

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

August 22, 2024 at 10:00 a.m.

1. [24-20145-E-7](#)  
[PVR-1](#)

DONALD DUPONT  
Eric Schwab

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-24-24 [[175](#)]

SCHOOLSFIRST FEDERAL CREDIT  
UNION 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 not 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 July 24, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

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

Schoolsfirst Federal Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2011 Land Rover Range Rover, VIN ending in 9951 (“Vehicle”). The moving party has provided the Declaration of Alexa Martinez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Donald Fred DuPont, Jr. (“Debtor”).

Movant argues Debtor has not made three post-petition payments, with a total of \$1,004.73 in post-petition payments past due. Declaration ¶ 5, Docket 166. Movant also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of \$669.82. *Id.*

Debtor submitted a nonopposition on August 5, 2024, stating his intent to surrender the collateral. Docket 193.

## **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 \$9,894.38 (*Id.* at ¶ 4), while the value of the Vehicle is determined to be \$8,498, as stated in Schedule D filed by Debtor. Schedule D 23, Docket 23.

### **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.

### **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.

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 Schoolsfirst Federal Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Land Rover Range Rover, VIN ending in 9951 (“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.

2. [24-23061-E-7](#)  
[AGN-1](#)

LIZA MORENO  
Nicholas Wajda

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-30-24 [\[14\]](#)

MAYRA VICTORIA 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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and the Chapter 7 Trustee on July 26, 2024. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period.

Moreover, Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and his attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), aff'd, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale*, 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), aff'd, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

At the hearing, **XXXXXXX**

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

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

Mayra Victoria ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 715 West Beverly Place, Tracy, Ca 95376 ("Property"). The moving party has provided the Declaration of Arthur G. Newton to introduce evidence as a basis for Movant's contention that Liza Melina Moreno ("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. Decl. ¶ 7, Docket 17; Ex. B, Docket 16. 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 San Joaquin on May 13, 2024. Ex. C, Docket 16. The trial in that case has been stayed pending this Motion.

While in the Motion Movant states that she is the owner of the property that is the Subject of the Motion, the State Court Complaint (Exhibit C; Dckt. 16) have Movant show as “Mayra Victoria, Trustee - Mayra Victoria Trust DTD 12/22/22.” The Lease Agreement, or portion thereof, filed as Exhibit A (Dckt. 16) does not identify who is the lessor of the Property.

From the Motion and the State Court Complaint, relief from the automatic stay is sought by Mayra Victoria, whether individually or as the Trustee of the Mayra Victoria Trust DTD 12/22/22, and relief can be so granted.

### **Evidence In Support of Motion**

Four Exhibits have been filed in support of this Motion. These Exhibits are summarized below by the court:

A. Exhibit A - Identified as “Rental Agreement Between the Debtor and the Movant.”

It appears that a clerical error was made with the filing of the Rental Agreement. No Agreement is provided as Exhibit A, but rather, it appears that a last page addendum to a Rental Agreement has been provided as Exhibit A. Exhibit A is a notarized page which is signed only by the Debtor, and states: (1) Her name is Liza Moreno, (2) she rents the house identified as 715 W. Beverly Place, Tracy, CA, (3) the rent is \$1,700 a month, and (4) Debtor pays the rent via Zelle.

There is no landlord identified and there is no other party to any agreement.

This Exhibit purports to be authenticated by Arthur Newton, attorney for Movant (“Counsel”). He states that Exhibit A is a true and correct copy of the “Lease.” However, he does not state how he has personal knowledge that this is the “Lease.” Rather, it appears that Counsel likely heard somebody say, possibly Movant, that this is the Lease and now Mr. Arthur Newton is saying what his ears heard the other person say.

B. Exhibit B - Three-Day Notice to Pay or Quit.

This Three-Day Notice is authenticated by Counsel, who is the person signing the Three-Day Notice.

C. Exhibit C - Unlawful Detainer State Court Complaint

The Unlawful Detainer Complaint is authenticated by Counsel, who has signed the Complaint. It is also verified by Mayra Victoria, Trustee. It states that the Lease is attached to the State Court Complaint, however, the “Lease” is the same one page document as Exhibit A.

- D. Exhibit D - Notice of Trial Issued by the State Court.  
The Notice of Trial states that the Unlawful Detainer Trial was set for July 31, 2024.

Exhibits; Dckt. 16.

The only Declaration filed in support of the Motion is that of Counsel. Dec.; Dckt. 17. While testifying that Exhibit A is the lease and the monetary defaults, the Declaration does not provide any testimony as to how Counsel has personal knowledge of these facts which he is attempting to testify to in this court. See, Fed. R. Evid. 602, personal knowledge required of witness.

### **Schedules and Statement of Financial Affairs Filed by Debtor**

On the Bankruptcy Petition, ¶ 5, Debtor lists the Property as her residence. Dckt. 1 at 2. On Schedule E/F Debtor lists Movant (individually, not as Trustee) as having an undisputed unsecured claim for (\$5,950). *Id.* at 23. The basis for this obligation is stated to be a “lease.”

On Schedule G, Debtor does not list any unexpired leases that are property of the Debtor. *Id.* at 25.

On the Statement of Financial Affairs, ¶ 9, Debtor identifies the State Court Unlawful Detainer action as pending litigation. *Id.* at 34.

The Chapter 7 Trustee has filed his Report of No Distribution.

### **Decision**

Movant has provided a properly authenticated copy of the Three-Day Notice to Pay Rent or Quit. Ex. B, Docket 16. The Three-Day Notice to Pay Rent or Quit document lists Movant, in her capacity as trustee of the Mayra Victoria Revocable Trust, as the landlord of the real property. On Schedule E/F Debtor verifies that Movant is the landlord for the Property. 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-Mack, 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.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, in order to protect her against further loss and prejudice due to a lack of adequate protection, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:1-4, Docket 14.

Movant has pleaded, by the court assuming that the grounds stated in various parts of the Motion are a basis for the requested waiver of the 14-day stay, 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 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 Mayra Victoria (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, individually and as Mayra Victoria, Trustee - Mayra Victoria Trust DTD 12/22/22,” and her agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 715 West Beverly Place, Tracy, Ca 95376.~~

~~\_\_\_\_\_ **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.~~

**COMMERCIAL CREDIT GROUP INC.  
VS.**

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

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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 in Possession, Debtor in Possession’s Attorney, Chapter 12 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the Chapter 12 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.

<p><b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b></p>
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#### **August 22, 2024 Hearing**

As of the court’s review of the Docket on August 16, 2024, no new documents have been filed with the court. At the hearing, XXXXXXX

#### **REVIEW OF THE MOTION**

Commercial Credit Group Inc. (“Movant”) seeks relief from the automatic stay with respect to the following two assets:

1. A 2007 Caterpillar D10T Crawler Dozer, Serial No. RJG01025 (“2007 Crawler”)
2. A 1997 Caterpillar D10R Crawler Dozer, Serial No. 3KR00943 (“1997 Crawler”) (collectively, “Crawlers”).



The Crawlers are a type of bulldozer with a heavy plate used to load and push heavy objects, ideal for maneuvering over uneven surfaces and hauling heavy materials.

The moving party has provided the Declarations of Michael Mikulan and Gabriel Herrera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jediah Hoffman, the Debtor and Debtor in Possession. Decls., Dockets 37, 38. According to Movant, Mr. Hoffman testified at the 341 Meeting that the Crawlers were not necessary to reorganize in his Chapter 12 case. Mot. 3:1-3, Docket 35. However, Debtor in Possession's counsel explained at a subsequent status conference that the Crawlers may be needed by Debtor in Possession to reorganize. *Id.* at 3:4-5.

Debtor executed a promissory note to Creditor in the amount of \$517,770, secured by the Crawlers, containing the following terms:

(a) repayment was to be in consecutive monthly installments of 22 installments in the amount of \$21,690.00 and 1 installment in the amount of \$40,590.00; (b) payments were to begin on January 15, 2023; (c) upon default, including by failing to make payment, default interest would accrue at 18% per annum, plus collection and other charges, and reasonable attorneys' fees; (d) the proceeds of the loan were to refinance other loans issued by the Creditor to the Debtor in Possession; and (e) the Debtor in Possession provided a blanket lien against his assets, including against the 2007 Crawler and the 1997 Crawler.

*Id.* at 3:12-18. Debtor immediately defaulted under these terms, failing to make a single installment. Creditor repossessed various items of collateral, including the Crawlers, prepetition. *Id.* at 23-27.

The Creditor does not significantly dispute the Debtor in Possession's Schedule D valuation of the collateral identified. Post-petition, the Creditor has received and forwarded to the Debtor in Possession offers for the purchase of the 2007 Crawler at \$243,000, and the 1997 Crawler at \$42,000. *Id.* at 4:6-8. Creditor continues to accumulate storage fees and interest while in possession of the Crawlers.

The 2007 Crawler has a value of \$243,000, with liens encumbering it in the amount of \$776,008.73. *Id.* at 5:15-19. The 1997 Crawler has a value of \$42,000 with liens encumbering it also in the amount of \$776,008.73. *Id.* As such, there is no equity in the Crawlers. Creditor requests relief pursuant to 11 U.S.C. § 362(d)(2) as the Crawlers are not effective for a reorganization and there is no equity in the Crawlers. In the alternative, if the court finds that the Crawlers are necessary for an effective reorganization, Creditor requests the Motion be denied without prejudice.

## **OPPOSITION FILED BY DEBTOR IN POSSESSION**

On June 14, 2024, the Debtor in Possession filed Opposition Pleadings. Dckts. 43-45. In the Opposition it is asserted that the Crawlers are necessary “for the success of the Debtor’s business endeavors and the success and feasibility of the Debtor.” Opposition, p. 2:11-13; Dckt. 43. The court is directed to the Declaration of the Debtor in Possession in support of this statement.

In looking at the above stated ground of opposition, it is not stated that the equipment is necessary for an effective reorganization.

The Debtor in Possession then states that “the Debtor” has obtained Liability Insurance for all the heavy equipment being used in ‘his’ ranch and farm operations.” *Id.*; p. 2:15-17.

The Debtor in Possession then requests an Evidentiary Hearing,

so that it can evaluate the live testimony of agricultural experts in order to make its determination on the condition of the Property and its trees for purposes of ruling upon Movant’s request for relief from the stay under Section 362(d)(1).

*Id.*, p. 2:18-22.

In his Declaration, the Debtor in Possession provides testimony, as summarized by the court, including the following (identified by paragraph number in the Declaration):

1. I am a resident of the State of California and am over eighteen years of age. The following facts is within my personal knowledge, except as to those matters, if any, which are stated on information and belief and as to those matters I believe to be true; accordingly, if called as witness I could and would, competently testify thereto

It appears that the Debtor in Possession is stating that he does not have personal knowledge of all of what he is testifying to, as required by Federal Rule of Evidence 602,<sup>FN.1.</sup> but merely has been informed from some source or believes it to be true because it supports his Opposition.

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FN. Fed. R. Evid. 602.Need for Personal Knowledge (emphasis added)

A witness may testify to a matter **only if** evidence is introduced sufficient to support a finding that the **witness has personal knowledge of the matter**. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

Additionally 28 U.S.C. § 1746 set forth the requirements for declarations and the affirmation that must be provided by the declarant (emphasis added):

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or **proved by the unsworn declaration**, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: **“I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).**

(Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)”.

The Debtor in Possession has not provided a declaration that complies with 28 U.S.C. § 1746.

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In the Declaration, the Debtor in Possession state that the court:

2 . BE ADVISED, that ALL of my heavy equipment, particularly my Caterpillar D10T and my Caterpillar D10R and necessary for my income streams and for a feasible Chapter 12 Plan.

With this statement, the Debtor in Possession dictates to the court a finding of fact and does not provide the court with any evidence of how and why the two Crawlers are necessary for generating monies to fund a Chapter 12 Plan.

The Debtor in Possession continues, telling the court to “BE FURTHER ADVISED” that he has sent to Movant a Certificate of Liability Insurance covering all of “his” equipment, and directs the court to see the Certificate of Insurance as an exhibit. *Id.*, ¶¶ 4, 5.

The Exhibit is filed at Dckt. 45, without a cover page identifying this Bankruptcy Case and the contested matter to which it relates. The Certificate of Liability Insurance is dated June 7, 2024, and states that the Insured is “Westside Production Solutions.” Dckt. 45, p. 1. It is not clear from the Schedules and Statement of Financial Affairs who “Westside Production Solutions,” the insured, is.

On page 2 of the Exhibit is a document titled “Inland Marine Coverage Part Contractors Equipment Coverage Form Supplemental Declarations” which is dated June 7, 2024. The insured person named is “Westside Production Solutions, Inc.” Neither the Debtor in Possession nor the Bankruptcy Estate are named as insureds. *Id.*

On all of the other pages of the Exhibit, the identified insured is “Westside Production Solutions, Inc.”

The Debtor in Possession has also filed a Statement of Disputed Facts, Dckt. 46, stating the disputed fact as to whether or not the Crawlers are necessary for Debtor’s effective reorganization.

While stating this opposition, the Debtor in Possession offers no evidence of what possible reorganization will be sought, what business operations are ongoing in the Bankruptcy Estate, and how such will be funded.

## DISCUSSION

### 11 U.S.C. § 362(d)(2)

A Debtor in Possession 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 in Possession or estate has no equity in property, it is the burden of the Debtor in Possession or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate. 11 U.S.C. § 362(d)(2).

However, importantly, the Motion includes some indication that Debtor in Possession may argue the Crawlers are necessary for an effective reorganization. Debtor has filed an Opposition making such a conclusory statement, but offering no evidence of how or why such may be necessary for an effective reorganization.

### June 20, 2024 Hearing

At the hearing, the court addressed the evidentiary shortfalls with respect to the Opposition. This being a Motion filed with notice provided pursuant to Local Bankruptcy Rule 9014-1(f)(2), the written Opposition was treated by the court as the oral opposition and has set the briefing schedule based on that.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on August 1, 2024. On or before July 12, 2024, Amended Opposition to the Motion shall be filed and served by the Debtor in Possession. Reply pleadings, if any, shall be filed and served on or before July 19, 2024.

### August 1, 2024 Hearing

The court continued this hearing as counsel for Debtor in Possession reported that he would likely argue the Crawlers, the collateral that is subject to the Motion, are necessary for an effective reorganization. The court set the following deadlines in continuing this hearing: “On or before July 12, 2024, Amended Opposition to the Motion shall be filed and served by the Debtor in Possession. Reply pleadings, if any, shall be filed and served on or before July 19, 2024.” Order, Docket 51. The parties complied with their respective time lines.

On July 11, 2024, Debtor in Possession filed a Declaration in support of the proposition that the Crawlers are going to be necessary for an effective organization. Docket 61. Debtor in Possession states:

1. The Crawlers have proved integral to Debtor in Possession's profitability over the course of many years and will in turn will be critical to his effective organization in that the income to be derived from the Crawlers will assist in supporting Plan payments. Decl. 2:9-12, Docket 61.
2. Debtor in Possession provides an income history for each Crawler, reporting that since 2016 the 1997 Crawler has cumulatively earned

\$2,456,200, and since 2018 the 2007 Crawler has cumulatively earned \$1,834,000. *Id.* at 3:15, 3:25.

3. Debtor in Possession provides the following tables of income projections for each Crawler:

1997 Crawler	2025	2026	2027	2028	2029
Deep Ripping	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Pushing Dirt/ Leveling	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
Rental	\$360,000	\$360,000	\$360,000	\$360,000	\$360,000

2007 Crawler	2025	2026	2027	2028	2029
Deep Ripping	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Pushing Dirt/ Leveling	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Rental	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000

*Id.* at 4:2-9.

4. Debtor in Possession states Movant is adequately protected in the Crawlers possessing a total market value of \$700,000, while Movant's claim is in the amount of \$331,000. *Id.* at 4:20-23.
5. Movant is in possession of all of Debtor in Possession's farm equipment, including the Crawlers, in the total market value of approximately \$1,000,000. *Id.*

### **Movant's Sur Reply**

In Movant's reply pleading filed on July 19, 2024, Movant states:

1. One concern raised at the hearing held on June 20, 2024, was the issue of insurance policies on the Crawlers. On or about July 2, 2024, an updated declaration page was received from Debtor in Possession for the insurance. The declaration page continues to identify the insured as Westside Production Solutions, Inc. and that "loss payables" were added, and states that only "Inland Marine Coverage" is provided. The full policy, however, has not been produced. Reply 2:11-14, Docket 69.

2. The court entered an Order on May 24, 2024, requiring Debtor in Possession to file monthly operating reports (“MOR”). Debtor in Possession has not filed any MORs. *Id.* at 2:21-24.
3. In Debtor in Possession’s Motion to Confirm the Plan, an unsubstantiated projection is attached which identifies the anticipated revenue from “custom farming” as \$1,250,000 for 2025, which is over \$1 million less than the projections for the use of the Crawlers. *Id.* at 3:3-4.
4. Debtor in Possession fails to provide any evidence or testimony establishing that the 2007 Crawler and the 1997 Crawler are necessary to an effective reorganization. No explanation is provided as to how the profitability from several years ago is relevant to a successful reorganization now or within a reasonable time. *Id.* at 3:23-28.
5. Debtor in Possession does not provide any term sheets, agreements, or other documentation that would demonstrate that income will be generated in the future by the use of the Crawlers. Debtor in Possession already admitted that his custom farming operation is not doing well and he only has one farmer client, who pays \$350 per acre for 20 acres. *Id.* at 4:4-7.
6. Despite this relatively minimal income, Debtor in Possession somehow speculates that he will earn \$2.41 million per year from the use of the Crawlers. *Id.* at 4:7-9.
7. Notably, \$960,000 per year of the combined projections come from the “Rental” of the Crawlers. Yet, the rental of the Crawlers is expressly prohibited by the terms of the loan documents with the Movant. *Id.* at 4:14-16.
8. Debtor in Possession has not yet even attempted to recover the Crawlers from Movant’s possession. *Id.* at 4:20-21.
9. Debtor in Possession has not received the court’s permission through a noticed hearing or Movant’s permission to use the cash collateral. *Id.* at 4:26-5:1.

**Proof of Claim 13-1**  
**Filed by Movant**

Movant filed Proof of Claim 13-1 on June 11, 2024. Movant asserts a secured claim in the amount of (\$311,249.29), and states that the property securing the claim has a value of \$400,000. POC 13-1, Part 2 ¶ 9. Movant also states in Proof of Claim 13-1 that the annual interest rate of the Claim is 18%. *Id.*

Based on Movant’s Proof of Claim 13-1, there is an equity cushion of approximately 30%.

The UCC-1 Financing Statement attached to Proof of Claim 13-1, p. 15, lists the following items as collateral securing the (\$311,249.29) Claim:

Description:

- (1) 2000 Murray 16 Wheel Lowboy Trailer 1M9G45208YA056042
  - (1) 2011 Caterpillar 430E Backhoe Loader CAT0430ECSWC00383
  - (1) 2007 Caterpillar D6T XW Crawler Dozer with EROPS, Enclosed Cab, Heat, Air Condition, 6-Way Blade, Multi Shank Ripper, Laser DJG00316
  - (1) 2006 Peterbilt 367 Day Cab Tractor with a 550 Horse Power Cat Engine, 18 Speed Transmission, 22K lb Front Axle, 46K Rear Axles 1XPFD0X16D889446
  - (1) 2002 John Deere 544H Wheel Loader DW544HX583752
  - (1) 1997 Caterpillar 623F Elevating Scraper 6BK00396
  - (1) 2007 Caterpillar 330DL Excavator with Hydraulic Thumb, Hydraulic Quick Coupler MWP01950
  - (1) 2015 John Deere 9520R Scraper Tractor with 115GPM Hydraulic System, Drawbar Support, Hydraulic Trailer Brakes 1RW9520RCFE016196
  - (1) 2007 Caterpillar D10T Crawler Dozer RJG01025
  - (1) 1997 Caterpillar D10R Crawler Dozer 3KR00943
  - (1) 2013 Komatsu WA320-7 Wheel Loader with Tier 4 Interim, Bucket & A/C Cab KMTWA121C01080219
- and all attachments, accessions, improvements, tooling, replacements, replacement parts, software and software upgrades and all cash and non-cash proceeds (including rental proceeds, insurance proceeds, accounts and chattel paper arising out of or related to the sale, use, rental or other disposition thereof) of and to all of the foregoing. In addition to the foregoing collateral, all assets now owned or hereafter acquired. Secured Party includes Commercial Credit Group Inc. on behalf of itself and on behalf of all Affiliates of Commercial Credit, Inc.

## **Prosecution of Chapter 11 Case by Debtor in Possession**

As Movant notes, the Debtor in Possession has not filed any monthly operating reports, notwithstanding the required to so do. See Order Setting Chapter 12 Status Conference, stating:

**IT IS FURTHER ORDERED**, the debtor-in-possession shall prepare, file, and serve Monthly Operating Reports as required by LBR 2015-1 using the form found on the court's website

Order, p. 2; Dckt. 10.

Since the April 3, 2024 filing of this Bankruptcy Case, there are at least three Monthly Operating Reports that are required to be filed and have not been by the Debtor in Possession.

## **DISCUSSION**

Debtor in Possession makes the case that the Crawlers are going to be essential to an effective reorganization, even earning millions of dollars in revenue per year. However, Debtor in Possession does little to describe how he will achieve such a high income after seemingly winding up his business over the recent years. The record indicates Debtor in Possession only has one farmer client for his custom farming operation, earning a meager \$350 per acre for 20 acres.

Debtor in Possession has not filed any monthly operating reports despite this court order Debtor to do so on May 24, 2024. Docket 31. Of additional concern to the court is a lack of a Motion for Authorization to Use Cash Collateral on the Docket. If the Crawlers truly can generate such a large income, the court would expect to see not only efforts to quickly recover the Crawlers from Movant's possession, but also a Motion on the Docket seeking immediate authorization to use the cash collateral and start generating income.

11 U.S.C. § 363(c) provides:

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

Movant has not consented to using the cash collateral, and this court has not granted authorization to use the cash collateral.

Furthermore, Movant states Debtor is yet to fully resolve the issue whether insurance has been properly provided.

### **Continuance of Hearing**

Pursuant to the Joint *Ex Parte* Motion and Stipulation of Movant and the Debtor in Possession, the court has continued the hearing to 10:00 a.m. on August 22, 2024. Order; Dckt. 74.

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 Commercial Credit Group Inc. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion for Relief is **XXXXXXX**.



**STREAMS APARTMENTS, LP 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 not 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 presumably August 5, 2024. The Certificate of Service at Docket 27 leaves blank the actual date when parties were served. By the court's calculation, 17 days' notice was provided. 28 days' notice is required. Movant is far short of the required notice period for a Local Rule 9014-1(f)(1) Motion.

At the hearing, **XXXXXXX**

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

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

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Victor Damian Arnold's ("Debtor") real property commonly known as 5692 Karen Avenue, Cypress, CA 90630 ("Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 24.

Movant argues Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved the transfer of all or part ownership of the Property without the consent of Movant or court approval. Movant offers evidence that the loan secured by a deed of trust has been in default for at least 28 contractual monthly payments since April 1, 2022. *Id.* at ¶ 9. There is an arrearage of \$30,507.65. *Id.* There have been a series of unauthorized grant deeds executed transferring an interest in this Property to various persons, and those persons have filed bankruptcy to thwart foreclosure proceedings. *Id.* at ¶¶ 14-18.

Debtor in this instant case filed bankruptcy on July 1, 2024. On July 8, 2024, a grant deed was recorded transferring an interest in the Property to Debtor. *Id.* at ¶ 20. The deed was dated November 16, 2020 and is included at Exhibit 11. *Id.* See Ex. 11, Docket 25.

## 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 \$106,108.58 (Decl. ¶ 10, Dckt. 24), and the Property is not accounted for in Debtor's Schedules. Docket 15.

### 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 multiple bankruptcy filings implicating this Property without various debtors making required contractual payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

### 11 U.S.C. § 362(d)(4)

#### Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, the Property has been the subject of multiple unauthorized transfers to various persons where those persons then file bankruptcy to thwart foreclosure.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 7 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 7 case cannot have been for any bona fide, good faith reason in light of these multiple unauthorized transfers and subsequent bankruptcy filings.

~~The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.~~

~~————— In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.~~

### **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.

### **Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Nationstar Mortgage LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other~~

beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5692 Karen Avenue, Cypress, CA 90630 ("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 above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

————— "If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

————— **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.

# FINAL RULINGS

5. [23-22661-E-7](#)      **JOSE VIGIL CAMPOS AND**      **MOTION FOR RELIEF FROM**  
[KMM-1](#)      **RINA SOLANO-VIGIL CAMPOS**      **AUTOMATIC STAY**  
      **Kristy Hernandez**      **7-9-24 [26]**

## **TOYOTA MOTOR CREDIT CORPORATION VS.**

**Final Ruling:** No appearance at the August 22, 2024 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 July 9, 2024. By the court’s calculation, 44 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.**

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2023 Toyota Corolla, VIN ending in 2516 (“Vehicle”). The moving party has provided the Declaration of Donna Delahanty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jose Manuel Vigil Campos and Rina Yanira Solano-Vigil Campos (“Debtor”). Decl., Docket 28.

Movant argues Debtor has not made four post-petition payments of \$568.42 each. *Id.* at 2:26-27. Movant states it is currently in possession of the Vehicle. *Id.* at 3:1.

The Chapter 7 Trustee filed a statement of nonopposition on July 18, 2024.

**J.D. Power Valuation Report Provided**

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 29. 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 \$30,868.23 (Declaration 3L27, Docket 28), while the value of the Vehicle is determined to be \$25,850.00, as stated on the J.D. Power Valuation Report.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). 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 / rehabilitation]. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). 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 an order substantially in the following form holding that:

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

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

**IT IS ORDERED** the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2023 Toyota Corolla, VIN ending in 2516 (“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.