



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

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**February 21, 2023 at 1:30 p.m.**

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Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

You may choose any of these options unless otherwise ordered.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

**Video web address:**

<https://www.zoomgov.com/j/1619021357?pwd=UCsyVUtMUUtYMmQ4eDF0d1haSlVpQT09>

**Meeting ID:** 160 902 1357

**Password:** 808908

**Zoom.Gov Telephone:** (669) 254-5252 (Toll Free)

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. You are required to give the court 24 hours advance notice. Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
3. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

Please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued mediac credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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**UNITED STATES BANKRUPTCY COURT**

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Bankruptcy Judge

Sacramento, California

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1. [22-20151](#)-C-13 ROBERTA WILLIAMS MOTION FOR RELIEF FROM  
[KMM](#)-1 Mikalah Liviakis AUTOMATIC STAY  
1-23-23 [[19](#)]  
THE MONEY SOURCE INC. VS.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 24.

<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">xxxxxx</span>.</b>
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The Money Source Inc. ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' property located at 11712 Corino Way, Rancho Cordova, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent \$4,795.32 postpetition payments. Declaration, Dkt. 21.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 31, 2023. Dkt. 25. Debtor asserts that she fell behind on her mortgage payments because she contracted COVID and a representative for the Movant said she could skip a payment. Debtor contends that she has paid the delinquent months and is now current on her payments.

**DISCUSSION**

At the hearing .....

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 The Money Source Inc. ("Movant") having been presented to

**February 21, 2023 at 1:30 p.m.**

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 ~~xxxxxxx~~

2. [22-23174](#)-C-13 FRANCISCO BLANDON  
[RDG](#)-1 Kristy Hernandez

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
1-31-23 [[14](#)]

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 17.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan relies on two motions to value collateral that have not been filed or set for hearing; and
2. The debtor's plan does not have sufficient monies to pay the Class 2B claims in full until the motions to value collateral have been filed and granted.

**DISCUSSION**

The plan proposes valuing the secured claims of the IRS and FTB. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

That is reason to deny confirmation. Therefore, the Objection is sustained.

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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, 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 is sustained.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 38.

**The Motion to Impose Automatic Stay and for Sanctions for Violation of the Automatic Stay is xxxxxx.**

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Debtor, Amrit Lal ("Movant"). The claims are asserted against CFG Merchant Solutions LLC ("Respondent").

**LEGAL STANDARD**

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order

for relief as provided by § 342. 11 U.S.C. § 342(g) (2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

#### **REVIEW OF MOTION**

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

- A. On November 15, 2022, respondent filed a complaint against the debtor in the State of New York, County of Kings;
- B. On December 15, 2022, respondent filed a proof of claim (Claim No. 5-1) in the amount of \$51,915.40;
- C. On January 31, 2023, respondent through its attorney issued a garnishment against movant's sole prop business bank account with Bank of America (BoFA), which BoFA then restricted and later debited \$12,795.80 from;

#### **REVIEW OF EVIDENCE**

Movant has provided the Declaration of Amrit Lal in support of the Motion. Dkt. 37. The Declaration asserts that because of respondent's actions garnishing his bank account and not responding to him and his attorney's efforts to rectify the situation he has not been able to sleep and is not doing well emotionally. Movant has also provided the notice of garnishment from BoFA and a copy of the complaint.

#### **DISCUSSION**

At the hearing .....

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 Sanctions for Violation of the Automatic Stay by Amrit Lal 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 **xxxxxx**.

4. [22-20492](#)-C-13 GENEROSA DIZON  
[MJH](#)-1 Lewis Phon

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY.  
1-27-23 [[200](#)]

THE MICHAEL J. HARRINGTON  
LIVING TRUST VS.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 191.

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

Michael J. Harrington, Trustee of The Michael J. Harrington Living Trust established August 20, 2003 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's property located at 8609 Banff Vista Drive, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent by approximately \$225,508.25. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property exceeds the value of the Property, which is \$600,000.

**DISCUSSION**

Upon review of the record, the court finds cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property exceeds the value of the Property, which is \$600,000, and the debtor is delinquent on the debt that is secured by the property..

Language vacating stay

Based on the foregoing, the Motion 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 Property, 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 Michael J. Harrington, Trustee of The Michael J. Harrington Living Trust established August 20, 2003 ("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 8609 Banff Vista Drive, Elk Grove, 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 waived for cause.

No other or additional relief is granted.