



**No Tentative Ruling:** 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief from the Automatic Stay is XXXXXXXXXX.**

Sherwood Iron Point, LP ("Movant") seeks relief from the automatic stay to allow proceeding with an unlawful detainer action to obtain possession of the real property commonly known as 2300 Iron Point Road #1422, Folsom, California (the "Property"). Movant has provided the Declaration of Brittney Souza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tabatha Faye Slaton ("Debtor").

Movant argues that Movant's ownership interest in not adequately protect. Declaration, Dckt. 21. Debtor has made no offer the vacate the Property, thus continuation of the stay will work a real and irreparable harm to Movant as Movant must bear all of the incident of ownership of the Property while Debtor continues to enjoy the benefit of occupying the property at no cost to Debtor. *Id.*

## DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. See *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The Motion alleges that the default under the lease occurred in January 2020. On January 17, 2020, Movant's agent was notified of the December 27, 2019, commencement of this bankruptcy case by Debtor.

A copy of the fifty-two (52) page Lease is filed as Exhibit A. Dckt. 20. Also provides the Declaration of Brittney Souza, who states that she is the Assistant Community Director employed by FPI Management, Inc. Dec. ¶ 1, Dckt. 21. Ms. Souza testifies that she is the “Assistant Community Director” for Movant, but does not testify as to what such a position does.

Ms. Souza then states that Movant is the owner of the Property, but does not state in the Declaration as to how she has that personal knowledge.

Ms. Souza does testify that Movant has contracted with FPI Management, Inc. to enter into leases for it, including the lease with the Debtor for the Property at issue. *Id.*, ¶ 5. The Lease provided as Exhibit A expressly identifies FPI Management, Inc. as the agent for Movant, the Owner leasing the Property. Lease, p. 1; Dckt. 20. The Lease is signed by FPI Management, Inc., “on behalf of, and as designated agent for, Owner.”

Ms. Souza testifies under penalty of perjury that Debtor failed to pay the rent in January 2020. *Id.* at 7. In the Declaration Ms. Souza does not testify as to how she is aware of the default in payment. The first possibility is that rent payments are made directly to FPI Management, Inc., as the agent for Movant, and Ms. Souza found that in the records of FPI Management, Inc. relating to its activity.

A review of the lease discloses that the rent payments are made to Movant directly, at an address different than FPI Management, Inc. Lease ¶ 4.2, Dckt. 20.

The second alternative is that Ms. Souza or someone else at FPI Management, Inc. could have heard someone at Movant say that the rent payment had not been made, and then Ms. Souza wrote down what she heard said into the FPI Management, Inc. records.

The third alternative is that Ms. Souza contacted the Debtor about the rent payment she heard someone say had not been paid, and then the Debtor confirmed (admitted) that the payment had not been made, and notified Ms. Souza as part of the January 17, 2020 email that the Debtor had filed bankruptcy.

Unfortunately, Ms. Souza fails to provide testimony of who she heard say that the Debtor had defaulted in the January 2020 rent payment.

Ms. Souza then provides her legal conclusion and factual finding that Movant will “suffer undue hardship” in having to “maintain all obligations” relating to the Property “while not being able to collect any rental income” during the period Debtor continues in occupancy without paying rent. While such a conclusion may well be an allegation in the Motion, Ms. Souza personal conclusion on this point is of little evidentiary assistance. If Ms. Souza had provided testimony of all of the “obligations” alleged to create an “undue burden,” the court could then have made such a determination.

Ms. Souza then testifies that she has read the Motion and “know the contents thereof.” *Id.* ¶ 12. Some of the points concerning Ms. Souza testifying under penalty of perjury about having personal knowledge of all of the contents in the Motion ring hollow are:

- A. Movant is the owner of the Property.
- B. That the Lease was entered into on June 13, 2019. (Ms. Souza is not the representative who signed the lease for Movant, so it is unclear as to how she has personal knowledge of that fact.)
- C. The Debtor defaulted in the January 2020 rent payment.
- D. The legal allegation that adequate and good cause exists to modify the automatic stay.
- E. That the Debtor has made no offer to vacate the Property.
- F. That Debtor has no “form of equitable interest” in the Property.

With Ms. Souza being willing to state under penalty of perjury that he “knows” everything in the Motion, her testimony of anything in her declaration is in doubt.

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

## Requested 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. In the prayer for relief, devoid of any connection to the grounds stated with particularity in the Motion, is an added request for “For an Order that the 14 day period specified by F.R.B.P., Rule 4001(a)(3) is waived.” Motion, p. 3:19.5-20.5; Dckt. 24. This is just before the catch all request “For such other and further relief as the court may deem just and proper.” *Id.*, p. 3:21.5.

No grounds are stated in the Motion for this court to “overrule” the fourteen day stay of enforcement adopted by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3). While this court could attempt to construct such grounds, state such grounds, and then advocate for such additional relief for Movant, the court declines the opportunity to provide such legal services to one litigant against another.

## Decision

~~Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).~~

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.~~

~~—————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 Sherwood Iron Point, LP (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Sherwood Iron Point, LP, and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2300 Iron Point Road #1422, Folsom, California.~~

**March 5, 2020 at 10:00 a.m.**

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~~IT IS FURTHER ORDERED~~ that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

\_\_\_\_\_ No other or additional relief is granted.

3. [10-27435-E-7](#) THOMAS GASSNER  
[SGB-3](#)  
CAROL GASSNER VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR RETROACTIVE RELIEF  
FROM AUTOMATIC STAY  
12-11-19 [[188](#)]

**Due to the anticipated length of oral arguments, the Motion for Relief from the Automatic Stay and the accompanying Status Conference will be heard at the end of the March 5, 2020 [10:30 a.m.](#) calendar.**

**No Tentative Ruling for the Motion for Relief of the Automatic Stay will be posted at this time.**

**Due to the anticipated length of oral arguments, the Motion for Relief from the Automatic Stay and the accompanying Status Conference will be heard at the end of the March 5, 2020 10:30 a.m. calendar.**

Plaintiff's Atty: Holly A. Estioko

Defendant's Atty:

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]

Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19

Answer:

4/11/19 [Laura Strombom]

4/11/19 [Alfred M. Gassner; Carol L. Gassner]

Amd. Cmplt. Filed: 7/12/19

Answer:

8/5/19 [Alfred M. Gassner; Carol L. Gassner]

8/13/19 [Laura Strombom]

Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]

8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:

Sanctions for willful violation of automatic stay (against Settlor and Strombom)

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Declaratory judgment

Injunctive relief - other

Notes:

Continued from 2/13/20 by request of the Parties to be heard in conjunction with the Motion for Relief from Stay in the bankruptcy case.

Status Conference Statement of Plaintiff Georgene Gassner filed 2/27/20 [Dckt 110]

# FINAL RULINGS

5. [19-28000-E-7](#)      **GINGER BENNETT**      **MOTION FOR RELIEF FROM**  
[RPZ-1](#)      **BANK OF AMERICA, N.A. VS.**      **AUTOMATIC STAY**  
1-17-20 [[11](#)]

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 17, 2020. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Bank of America, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a N 2017 Cadillac XT5, VIN ending in 6901 (“Vehicle”). The moving party has provided the Declaration of Lorrie Matheson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ginger Ann Bennett (“Debtor”).

Movant provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$2,600.43. Declaration, Dckt. 15.

## TRUSTEE’S STATEMENT

On January 27, 2020, Chapter 7 Trustee, Susan K. Smith, filed a statement of non-opposition.

## 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 \$26,971.03 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be \$22,000.00, as stated in Schedules B and D filed by Debtor.

Pursuant to Debtor's Statement of Intention, Debtor surrendered the Vehicle and Movant regained possession on December 29, 2019. *See* Dckt. 1.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### 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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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 a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Bank of America, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a N 2017 Cadillac XT5, VIN ending in 6901 (“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.

6. [19-27748-E-7](#)      **RANDY HERRON**  
[AP-1](#)  
**THE HUNTINGTON NATIONAL BANK**  
**VS.**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
**2-5-20 [11]**

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

The Huntington National Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Momentum G-Class 21G, VIN ending in 2942 (“Vehicle”). The moving party has provided the Declaration of Scott Mellinger to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Randy L. Herron (“Debtor”).

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$451.43 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there is one (1) pre-petition payment in default, with a pre-petition arrearage of \$451.43. *Id.*

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$50,939.48 (Declaration, Dckt. 13), while the value of the Vehicle is determined to be \$45,000.00, as stated in Schedules B and D filed by Debtor.

## **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

## **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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

## **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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

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.

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 a minute order substantially in the following form holding that:

**March 5, 2020 at 10:00 a.m.**

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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 The Huntington National Bank (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Momentum G-Class 21G, VIN ending in 2942 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on February 6, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

American Honda Finance Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Honda Ridgeline, VIN ending in 2452 (“Vehicle”). The moving party has provided the Declaration of Brandon Carpenter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by James Ray Eidson, III (“Debtor”).

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$867.66 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there is one (1) pre-petition payments in default, with a pre-petition arrearage of \$867.66. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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 \$47,133.48 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be \$30,035.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report.

According to Debtor's Statement of Intention, Debtor intends to surrender the Vehicle. Dckt. 1.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

### **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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

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.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by American Honda Finance Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Honda Ridgeline, VIN ending in 2452 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

8. [20-20057-E-7](#)      **DOROTHY CONCEPCION**  
[PPR-1](#)  
**PRESTIGE FINANCIAL SERVICES,**  
**INC. VS.**

**MOTION FOR RELIEF FROM**  
**AUTOMATIC STAY AND/OR MOTION**  
**FOR ADEQUATE PROTECTION**  
**1-31-20 [13]**

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 31, 2020. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Prestige Financial Services, Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2018 Hyundai Elantra, VIN ending in 3527 (“Vehicle”). The moving party has provided the Declaration of Andrew Kenstler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Dorothy Concepcion (“Debtor”).

Movant argues Debtor has not made one (1) post-petition payments, with a total of \$669.14 in post-petition payments past due. Declaration, Dckt. 15. Movant also provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of \$2,007.42. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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 \$29,275.02 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be \$7,372.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA Valuation Report.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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 a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Prestige Financial 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 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 2018 Hyundai Elantra, VIN ending in 3527 (“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 Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on January 28, 2020. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Americredit Financial Services, Inc., dba GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Cadillac Escalade, VIN ending in 1583 (“Vehicle”). The moving party has provided the Declarations of Aaron Rangel and Adriana Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Shawn Allan Myers (“Debtor”).

Movant provides evidence that there are 7.8 pre-petition payments in default, with a pre-petition arrearage of \$13,040.64. Declarations, Dckts. 16.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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 \$56,958.44 (Declaration, Dckt. 16), while the value of the Vehicle is determined to be \$40,000.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA 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). 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.

### 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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

### Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 [not] granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Americredit Financial Services, Inc., dba GM Financial (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Cadillac Escalade, VIN ending in 1583 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on January 28, 2020. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Wilmington Savings Fund Society, fsb, as Trustee of Stanwich Mortgage Loan Trust A (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 2929 El Camino Avenue, Sacramento, California (“Property”). The moving party has provided the Declaration of Arnold L. Graff to introduce evidence as a basis for Movant’s contention that Ronald Marcussen (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on February 9, 2017. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and received a judgment for possession, with a Writ of Execution having been issued by that court on December 16, 2019. Exhibit 6, Dckt. 28.

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership Writ of Execution. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at \*8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Wilmington Savings Fund Society, fsb, as Trustee of Stanwich Mortgage Loan Trust A (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2929 El Camino Avenue, Sacramento, California.

No other or additional relief is granted.

11. [19-27794-E-7](#)      LASHUN CURTIS AND TIFFANY      MOTION FOR RELIEF FROM  
[JHW-1](#)              PATTERSON-CURTIS              AUTOMATIC STAY  
SANTANDER CONSUMER USA INC.      2-5-20 [20]  
VS.

**Final Ruling:** No appearance at the March 5, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Santander Consumer USA Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Dodge Challenger, VIN ending in 0764 (“Vehicle”). The moving party has provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Lashun Curtis and Tiffany Patterson-Curtis (“Debtor”).

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$1,596.80 in post-petition payments past due. Declaration, Dckt. 23. Movant also provides evidence that there are ten (10) pre-petition payments in default, with a pre-petition arrearage of \$7,984.00. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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 \$32,188.43 (Declaration, Dckt. 23), while the value of the Vehicle

is determined to be \$15,782.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the NADA 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). 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.

### **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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA 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 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 Dodge Challenger, VIN ending in 0764 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.