

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 14, 2021 at 1:30 p.m.**

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1. [21-22545](#)-E-13      **DARYLL DESANTIS**  
[SW-6](#)                      **Scott Johnson**  
**MEDMEN ENTERPRISES, INC. VS.**

**MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY AND/OR  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-16-21 [[67](#)]**

**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, and Office of the United States Trustee on August 16, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Relief from the Automatic Stay is <span style="color:red">XXXXX</span>.</b>
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MedMen Enterprises, Inc. ("Movant") seeks relief from the automatic stay to allow *Unisys Technical Solutions, LLC, et al. v. CSI Solutions, LLC, et al.*, and all related cross actions, Case No. CV2020-006195 pending in the Maricopa County Superior Court in the state of Arizona (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Dan Edwards to introduce

evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor Daryll Desantis (“Debtor”).

Movant argues that a contempt proceeding is exempt from the automatic stay as it falls under the government regulatory exemption pursuant to 11 U.S.C. § 362(b)(4). Motion, Dckt. 67, ¶ A:25-9. In the alternative, Movant argues that cause exists to lift the stay to allow the State Court to proceed with the contempt proceeding and sanction Debtor after Debtor failed to follow State Court orders and filed the instant bankruptcy case in bad faith. *Id.*, ¶ B:23-3.

## DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 31, 2021. Dckt. 115. Debtor asserts that Movant has failed to meet its burden for the court to lift the stay because the government regulatory exemption does not apply and Movant has failed to show that cause exists where no evidence has been presented that Debtor filed this case in bad faith.

## DISCUSSION

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

On September 10, 2021, the parties filed a Joint Status Conference requesting the court treat the hearing on the instant Motion as a Status Conference since the parties have been meeting and conferring with respect to the issues pending in the State Court Litigation and they are cautiously optimistic that an agreement can be reached which can resolve pending matters and the case. Dckt. 126.

At the hearing **xxxxxxx**

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 MedMen Enterprises, 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** that the Motion is **xxxxxx**.

# FINAL RULINGS

2. [21-22220-E-13](#)      **KENNETH FALJEAN**      **MOTION FOR RELIEF FROM**  
[APN-1](#)      **Gabriel Liberman**      **AUTOMATIC STAY**  
**TOYOTA MOTOR CREDIT**      **7-30-21 [26]**  
**CORPORATION VS.**

**Final Ruling:** No appearance at the September 14, 2021 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, and Office of the United States Trustee on July 30, 2021. By the court's calculation, 46 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.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota RAV4, VIN ending in 4322 ("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 Kenneth John Faljean ("Debtor").

Although Debtor is current on all payments, Movant points the court to Debtor's Chapter 13 Plan which provides for Debtor to surrender the Vehicle. Moreover, according to Movant, Debtor has failed to provide a valid, written proof of insurance coverage for the Vehicle which violates the terms of the contract and California laws.

## TRUSTEE'S NON-OPPOSITION

Trustee filed an Non-Opposition on August 23, 2021 noting that Trustee has not disbursed any funds to this Creditor. Dckt. 32.

## 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 \$23,639.11 (Declaration, Dckt. 28), while the value of the Vehicle is determined to be \$18,458.00, as stated in Schedules A/B and D filed by Debtor.

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

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

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 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 2017 Toyota RAV4, VIN ending in 4322 (“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.