



Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5<sup>th</sup> wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition. Movant also takes issue with the fact that Debtor lists the property as her “homestead” in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally.

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on July 1, 2019. Dckt. 28. The Chapter 13 Trustee states that Debtor is delinquent \$1,230.00 under the proposed plan. Debtor has paid a total of \$1,230.00 to date. The Chapter 13 Trustee received payments from Debtor on June 3, 2019 and June 4, 2019. The Chapter 13 Trustee has a balance on hand of \$351.28 net of Trustee fees. Movant is included as creditor in Class 1 of the proposed plan with Post-Petition Monthly Payment of \$800.00. Dckt. 11. The Chapter 13 Trustee has generated a disbursement of \$800.00 to Movant on June 28, 2019. The Chapter 13 Trustee requests that the Court consider these matters.

## **DEBTOR’S RESPONSE**

Debtor filed an Opposition on July 2, 2019. Dckt. 32. Debtor concedes that she entered into a Promissory note with Movant on May 1, 2018 secured by the subject Property. Debtor also concedes that she was delinquent in her payments as noted in the Motion. Debtor argues that Movant is adequately protected because Movant is provided for as a Class 1 claim, paying post-petition ongoing payments along with \$296.67 per month to be applied to the arrears. Debtor concedes that if she fails to perform her payments on the Promissory note that Movant can foreclose on the property. Debtor notes that the deadline to file claims was June 11, 2019 and Movant failed to file a claim by then. Debtor shall file a claim then enabling the Chapter 13 Trustee to make payments on the mortgage arrears.

In response to “Lack of Equity,” Debtor believes that the property value in the area is increasing after the devastating Camp Fires in November 2018. Debtor plans to remove the Vehicles and install some permanent structures on the Property once the Note is paid.

## **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 \$81,212.36 (Declaration, Dckt. 23), while the value of the Property is determined to be \$110,000, as stated in Schedules A/B filed by the Debtor.

Debtor lists the total value of the Property at \$110,000.00 and lists the obligation to Movant at \$79,541.85. Movant argues that Debtor owes \$81,212.36 in addition to costs and advances because of interest. According to Movant, Debtor has committed waste on the property. The Property is an unimproved lot that is used primarily for pastureland with no structures or other miscellaneous junk on the property at the date of sale. Since the sale in April 2019, Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5<sup>th</sup> wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition.

Movant also takes issue with the fact that Debtor lists the property as her “homestead” in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally. Debtor’s filed Response rebuts this assumption and states that the Camp Fire in November 2018 caused her to leave the property, but she plans on returning and making the 5<sup>th</sup> wheel her permanent residence. Dckt. 32.

At the hearing the parties addressed whether Debtor's delinquency has been cured and the allegations of waste to the property. The Court continues the hearing to 1:30 p.m. on August 13, 2019. Debtor shall file supplemental pleadings documenting the condition of the Property on or before August 5, 2019; and Supplemental Reply Pleadings shall be filed and served on or before August 9, 2019.

**DEBTOR'S SUPPLEMENTAL REPLY:**

On August 5, 2019, Debtor filed a declaration stating that she has taken measures to clearing the property of debris and vehicle parts. Dckt. 38. Debtor's declaration refers to photographs documenting the efforts, however, no such photographs were filed in connection with the declaration.

**CREDITOR'S SUPPLEMENTAL OPPOSITION:**

On August 8, 2019, Creditor filed a declaration of Lyle Verry in response. Dckt. 40. Creditor disputes Debtor's contention that meaningful clean up efforts have been complete. In support, Creditor provides photographs taken on August 2, 2019 Lyle Verry offered as proof that little improvement has taken place.

**DISCUSSION:**

**At the 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 Lyle Verry and Carla Verry ("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 hearing on the Motion for Relief from the Automatic Stay is **xxxx**.

WILMINGTON SAVINGS FUND  
SOCIETY, FSB VS.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—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, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2019. 28 days' notice is required. That requirement was met.

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 granted.**

Wilmington Savings Fund Society, FSB, dba Christina Trust, not individually but as trustee for Premium Mortgage Acquisition Trust ("Movant") seeks relief from the automatic stay with respect to Daniel Butler's ("Debtor") real property commonly known as 3220 Groveland Way, Antelope, California ("Property"). Movant has provided the Declaration of Ilda Huzejrovic to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made six post-petition payments, with a total of \$7,612.78 in post-petition payments past due. Declaration, Dckt. 81. Movant also provides evidence that there are eleven pre-petition payments in default, with a pre-petition arrearage of \$16,159.77. *Id.*

Movant asserts that since the filing of the petition on June 6, 2018, Debtor has not submitted any loan modification applications. Dckt. 81.

#### CHAPTER 13 TRUSTEE'S RESPONSE:

David Cusick ("the Chapter 13 Trustee") filed an Response on July 24, 2019. Dckt.86. The Trustee states that Debtor is current with the confirmed plan payments as of June 26, 2019. Debtor's confirmed Plan classifies Movant as a Class 1 secured claim providing adequate protection payments while

Debtor seeks a loan modification.

## DISCUSSION

Debtor's confirmed Chapter 13 Plan affords Debtor extraordinary relief in being able to make adequate protection payments while diligently prosecuting a loan modification. The adequate protection payments and negotiation provision of the Chapter 13 Plan are to afford a debtor the opportunity to try and obtain a modification, not hold the property hostage by the automatic stay. While the Plan suggests that Debtor had a loan modification was in process at the time of the filing of Plan (Section 7.03 "the Debtor has in process a HAMP Application"), Creditor disputes this premise. Debtor did not file a response to Creditor's Motion. Accordingly, Debtor's default is entered.

The court notes that the Confirmed Plan lists Sertus, Inc. as the entity the Debtor submitted the loan modification application. Sertus, Inc., the original creditor who filed the relevant proof of claim, filed a Notice of Intent to Transfer its claim to Creditor on March 1, 2019. The court notes that Movant provides a declaration that no loan modification was submitted to Movant, however, it is not clear whether Movant is also asserting that Debtor did not submit a loan modification to Sertus, Inc.

At the hearing Movant clarified for the court, whether it asserts for the purpose of its Motion that Debtor did not submit a loan modification application to the relevant mortgage holders -----

~~From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by the value of the Property that is determined to be \$323,757.00, as stated in Schedules B and D filed by Debtor:~~

~~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.~~

### ~~Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement~~

~~Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely~~

stated in the prayer:

~~\_\_\_\_\_ Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.~~

~~\_\_\_\_\_ 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, dba Christina Trust, not individually but as trustee for Premium Mortgage Acquisition Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~\_\_\_\_\_ **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3220 Groveland Way, Antelope, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~\_\_\_\_\_ **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

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

USAA FEDERAL SAVINGS BANK  
VS.

**Final Ruling:** No appearance at the August 13, 2019 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 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2019. 28 days’ notice is required. That requirement was met.

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.**

USAA Federal Savings Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2008 Sunseeker by Forest Iver 2860DS, VIN ending in 31370 (“Vehicle”). The moving party has provided the Declaration of Martin J. Wiggins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Alan Kenyon and Sherry Kenyon (“Debtors”).

Movant argues Debtor has not made five post-petition payments, with a total of \$1,694.99 in post-petition payments past due. Declaration, Dckt. 28. Movant also provides evidence that there is a pre-petition arrearage of \$33.49. *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 the value of the Vehicle is determined to be \$25,000.00, as stated in Schedules B and D filed by Debtor. Dckt. 1.

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.

### **Request for Attorneys’ Fees**

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees “pursuant to the Security Agreement”). 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.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

### **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 has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not] granted.

No other or additional relief is granted by the court.

The court shall issue 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 USAA Federal Savings 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 2008 Sunseeker by Forest Iver 2860DS (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

**MALCOM TUCKER VS.  
DEBTOR DISMISSED: 07/26/19**

**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).**

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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, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met.

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, -----

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**The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.**

Malcom Tucker ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6640 Carmelwood Drive, Citrus Heights, California ("Property"). The moving party has provided the Declaration of Lisa Lyons to introduce evidence as a basis for Movant's contention that Adam Daugherty ("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. 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 trial was scheduled for July 9, 2019 but the proceeding was stay due to Debtor's present bankruptcy proceeding file don July 8, 2019. Dckt. 14.

Movant has provided a properly authenticated month-to-month residential lease signed by the Debtor on March 9, 2019 and three day notice to quite to substantiate its claim of ownership. 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).

The instant case was dismissed on July 26, 2019, for not filing timely documents Dckt. 19.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

*(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of July 26, 2019, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on July 26, 2019.

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 Malcom Tucker (“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 denied without prejudice as moot, this bankruptcy case having been dismissed on July 26, 2019 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Adam Daugherty (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 6640 Carmelwood Drive, Citrus Heights, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the July 26, 2019 dismissal of this bankruptcy case.