Withdraw as Counsel to All Interested Parties filed 10/4/24 [Dckt 45], set for hearing 10/24/24 at 11:00 a.m.

The Status Conference is xxxxxxx

On October 22, 2024, the court conducted a hearing on the Order to Show Cause why this Adversary Proceeding should not be dismissed.

~~The court sustained the Order to Show Cause and ordered the Adversary Proceeding dismissed without prejudice.~~

~~The Status Conference is concluded and removed from the Calendar.~~

7. 23-23242-E-7 24-2038 RHS-1 | **BRYAN GALLINGER Peter Macaluso** | **CONTINUED ORDER TO SHOW CAUSE 7-15-24 [13]**

GALLINGER V. LEVICK FAMILY TRUST ET AL

Plaintiff's Atty: Matthew V. Brady; Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 4/19/24
Reissued Summons: 6/10/24
Answer: none
Amd Complaint Filed: 7/31/24
Reissued Summons: 7/31/24

Nature of Action:
Recovery of money/property - other

Notes:
Continued from 8/14/24. Matthew V. Brady, counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint, Plaintiff-Debtor Bryan G Gallinger, and Peter Macaluso, Chapter 7 bankruptcy counsel for the Plaintiff-Debtor, to appear in person at the continued status conference - No Telephonic Appearance Permitted.

The Order to Show Cause is sustained and this Adversary Proceeding is dismissed without prejudice.

October 22, 2024 Hearing

The court continued the hearing on this Order to afford Former Plaintiff-Debtor more time to acquire replacement counsel to prosecute the adversary proceeding. As of the court's review of the Docket on October 15, 2024, nothing new has been field with the court.

Former Plaintiff-Counsel has filed his Motion to Withdraw as Counsel for the Former Plaintiff-Debtor. Dckt. 36. This was filed on September 18, 2024. Since early September 2024, Former Plaintiff-Debtor's counsel has been unable to proceed with representation of the Former Plaintiff-Debtor.

Former Plaintiff-Debtor's bankruptcy counsel in the Chapter 7 Case has appeared in this Adversary Proceeding, solely as the Chapter 7 bankruptcy counsel. The court has continued the hearings on this Order to Show Cause to afford Former Plaintiff-Debtor the opportunity to obtain replacement counsel for the prosecution of the claims asserted in this Adversary Proceeding. No substitution has been presented.

As reported by counsel for the Chapter 7 Trustee as the September 18, 2024 continued hearing on this Order to Show Cause, the Trustee has determined that he will not prosecute the claims asserted in this Adversary Proceeding and that he will allow them to be abandoned to the Debtor.

A review of the Docket in the related Chapter 7 Case, 23-23242, discloses that the deadline for filing objections to discharge expired on October 7, 2024. A review of the court's files discloses that no proceeding objecting to a discharge being entered for the Former Plaintiff-Debtor has been filed.

The claims asserted in this Adversary Proceeding do not arise under the Bankruptcy Code or in this Bankruptcy Case. They are related to matters, rights or interests that are property of the bankruptcy estate. Congress provides for federal court jurisdiction for bankruptcy cases, claims arising under the Bankruptcy Code, in the bankruptcy case, or related to the bankruptcy case in 28 U.S.C. § 1334(a), (b). This provides for federal court jurisdiction for bankruptcy cases, matters arising under the Bankruptcy Code, matters arising in the bankruptcy case, and matters related to a bankruptcy case. While very broad, there are limits to the proper exercise of such federal court jurisdiction.

First, as in the present case, the Chapter 7 Trustee has determined that the claims in the claims asserted in this Adversary Proceeding will not be prosecuted or further administered by the Chapter 7 Trustee. Rather, they will be abandoned to the Former Plaintiff-Debtor. Absent the Former Plaintiff-Debtor filing a motion for the abandonment of these claims, they will be abandoned to the Former Plaintiff-Debtor by operation of law upon the closing of the related Chapter 7 Bankruptcy Case. 11 U.S.C. § 554(b). A review of the related Chapter 7 Docket, 23-23242, discloses that no motion to abandon has been filed by the Former Plaintiff-Debtor.

Whatever claims, when abandoned to the Former Plaintiff-Debtor, they have no impact on or relation to the Bankruptcy Case.

The Chapter 7 Trustee, the one who is the real party in interest is not prosecuting this Adversary Proceeding. The claims asserted herein, will not be prosecuted by the Trustee. They will be left to the Former Plaintiff-Debtor, in his post-bankruptcy personal capacity, to assert as he deems appropriate.

This Adversary Proceeding not being prosecuted, dismissal WITHOUT PREJUDICE is proper.

Additionally, Congress further provides in 28 U.S.C. § 1334(c)(1) that the federal court from abstaining from hearing a matter in the interest of justice, or in the interest of comity with State Courts or the respect for State Law. Here, there is no effect on the Bankruptcy Estate in the Chapter 7 Case or the Chapter 7 Case itself by this Adversary Proceedings. All of the claims are the post-bankruptcy property of the Former Plaintiff-Debtor, which he will be free to prosecute in State Court or the Federal District Court if proper federal jurisdiction exists. There is not a basis for properly conducting bankruptcy court federal jurisdiction for litigation of the claims in this Adversary Proceeding.

The court determines that it is proper for this Federal Bankruptcy Court, the judges of which are a unit of the District Court, to abstain from the exercise of the "related to" federal jurisdiction arising under 28 U.S.C. § 1334(b).

At the hearing, **XXXXXXX**

The Adversary Proceeding is dismissed without prejudice.

ORDER TO SHOW CAUSE

This Adversary Proceeding was commenced on April 19, 2024 by the filing of a Complaint by Plaintiff-Debtor Bryan Gallinger ("Plaintiff-Debtor" and referenced as "Former Plaintiff-Debtor" in discussion relating to the post-Chapter 7 conversion period of the related Bankruptcy Case). Plaintiff-Debtor has engaged Matthew Brady, Esq. as his "Special Counsel" in this Adversary Proceeding. Dckt. 1. Plaintiff-Debtor's bankruptcy counsel in Chapter 13 Case 23-23242 is Peter Macaluso, Esq.

In reviewing the Complaint, there are several deviations from Federal court adversary proceeding litigation. Only the Plaintiff-Debtor is listed in the caption as the "Debtor" and there is no second caption listing the plaintiff and the defendants. *Id*.; p. 1. The Adversary Complaint states the following Causes of Action being asserted as part of the Objection to Claim:

A. First Cause of Action..................Breach of Written Contract
B. Second Cause of Action.............Fraud

Id.

The claims are being asserted against the "Levick Family Trust." *Id*., ¶ 1. The Adversary Complaint does not list the trustee of the Levick Family Trust as a defendant. The court has addressed in an unrelated adversary proceeding that a "trust" is not a separate legal entity that has standing or can hold property, but it is the trustee of the trust who has such rights, powers and duties. This includes the trustee, and not the trust, being either a plaintiff or defendant in a legal proceeding.

As addressed in *Presta v. Tepper*, 179 Cal.App. 4th 909, 914 (2009), it is the trustee of the trust that is the real party in interest and must be named as the plaintiff or defendant in any legal proceeding (emphasis added):

> Most importantly for our purposes, "an ordinary express trust is not an entity separate from its trustees.... " (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rptr. 729, italics added.) "In contrast to a corporation which is a ' "... distinct legal entity separate from its stockholder and from its officers" [citation]' (*Merco Constr. Engineers, Inc. v. Municipal Court* [(1978)] 21 Cal.3d [724,] 729) and deemed a person within many legal constructs (Code Civ. Proc., § 17), **a '... trust is not a person but rather "a fiduciary relationship with respect to property**." [Citations.] Indeed, " ' "an ordinary express trust is not an entity separate from its trustees" ' '[citation].' (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3, italics added; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753; see also Evid.Code, § 951.)" (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, 75 Cal.Rptr.2d 312.)
>
> It is for this reason that a trust itself can neither sue nor be sued in its own name. Instead, **the real party in interest in litigation involving a trust is always the trustee**. (*Powers v. Ashton*, supra, 45 Cal.App.3d at p. 787, 119 Cal.Rptr. 729; Code Civ. Proc., § 369.)

See also, Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A., 92 Cal.App. 5th 142, 156-157 (2023), holding that a complaint filed in the name of the trust may be amended to state the trustee of the trust as plaintiff, it concurs with *Presta*, stating:

> MAM correctly points out that a trust is simply a collection of assets held for the benefit of designated beneficiaries (*Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391), and as such, has no ability to sue or otherwise act independently from a trustee. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521–522 ["'because "[a] trust is not a legal entity," it "cannot sue or be sued, but rather legal proceedings are properly directed at the trustee"'"]; Code Civ. Proc., § 680.280 [definition of "'Person'" does not include trust].) According to MAM, the problem here runs deeper than lack of capacity to sue. A trust lacks capacity to sue because it has no independent legal existence. As a Fourth District, Division Three panel explained in *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913–914, while a corporation is considered a jural person (Code Civ. Proc., § 17, subd. (b)(6)), a trust is not. A trust is merely ""'"a fiduciary relationship with respect to property."'"" (*Presta,* at p. 914; accord, *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3.) Under no circumstances can a trust be legally vivified and given capacity to sue or be sued.

It appears that in addition to correcting the Caption, the complaint needs to be amended to name the trustee of the Levick Family Trust as the defendant in this Adversary Proceeding. A copy of the Sales Agreement is provided as an exhibit to the Complaint (Dckt. 6). On page 4 of 4 of the Sales Agreement it appears to be signed by Douglas Levick and Mel[illegilble] Levick for the Levick Family Trust, and Ronald G Levick individually. Dckt. 6.

The Real Estate Transfer Disclosure Statement is signed by Douglas Levick for the Levick Family Trust (again indicating that he is a trustee of the Levick Family Trust) and Ronald Levick individually. Dckt. 6 at p. 21.

The Exhibits also include a Request to Initiate Mediation, on which Douglas F. Levick and Melba Levick, are identified as the Trustee of the Levick Family Trust. Ronald G Levick is identified as an additional party to the dispute.

On June 10, 2024, the Clerk of the Court Reissued the Summons in this Adversary Proceeding, which lists the Status Conference to be held on August 14, 2024. Dckt. 9. No certificate of service has been filed documenting the service of the reissued summons and Complaint.

Plaintiff-Debtor filed a Certificate of Service on May 15, 2024, relating to the service of the Complaint and original Summons that was issued on April 22, 2024, Dckt. 8, which identifies the following persons (other than the U.S. Trustee, Chapter 13 Trustee, and three counsel having been served electronically) having been served:

Melba Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Ron Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Douglas Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Levick Family Trust
5426 Ydra Ct
Fair Oaks, CA 95628

Federal Rule of Bankruptcy Procedure 7004 specifies the service requirements for a Complaint and Summons. The real party in interest or its agent for service of process must be served, It may be that Terence Kilpatrick, Esq. has been designated by the three individuals and two trustees (thought not expressly identified as being served as the trustee of the Levick Family Trust) as their respective agent for service of process. However, such attorney having "merely" appeared in the bankruptcy case does not make that attorney the agent for service of process for adversary proceedings or other motions filed in the bankruptcy case.[1]

At the Status Conference, no appearance was made by the Plaintiff-Debtor. No Certificate of Service for the Reissued Summons (reissued on June 10, 2024) or Complaint to be served with the Reissued Summons has been filed.

Dismissal Without Prejudice Pursuant to Federal Rule of Civil Procedure 4(m)

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004 (a)(1), provides:

> (m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

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[1] The Certificate of Service states that service was made pursuant to Federal Rule of Civil Procedure 5 and Federal Rule of Bankruptcy Procedure 9014. However, in commencing an adversary proceeding the complaint and summons must be served as required by Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004. Federal Rule of Bankruptcy Procedure 7004(3) requires that service of the summons and complaint must be made within 7 days of the issuance of the summons (which includes depositing it in the U.S. Mail when service may be made by mail).

As stated above, the summons and complaint must be served within seven days of the issuance of the summons for service to be effective. In this Adversary Proceeding the Original Summons, issued on April 22, 2024, is stated to have been served by mail on May 10, 2024. Cert. of Serv., ¶ 4; Dckt. 8. That is eighteen (18) days after it was issued.

For the Reissued Summons that was issued by the Clerk on June 10, 2024, as of the court's July 12, 2024 review of the Docket, no Certificate of Service has been filed.

This Adversary Proceeding was commenced on April 19, 2024. As of the July 12, 2024 review of the Docket, there is no Certificate of Service documenting timely service on any legally recognizable legal defendant. July 12, 2024 is eighty-one (81) days after the filing of the Complaint. That is nine days short of the 90-day period after which the court must dismiss the adversary proceeding (or for good cause shown, set a deadline for service).

August 14, 2024 Hearing

On July 31, 2024, in response to this Order to Show Cause, Plaintiff-Debtor's counsel Mr. Brady submitted a response. Mr. Brady states:

1. Mr. Brady used the names of the Sellers as depicted on the California Residential Purchase Agreement when naming defendants in the original complaint. Resp. 1:28-2:10, Docket 16.

2. His legal services ended with the conversion of the case from Chapter 13 to Chapter 7 and he has been waiting to find out of the property is being sold which might eliminate the need to have the adversary. Resp. 2:11-13, Docket 16.

3. Counsel intends of filing an amendment to the complaint, simultaneously with the filing if this responsive pleading. *Id.* at 2:18-19.

4. As it relates to the process of service, the original adversary was achieved using service on Mr. Kilpatrick as the court file only had Mr. Kilpatrick's address for each of the named defendants, Douglas, Melba, and Ron. *Id.* at 2:20-23.

5. When he learned that the process he was following was wrong, he had the court reissue the summons. Mr. Brady then re- served everyone interested in his case. *Id.* at 2:23-24.

Mr. Brady also filed an Amended Complaint (Docket 20), Reissued Summons (Docket 21), and Certificate of Service for the Reissued Summons and Complaint (Docket 23) on July 31, 2024.

The only change in the Amended Complaint appears to be in the header of the Amended Complaint where Mr. Brady properly names the Defendants. Docket 20. The court notes that Fed. R. Civ. P. 15 states:

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

This Amended Complaint is outside the 21-day window prescribed in this Rule.

The Certificate of Service for the Amended Complaint shows that service was effectuated on the necessary parties at their address. Docket 18.

Plaintiff-Debtor Not the Real Party in Interest

The court notes that Mr. Brady as Special Counsel for Brian Gallinger as the Plaintiff-Debtor, no longer represents is a party in interest who may bring an Amended Complaint in this Adversary Proceeding.

11 U.S.C. § 541(a)(1) states:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Collier's Treatise on Bankruptcy explains, "[p]aragraph (1) is broad. It includes all kinds of property, tangible and intangible, causes of action, and all other forms of property." 5 COLLIER ON BANKRUPTCY ¶ 541.03. Therefore, the cause of action in this case is now property of the bankruptcy estate, of which is property only a trustee may exercise control over.

11 U.S.C. § 704(a)(1) states:

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest. . .

Collier's Treatise on Bankruptcy again explains:

Trustees should bear in mind at all times that they are representatives of the estate, charged with doing whatever is necessary to advance its interests. Rights of action

> arising upon the contracts or property of the debtor, not yet resolved into suit, pass to the trustee, and should be asserted in the proper tribunal whenever necessary for the collection or preservation of the estate.

In reading 11 U.S.C. § 704 in conjunction with 11 U.S.C. § 541, it is clear only the Chapter 7 Trustee has rights to prosecute this lawsuit. In the event the Chapter 7 Trustee in this case decides the lawsuit is of inconsequential value to the Estate, a Motion to Abandon would put the lawsuit back in debtor's control, if granted by the court. There is no Motion to Abandon on the Docket as of August 9, 2024, and there is no indication that the Chapter 7 Trustee intends to prosecute this lawsuit.

Geoffrey Richards, the Chapter 7 Attorney for Plaintiff-Debtor's bankruptcy case, is the real party in interest, but did not appear at the August 14, 2024 hearing on the Order to Show Cause and related Status Conference for this Adversary Proceeding. Though it is early in the converted Chapter 7 Case, the court must have real parties in interest before it.

The hearing on the Order to Show Cause is continued to 2:00 p.m. on September 18, 2024. The court shall order that the Chapter 7 Trustee, Geoffrey Richards and his counsel (if any) shall attend the continued hearing on the Order to Show Cause and the related Status Conference in this Adversary Proceeding.

The court also orders Matthew V. Brady, Esq., counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint for Plaintiff-Debtor, Plaintiff-Debtor Bryan G. Gallinger, and Peter Macaluso, Esq., Chapter 7 Bankruptcy Counsel for the Plaintiff-Debtor, and each of them, to appear in person at the continued hearing on September 18, 2024 – NO TELEPHONIC APPEARANCE PERMITTED for the forgoing persons ordered to appear at the September 18, 2024 continued Hearing.

The court by separate order extends the deadline for Defendants to file an answer or other response pleading to and including October 4, 2024.

SEPTEMBER 18, 2024 HEARING

As the court has previously addressed, when the related Bankruptcy Case was converted to one under Chapter 7, the real party in interest plaintiff became the Chapter 7 Trustee. As of the August 14, 2024 prior Status Conference, there did not appear to be any communications between the counsel for the Plaintiff-Debtor and the Chapter 7 Trustee.

At the September 18, 2024 continued hearing, counsel for the Trustee reported that the Trustee has investigated this claim, as well as other potential assets of the estate, and has determined that there are no assets to administered. Any rights and claims of the Estate will be abandoned back to the Debtor and not administered in this Bankruptcy Case.

On September 18, 2024, Matthew Brady, Esq., counsel of record for the Debtor in this Adversary Proceeding filed a Motion to Withdraw as Attorney of Record due to health issues. The Motion was filed *ex parte*, and is not a substitution of attorney.

Local Bankruptcy Rule 2017-1(e) requires that when the withdrawal of counsel results in the client being in *pro se*, it must be by a noticed motion.

The court sets the hearing for the Motion to Withdraw for 1:30 p.m. on October 22, 2024, to afford Debtor the opportunity to obtain replacement counsel.

The Court continues the hearing on the Order to Show Cause to 1:30 p.m. on October 22, 2024, for a final hearing to allow the Debtor to obtain replacement counsel.

The court extends the deadline for filing any responsive pleadings to the Complaint to and including November 30, 2024.

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 hearing on the Order to Show Cause re Dismissal of Adversary Proceeding was conducted on September 18, 2024. At the hearing, counsel for the Chapter 7 Trustee reported that the Trustee has investigated the claims in this Adversary Proceeding and would not be pursuing them. Further, the Chapter 7 Trustee has determined that the related Chapter 7 Case of Debtor Bryan Gallinger is a no asset case, and that any asserted claims would be abandoned back to the Debtor upon the closing of the Bankruptcy Case.
>
> The Trustee having determined that there are no assets, including the claims in this Adversary Proceeding originally filed by the Debtor, to be prosecuted and administered in the Chapter 7 Bankruptcy Case filed by Debtor Bryan Gallinger, there does not appear to be a sufficient basis for the exercise federal court jurisdiction pursuant to 28 U.S.C. § 1334 to adjudicate the claims for Breach of Contract and Fraud.
>
> On September 18, 2024, Matthew Brady, Esq., counsel of record for the Debtor in this Adversary Proceeding filed a Motion to Withdraw as Attorney of Record due to health issues. The Motion was filed *ex parte*, and is not a substitution of attorney. Local Bankruptcy Rule 2017-1(e) requires that when the withdrawal of counsel results in the client being in *pro se*, it must be by a noticed motion.
>
> Because of the need for Mr. Brady to withdraw as counsel for the Debtor, a continuance of this hearing is appropriate to allow Debtor Bryan Gallinger to seek replacement counsel.
>
> **THEREFORE**, upon review of the Order to Show Cause, the Chapter 7 Trustee determining that the claims asserted in this Adversary Proceeding will not be administered as property of the Bankruptcy Estate, Debtor Bryan Gallinger (who commenced this Adversary Proceeding as the Chapter 13 Debtor prior to conversion of the Bankruptcy Case to one under Chapter 7), Debtor Bryan Gallinger's attorney

of record being unable to continue in that capacity due to health reasons, and good cause appearing;

IT IS ORDERED that the hearing on the Order to Show Cause is **xxxxxxx**.

8. 24-20742-E-13 RHS-1 **PHILLISTINE VOSLEY** **STATUS CONFERENCE RE: VOLUNTARY PETITION 2-27-24 [1]**

Debtor's Atty: Pro Se

Notes:
Set by order of the court filed 9/24/24 [Dckt 48] The Debtor, Phillistine Vosley ordered to appear [telephonic appearances permitted].

The Status Conference is xxxxxxx

OCTOBER 22, 2024 STATUS CONFERENCE

On February 27, 2024, Debtor Phillistine Vosley commenced this Chapter 13 Case. Debtor is prosecuting this Bankruptcy Case in *pro se*. The original Chapter 13 Plan filed by Debtor was not confirmed, the court sustaining the Objections to Confirmation filed by the Chapter 13 Trustee and Ajax Mortgage Loan Trust 2021-C. The basis for the Objections is addressed in the Civil Minutes for the hearings on the two Objections. Dckts. 26, 27.

Debtor has not filed an Amended Plan or a Motion to Confirm such Amended Plan. Recently, the Chapter 13 Trustee filed a Motion to Convert this Case to Chapter 7 or Dismiss this Case (Dckt. 39) identifying a one month delinquency in plan payments (based on the Plan which was denied confirmation), that no Amended Plan had been filed, and that there are substantial non-exempt assets in this Bankruptcy Case.

Debtor responded to the Motion to Dismiss, using a pleading form from the Central District of California. That pleading form was actually a form Motion used by a debtor seeking to dismiss a bankruptcy case, not to oppose the dismissal of the case. Dckt. 43. However, as the court notes in the Civil Minutes for the hearing on the Motion to Convert or Dismiss, the substance stated by Debtor in the response was that she opposed the dismissal or conversion of this Bankruptcy Case. Further, that she is making the Plan payments and needs the bankruptcy case to cure the default on her mortgage (the only creditor she believes she is behind on in payment) to save her residence.

The court continued the hearing on the Motion to Convert or Dismiss to 9:00 a.m. on November 13, 2024. The Chapter 13 Trustee concurred with the continuance in light of the apparent economic ability of the Debtor to perform a Chapter 13 Plan.

As both the court and Trustee noted, while having the apparent financial ability to perform a Plan, the Debtor has been unable to substantively and procedurally prosecute this Bankruptcy Case as required under the Bankruptcy Code. This is not unusual for consumer debtors who are working hard to generate the monies to fund a Plan, but are not trained or educated in the Bankruptcy Laws and Procedures.

Two secured claims have been filed in this Bankruptcy Case. Proof of Claim 12-1 has been filed for Ajax Mortgage Loan Trust 2021-C, by U.S. Bank, N.A., Trustee. This claim is secured by the Debtor's residence and states that there is a $17,730.65 pre-petition arrearage to be cured. That appears, based on the Debtor's finances, an arrearage that could be cured through a 60-month Chapter 13 Plan.

The second secured claim has been filed by OneMain Financial Group, for which a vehicle is the collateral securing the claim. Amended Proof of Claim 3-2. In Amended Proof of Claim 3-2 the creditor states that only $8,500.00 of the claim is secured. Additionally, that the interest rate is 33.30%.

While having the apparent financial ability to fund a Chapter 13 Plan, Debtor is on the verge of not merely having this Bankruptcy Case dismissed, but possibly converted to one under Chapter 7. In a Chapter 7 case the bankruptcy trustee liquidates nonexempt property (which in a Chapter 13 case the Debtor could be using to perform the Plan), pay creditors, and then abandon the remaining assets, without the defaults on the debt secured by Debtor's residence cured, abandoned back to the Debtor.

The Chapter 13 Trustee concurred with the idea of setting a Chapter 13 Status Conference to make sure the Debtor understands the shortcomings and to afford the Debtor the opportunity to seek out counsel or other legal assistance (such as law school or community bankruptcy assistance programs for individual consumers).

In light of the Debtor's efforts to try and prosecute this Bankruptcy Case, the Debtor's apparent financial ability to perform a Chapter 13 Plan, and the Debtor being unrepresented in this Bankruptcy Case, the court set a special Chapter 13 Status Conference.

At the Status Conference, **XXXXXXX**

9. 24-23545-E-13 PGM-1 | **KEVIN NORMAN** Peter Macaluso | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY** 8-15-24 [11]

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).

AT THE HEARING COUNSEL FOR THE DEBTOR WILL ADDRESS WHETHER A MOTION FOR JOINT CONSOLIDATION WITH THE ERIKA NORMAN CASE WILL BE FILED IN THE KEVIN NORMAN CASE

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 13 Trustee, creditors, parties in interest, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 7 days' notice was provided. The court set the hearing for August 20, 2024. Dckt. 20.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 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 opposition was stated.

The Motion to Extend the Automatic Stay is granted.

October 22, 2024 Hearing

The court continued the hearing on this Motion, having granted the Motion on an interim basis. A review of the Docket on October 17, 2024 reveals nothing new has been filed with the court under this Docket Control Number. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Kevin James Norman ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-22267) was dismissed on May 23, 2024, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 20-22267, Dckt. 249, May 23, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith. Debtor explains he became delinquent under the terms of the previous plan because his contracted construction jobs took longer to collect payment than anticipated. Decl. ¶ 1, Docket 15. Debtor explains his circumstances have changed prior to this filing as his son has gotten a job at Genentech and his daughter has gotten a job as a Medical Assistant, and both currently live at home with Debtor and will contribute to the Plan. *Id.* at ¶ 3. Moreover, Debtor explains he has gotten a small business license as a handyman and has begun working under a contractor who is a project manager at Construction Action Network. *Id.* Debtor's NF-Spouse is currently looking for work as well. All members of the family are contributing to make a Plan work. *Id.*

Debtor's Daughter, Anabelle Norman, also submitted her Declaration in support. Docket 17. She states she will contribute $1,000 per month toward the Plan to save the home. *Id.* at ¶ 2.

Debtor's son, Isaac Norma, submitted his Declaration in support as well. He testifies that he will also contribute $1,000 per month to the Plan. *Id.* at ¶ 3.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

September 10, 2024 Hearing

After hearing the original Motion on shortened time, the court granted the Motion and extended the automatic stay through September 20, 2024, with the final hearing on this Motion to be heard on September 10, 2024. Order, Docket 31. Written oppositions were to be filed on or before August 30, 2024, with replies to be stated at the hearing.

On August 19, 2024, Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("Creditor") filed an Opposition. Docket 25. Creditor states:

1. This is the third bankruptcy purporting to affect the Property pending within this year, including Debtor's prior bankruptcy case no. 20-22267 and the bankruptcy filed by Debtor's spouse, Erika Norman, bankruptcy case no. 24-21440. Opp'n 2:9-11, Docket 25.

2. Debtor did not perform under his previous case, eventually being dismissed for failing to make plan payments. *Id.* at 2:21.

3. The current case was filed solely for the purpose of stalling Creditor's valid foreclosure. *Id.* at 2:25-26.

4. Debtor has not filed this case in good faith because he has not filed schedules or a plan, so the stay should not be extended. *Id.* at 3:1-6.

5. Given Debtor's repeated defaults in his own prior bankruptcy, Debtor has demonstrated an inability to maintain plan payments. Creditor asserts that Debtor's current bankruptcy filing is not a legitimate attempt at reorganization, but was merely filed to re-impose the stay as to the Property in an effort to stall a valid foreclosure. *Id.* at 7:11-14.

6. Through defaulting on plan payments, taking out a secret loan during the First Bankruptcy while not making plan payments, the Debtor's Wife's bankruptcy in which she claimed an interest in the Property, which is contradicted by the Quitclaim Deed and the Debtor's Schedules in the First Bankruptcy, and the filing of this bankruptcy while Creditor's motion for relief is pending in the Second Bankruptcy, it is apparent that the Debtor and his spouse are abusing the bankruptcy system and engaged in a scheme to hinder their creditors. *Id.* at 7:14-20.

Creditor submits no evidence in support of its Opposition.

DISCUSSION

Creditor identifies the following factors as reasons why the court should find this second case is not in good faith: "dueling bankruptcy cases" ongoing between husband and wife, three cases affecting the Property in the past year, poor performance under the previous Chapter 13 Case, and Debtor not having filed Schedules or a Plan in the instant case.

On August 19, 2024, Debtor filed all required Schedules and a proposed Chapter 13 Plan. Dockets 22-23.

Erika Norman's case, bankruptcy case no. 24-21440, has been transferred to Judge Sargis by Order issued on August 23, 2024. Case no. 24-21440, Order, Docket 78. The court is able to consolidate the cases and end any "duel" that may exits in hindering case prosecution.

The court does not find the previous performance under the prior dismissed Chapter 13 Case prejudice's Debtor's current case. Debtor is promptly working to prosecute the current case, having submitted a Plan and Schedules that seem feasible on their face. If debtors were not able to refile without being burdened by the poor performance of a previous case, then it is unlikely Congress would have allowed any subsequent bankruptcy filings after a prior case was dismissed. Creditor has merely identified the usual reasons a debtor may refile, including defaulting on payments under a previous Plan and refiling to stop a pending foreclosure sale.

The Parties are actively addressing these issues, and counsel for the Debtor in this case will be filing Motions for Debtor's spouse's case - Erika Norman, 23-21440 - be substantive consolidated into this case and prosecuted as a joint case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay on a further interim basis. Debtor has presented evidence of a change in his circumstances that will allow for the completion of a successful Chapter 13 Plan. Debtor has testified as to why the previous case failed, and how the present case will succeed, including submitting evidence that shows Debtor's children are going to help make a Plan work.

Debtor's good faith for a permanent extension of the stay will be demonstrated by the prosecution of the joint case.

The Motion to Extend the Automatic Stay is granted on an interim basis, and the automatic stay is extended through and including October 31, 2024.

The hearing on the Motion to Extend the Automatic Stay is continued to continued to 1:30 p.m. on October 22, 2024.

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 Extend the Automatic Stay filed by Kevin James Norman ("Debtor") 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 is further extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

10. 20-25152-E-13 KMM-1 **MATTHEW KROG Matthew Gilbert** **MOTION FOR RELIEF FROM AUTOMATIC STAY 9-5-24 [21]**

TOYOTA MOTOR CREDIT CORPORATION 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 5, 2024. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxx.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Toyota Tundra, VIN ending in 4838 ("Vehicle"). The moving party has provided the Declaration of Debra Knight to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Matthew Val Flores Krog ("Debtor"). Decl., Docket 23.

Movant argues Debtor has not made three post-petition payments for a total post-petition delinquency of $2,331.88. Declaration 3:1-7, Docket 23.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 25. 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).

DEBTOR'S OPPOSITION

Debtor filed a Declaration as an opposition on October 8, 2024. Docket 31. Debtor asserts that he made a payment of $820 in September and will cure the default in full on October 9, 2024.

On October 17, 2024, Debtor filed a Supplemental Declaration, testifying that on October 11, 2024, Debtor made a payment of $1,625.00 to cure the default on payments. Dec., p. 2:11-17; Dckt. 34. Additionally, Exhibit A is a screen shot of a payment confirmation of the $1,625.00 to Movant. Dckt. 35.

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 $2,331.88, while the value of the Vehicle is determined to be $36,925, as stated on the J.D. Power Valuation Report.

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).

In confirming that the default has been cured, at the hearing, **XXXXXXX**

~~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 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.~~

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 Toyota Motor Credit 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 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 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 2019 Toyota Tundra, VIN ending in 4838 ("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.~~

No other or additional relief is granted.

11. 24-90376-E-7 **ONSAYO ABRAM** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY**
SD-1 **Peter Macaluso** **8-15-24 [15]**

CONSUMER PORTFOLIO SERVICES, INC. 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is granted.

October 22, 2024 Hearing

The court continued the hearing on this Motion for 30 days, at which point the court will enter an Order granting relief if the parties have not otherwise resolved the Motion. A review of the docket on October 17, 2024 reveals nothing new have been filed with the court.

As set forth in the Order continuing this hearing:

> **IT IS ORDERED** the hearing on the Motion for Relief from the Automatic Stay is continued to **1:30 p.m. on October 22, 2024, a specially set day and time on the Sacramento Division Chapter 13 Calendar**, at which time the court will grant the Motion if the matter has not been dismissed or otherwise resolved at that time

The Motion is granted, the court finding there is cause for relief from the automatic stay.

REVIEW OF MOTION

Consumer Portfolio Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Civic vin ending in 2424 ("Vehicle"). The moving party has provided the Declaration of Alex Kotsay to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Onsayo Abram ("Debtor"). Decl., Docket 18.

Movant argues Debtor has no equity in the Vehicle and it is not necessary for an effective reorganization, justifying 11 U.S.C. § 362(d)(2) relief. Mot. 2:6-12, Docket 15. Movant further argues because it is not adequately protected, relief is proper pursuant to 11 U.S.C. § 362(d)(1). *Id.* at 2:9-10.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations

> supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

In this Motion, Movant states with particularity the following "grounds" in support of the Motion for Relief From the Automatic Stay:

> A. "A copy of CPS's Relief from Stay Information Sheet is filed concurrently herewith as a separate document pursuant to Local Rules of Court.

Motion, p. 2:2-3; Dckt. 15. It is unclear to the court what "grounds" are being stated in the above with respect to the requested relief. Whatever is in the Information Sheet is not stated in the Motion.

> B. The current value of the Vehicle is $12,000.00.

Id.; p. 2:4-5. Clearly an important ground which is stated with particularity.

C. “In the present case, the Debtor has no equity in the Property, as evidenced by the approximate market value compared to the total lien owed to CPS.”

Id.; p. 2:6-7. While Movant states (dictates to the court) Movant’s factual finding that the Debtor has no equity in the Vehicle, there are no grounds stated with particularity from which such can be concluded by the court.

D. “Secured Creditor is not receiving regular monthly payments, ...”

Id.; p. 2:10. It is unclear if this is one payment, ten payments, or one hundred payments. Also, there is no allegation that the Debtor is actually in default. It may be, as may be stated by Movant, the Debtor has been making “irregular” payment, and there is no default.

The Declaration of Alex Kotsay is filed in support of the Motion. Dec.; Dckt. 18. The factual, personal knowledge testimony of Alex Kotsay consists of (identified by paragraph number in the Declaration):

4. Authentication of Retail Installment Sales Contract filed as Exhibit 1.

5. Authentication of the Lien and Title Information Report filed as Exhibit 2.

7. The amount necessary to payoff the loan is $15,522.77. Alex Kotsay also authenticates a Payoff Statement which is filed as Exhibit 3. Mr. Kotsay provides no testimony about the status of the loan or any defaults.

Exhibit 3, is a actually a letter written to its counsel, not a “Payoff Statement.” In this letter, which previously may have been subject to the attorney-client privilege, a representative of Consumer Portfolio Services, Inc. This letter requests that counsel represents CPS to file a motion for relief from the stay for a flat fee of $XXX.

The letter then includes some attorney-client communications about the debt (not a payoff statement).

Interestingly, it appear that in addition to the letter requesting that the attorney represent CPS, it also “threatens” the attorney with debt collection action, stating at the bottom of the letter:

THIS IS AN ATTEMPT TO COLLECT A DEBT, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

> We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report.
>
> NOTICE: If you are entitled to the protections of the United States Bankruptcy Code (11 U.S.C. .§§ 362; 524) regarding the subject matter of this letter, the following applies to you: **THIS COMMUNICATION IS NOT AN ATTEMPT TO COLLECT, ASSESS, OR RECOVER A CLAIM IN VIOLATION OF THE BANKRUPTCY CODE AND IS FOR INFORMATIONAL PURPOSES ONLY.**

Exhibit 3; Dckt. 19. It appears that CPS is using its debtor debt collection letter form to communicate with its own attorneys.

There is no basis shown for the above letter to be some authenticated financial record concerning the debt.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 4, Docket 19. 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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 5, 2024. Docket 21. Debtor asserts that he is only one payment delinquent, and requests 30 days to prove he has become current. Debtor states that he carries insurance on the Vehicle and depends on the Vehicle to keep employment. *Id.* at 1:21-25.

However, the above is "argued" by Debtor's counsel in the Opposition. No declaration or other evidence that there is no default or there will be a cure of the default has been provided.

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 $15,522.77 (Declaration ¶ 7, Docket 18), while the value of the Vehicle is determined to be $12,000, as stated on the J.D. Power Valuation Report. Ex. 4, Docket 19.

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).

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to

establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Debtor's Request for A Continuance to Cure the Default

Debtor's Opposition requests a continuance to become current on the payments, believing that he is only one payment in default. Opposition, p. 2:1; Dckt. 21. Based on this, Debtor first requests that the court deny the Motion based on an intention to cure thirty days in the future.

Alternative, if the court will not deny the Motion, Debtor requests a thirty day continuance.

This Bankruptcy Case was commenced on July 6, 2024. Debtor has diligently prosecuted this case, appeared at the 341 Meeting, and the Trustee has now filed his No Asset Report (Dckt. 23). However, the deadline for filing Objections to Discharge and Complaints for Nondischargeability is October 7, 2024, which means that the Debtor cannot get his discharge, and this case be closed, until late in October 2024.

The Declaration in support of the Motion states that amount necessary to pay off the secured claim is $15,522.77. Dec. ¶ 7; Dckt. 18. The Declaration does not provide any evidence of the Debtor being in default on the secured obligation.

Decision

The parties have placed the court in a bit of a quandary. What should be a simple motion for relief for the grounds to be stated with particularity, Movant has chosen a legal strategy that cuts the corners and does not comply with the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure enacted by the U.S. Supreme Court. Movant chooses instead to state general conclusions, have incomplete testimony, and leave it for the court to try and assemble the grounds and the evidence for Movant.

The Debtor, in seeking to oppose the Motion, merely sends in his attorney to make a factual argument. However, Debtor has chosen to not provide any testimony or evidence of the asserted fact upon which his opposition is based.

At the hearing, the Parties agreed to a continuance of the hearing to afford Debtor and Movant to address this debt and prepare a Reaffirmation Agreement if appropriate. Further, that at the continued hearing the court will grant the relief requested, no further pleadings of Movant required.

The hearing on the Motion for Relief from the Automatic Stay is 1:30 p.m. on October 22, 2024, at which time the court will grant the Motion if the matter has not been dismissed or otherwise resolved at that time.

The court shall, at the continued hearing if this Motion has not been dismissed or otherwise resolved, 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.

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).

However, the Parties having agreed to a continuance of approximately 30 days and the entry of an order granting the Motion if it has not been dismissed or otherwise resolved, cause exists to waive the fourteen (14) day stay if relief is ordered at the continued hearing.

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 Consumer Portfolio Services, Inc. ("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 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 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 2424 ("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.
>
> No other or additional relief is granted.

FINAL RULINGS

12. **24-21440-E-13** **RDW-3**

ERIKA NORMAN
Peter Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 8-7-24 [66]

RUDOLPH INCORPORATED VS.

Final Ruling: No appearance at the October 22, 2024 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 34 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 13 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, opposition was stated by Debtor.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on November 5, 2024, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Joint Administration.

REVIEW OF MOTION

Rudolph Incorporated, its successors and/or assignees in interest ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford F150 Regular Cab, VIN ending in 0916 ("Vehicle"). The moving party has provided the Declarations of Angela Hellman (Docket 68) and Reilly Wilkinson (Docket 69) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Erika Lizeth Norman ("Debtor").

Movant argues Debtor has not made four monthly post-petition payments, with a total of $2,086.36 in post-petition payments past due. Declaration 4:8, Docket 68. Movant also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of $547.66. *Id.* According to Movant, relief should be granted pursuant to 11 U.S.C. § 362(d)(1) for this delinquency, and because Debtor misrepresented facts to Movant when obtaining the loan secured by the vehicle. Mot. 2:14-21, Docket 66.

Movant further seeks an order granting relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for a reorganization. *Id.* at 2:25-26.

Movant further moves this court for its postpetition attorneys' fees and costs incurred in bringing the Motion. *Id.* at 3:10-12. No specific amount of attorney's fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

Kelley Blue Book Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70. 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).

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 $14,489.60 (Declaration 4:14-15, Docket 68), while the value of the Vehicle is determined to be $13,268, as stated in the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70.

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).

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

However, as noted in the related matter, relief from the stay would not allow Movant to pursue repossession where Debtor's spouse's ("Mr. Norman") individual bankruptcy case is currently ongoing,

there being a stay present there. Debtor's case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman's cases into one.

Co-Debtor Stay

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor's spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

Attorneys' Fees Requested
Request for Attorneys' Fees

Movant requests that it be allowed attorneys' fees. Movant seeks the fees pursuant to the "Security Agreement securing Movant's claim or 11 U.S.C. § 506(b)." Mot. 3:10-13, Docket 66. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Continuance of September 10, 2024 Hearing

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, appeared. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The hearing is continued to 1:30 p.m. on October 22, 2024. Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024.

October 22, 2024 Hearing

The court continued this hearing to afford Debtor time to get a Motion to Consolidate on file and provide for Movant's claim moving forward. The court set the deadlines: "Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024." Order, Docket 115.

On October 9, 2024, Debtor filed an Opposition to the Motion. Docket 134. Debtor states the Vehicle is being paid in full and is protected. *Id.* at 2:9-10. However, there is no Chapter 13 Plan on the Docket that reflects such treatment.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on November 5, 2024, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Joint Administration.

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 Rudolph Incorporated, its successors and/or assignees in interest ("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 hearing on the Motion for Relief from the Automatic Stay is continued to **2:00 p.m. on November 5, 2024**, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Joint Administration.