

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

October 10, 2024 at 10:00 a.m.

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1. [24-90504-E-7](#)      WALLACE ALBRIGHT AND LUNA      MOTION FOR RELIEF FROM  
[RDW-1](#)                      HART                                      AUTOMATIC STAY AND/OR MOTION  
   Pro Se                                      FOR ADEQUATE PROTECTION  
      9-20-24 [28]
- TO AMERICAN OVERSEAS TRADING  
CORPORATION, ET AL 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.

**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 7 Trustee, attorneys of record, and Office of the United States Trustee on September 20, 2024. By the court’s calculation, 20 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, creditors, the Chapter 7 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 granted.**

\$500,000 or 10% interest TO American Overseas Trading Corporation; \$500,000 or 10% interest TO James P. Mills, Jr., Trustee of the James P. Mills, Jr. Living Trust dated 11/6/2001; \$375,000 or 7.5% interest to Steven Alpert and Nancy Alpert, husband and wife as joint tenants; \$250,000 or 5% interest to James P. Mills, Jr. MD Money Purchase Plan; \$250,000 or 5% interest to LC Equity Group, Inc., A California Corporation; \$250,000 or 5% interest to Melvin Plutsky, Trustee of the Melvin Plutsky Living Trust; \$250,000 or 5% interest to Eagle Cal S.C. Inc., A California Corporation; \$250,000 or 5% interest to Janice L Piraino & John K. Piraino, Trustees of the Piraino Family Trust; \$250,000 or 5% interest to Josef Cernik and Caroline Cernik, Trustees of the Josef and Caroline Cernik Trust; \$250,000 or 5% interest to David Abramson, Trustee of the Earl Abramson 2010 Exempt Descendants Trust; \$250,000 or 5% interest to Dall LLC; \$250,000 or 5% interest to Earl B. Abramson, Trustee of the Earl B. Abramson 1998 Trust; \$250,000 or 5% interest to Timothy Cloughesy, Trustee of the Cloughesy Family Trust of 1996; \$250,000 or 5% interest to EM Card Services, LLC Defined Benefits Trust; \$250,000 or 5% interest to Abraham Katz Revocable Trust Dated 10/10/2010, Abraham Katz, Trustee; \$250,000 or 5% interest to Medimetrix Group, Inc.; \$250,000 or 5% interest to NLBD Cohen Family Partnership LP; \$125,000 or 2.5% interest to Steven Baer, a single man, its successors and/or assignees (“Movant”) seeks relief from the automatic stay with respect to Wallace Albright and Luna Hart’s (“Debtor”) real property commonly known as 25611 Vinedo Lane, Los Altos Hills, CA 94022 (“Property”). Movant has provided the Declaration of Brian Getz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 30. Movant seeks relief pursuant to 11 U.S.C. § 361(d)(1) and (d)(4).

Movant argues Debtor is not on the Note nor trustor under the Deed of Trust, but Debtor claims to have been assigned an interest in the Property immediately prior to filing this case. Decl. ¶ 8, Docket 30. The borrower on the Note is Martin Kacin, Jr. and Laura C. Kacin (“Borrower”), and Movant provides evidence Borrower transferred an interest in the Property to Debtor on August 26, 2024, three days before this case was filed. *Id.* at ¶ 9. Due to Borrower’s default, the Note became due in full on March 1, 2023. *Id.* at ¶ 11. The full amount owed on the Note is approximately \$5,637,856.44. *Id.* at ¶ 11.

## **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 \$5,637,856.44, while the value of the Property is determined to be \$7,400,000, as stated in Schedules A/B and D filed by Debtor. Schedule A/B, Docket 14.

### **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).

Here, the evidence before the court shows that Borrower engaged in an ownership transfer of the Property to Debtor without Movant's consent, mere days before the bankruptcy, and approximately one week before the scheduled foreclosure sale. Decl. ¶¶ 9-10, Docket 30. The grant deed transferring the interest to Debtor was recorded on September 6, 2024, the same date of the Scheduled foreclosure sale. *Id.* The evidence also shows that Movant is not receiving any payments on its Note and deed of trust. *Id.* at ¶ 11.

The court determines that cause exists for terminating the automatic stay, including using bankruptcy as a means to delay payment or foreclosure. 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.*

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 engaging in an unauthorized transfer of the Property mere days before filing bankruptcy.

Looking at the Grant Deed, Exhibit 3, it states that the Grantor stated that no transfer tax was due because the transfer was a gift. On Schedule A/B (Dckt. 14, p. 1) Debtor lists the Property as having a value of \$7,400,000, with Debtor's interest having a value of \$740,000 (10%). This is a substantial gift.

On Schedule D, Debtor states under penalty of perjury that there are no creditors who have claims secured by any of the Debtor's property. Dckt. 24 at p. 3. Based on the information provided with this Motion, that is clearly inaccurate.

On Schedule E/F Debtor states under penalty of perjury that Debtor has no creditors with priority unsecured claims. *Id.*; p. 5. On Schedule E/F Debtor states having creditors with general unsecured claims that total (\$14,900.00). *Id.* at p. 6-8. A very, very low debt amount for someone seeking the extraordinary relief under the Bankruptcy Code.

On Schedule I Debtor states under penalty of perjury having \$0.00 in income. Dckt. 25 at 5-6. On Schedule J Debtor lists having (\$6,645.00) in expenses. *Id.* at 7-9.

The Chapter 7 Trustee reports that Debtor failed to appear the 341 Meeting of Creditors on October 8, 2024. Dckt. 35 and October 8, 2024 Docket Entry Report.

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 an unauthorized transfer of interest in the Property.

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.

### **Attorneys' Fees Requested Request for Attorneys' Fees**

In the Motion Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual grounds for such fees (other than to state Movant seeks the fees "pursuant to the Note and Deed of Trust"). 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.

### **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 stop further potential unauthorized transfers of the Property, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:20-23, Docket 28.

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 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 \$500,000 or 10% interest TO American Overseas Trading Corporation; \$500,000 or 10% interest TO James P. Mills, Jr., Trustee of the James P. Mills, Jr. Living Trust dated 11/6/2001; \$375,000 or 7.5% interest to Steven Alpert and Nancy Alpert, husband and wife as joint tenants; \$250,000 or 5% interest to James P. Mills, Jr. MD Money Purchase Plan; \$250,000 or 5% interest to LC Equity Group, Inc., A California Corporation; \$250,000 or 5% interest to Melvin Plutsky, Trustee of the Melvin Plutsky Living Trust; \$250,000 or 5% interest to Eagle Cal S.C. Inc., A California Corporation; \$250,000 or 5% interest to Janice L Piraino & John K. Piraino, Trustees of the Piraino Family Trust; \$250,000 or 5% interest to Josef Cernik and Caroline Cernik, Trustees of the Josef and Caroline Cernik Trust; \$250,000 or 5% interest to David Abramson, Trustee of the Earl Abramson 2010 Exempt Descendants Trust; \$250,000 or 5% interest to Dall LLC; \$250,000 or 5% interest to Earl B. Abramson, Trustee of the Earl B. Abramson 1998 Trust; \$250,000 or 5% interest to Timothy Cloughesy, Trustee of the Cloughesy Family Trust of 1996; \$250,000 or 5% interest to EM Card Services, LLC Defined Benefits Trust; \$250,000 or 5% interest to Abraham Katz Revocable Trust Dated 10/10/2010, Abraham Katz, Trustee; \$250,000 or 5% interest to Medimetrix Group, Inc.; \$250,000 or 5% interest to NLBD Cohen Family Partnership LP; \$125,000 or 2.5% interest to Steven Baer, a single man, its successors and/or assignees (“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 25611 Vinedo Lane, Los Altos Hills, CA 94022 (“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 waived for cause.

No other or additional relief is granted.

2. [24-90398-E-7](#)

**GARRICK STEPHENS AND  
KELSEY MORRISON**  
Pro Se

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
9-13-24 [22]

**YAN WANG 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.

**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 not Provided. 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).

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 xx 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 ~~XXXXX~~.**

**NO SIGNATURE ON PLEADINGS**

Local Bankruptcy Rule 9004-1(c) provides:

All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

The Motion signature line states “\_\_\_\_\_/S/\_\_\_\_\_.” Dckt 22 at 3. The same is true for the Notice of Hearing. Dckt. 23 at 2.

Movant has not complied with this rule, the pleadings not containing any form of a signature.

## **NO DOCKET CONTROL NUMBER**

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

## **THE MOTION**

Yan Wang (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 19402 Lemon Hill Drive, Santa Ana, CA 92705 (“Property”). The moving party has provided the Declaration of Yan Wang to introduce evidence as a basis for Movant’s contention that Garrick Stephens and Kelsey Morrison (“Debtor”) do 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. ¶ 1, Docket 25. Based on the evidence presented, Debtor Ms. Morrison would be at best a tenant at sufferance, occupying the Property and failing to pay rent. *Id.* at ¶ 4, 7. Movant commenced an unlawful detainer action in California Superior Court, County of Orange on April 19, 2024, case no. 30-2024-01394801-CL-UD-CJC. *Id.* at ¶ 6. The unlawful detainer action has not yet gone to trial, Debtor filing this case and halting that proceeding.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the

Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

**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 Yan Wang (“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 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 19402 Lemon Hill Drive, Santa Ana, CA 92705.~~

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~~**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

3. [24-90454-E-7](#)  
[SKI-1](#)

JORGE BUSTOS  
Mark O'Toole

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-6-24 [\[13\]](#)

MERCEDES-BENZ FINANCIAL  
SERVICES USA LLC VS.

**Final Ruling:** No appearance at the October 10, 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, parties requesting special notice, and Office of the United States Trustee on September 6, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

Mercedes-Benz Financial Services USA, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Mercedes-Benz A220W, VIN ending in 5390 ("Vehicle"). The moving party has provided the Declaration of Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jorge Bustos ("Debtor"). Decl., Docket 17.

Movant argues Debtor has not made one post-petition payment, with a total of \$1,054.71 in post-petition payments past due. Declaration ¶ 5, Docket 13. Movant also provides evidence that there are two pre-petition payments in default, with a total arrearage of \$2,701.81. *Id.*

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

October 10, 2024 at 10:00 a.m.

- Page 9 of 14 -

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 13. 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 \$40,308.80 (Declaration ¶ 4, Docket 13), while the value of the Vehicle is determined to be \$28,800, as stated on the J.D. Power Valuation Report. Ex. D at 14, 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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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).

Here, the evidence shows that Debtor has failed to make post-petition payments. Decl. ¶ 7, Docket 17. The court determines that cause exists for terminating the automatic stay, including these defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

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

### **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, as debtor intends to surrender the vehicle, 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 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 Mercedes-Benz Financial Services USA, 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** 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 2021 Mercedes-Benz A220W, VIN ending in 5390 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

4. [23-90491-E-7](#)  
[SKI-1](#)

**CHERYL CLEVELAND**  
Anh Nguyen

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
TO CONFIRM TERMINATION OR  
ABSENCE OF STAY**  
8-30-24 [23]

**AMERICREDIT FINANCIAL  
SERVICES, INC. VS.**

**Final Ruling:** No appearance at the October 10, 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, other parties in interest, and Office of the United States Trustee on August 30, 2024. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

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

Americredit Financial Services, Inc. d/b/a GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2022 Chevrolet Malibu, VIN ending in 9262 (“Vehicle”). The moving party has provided the Declarations of Phillip Ford and John Eng in support to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Cheryl Denice Cleveland (“Debtor”). Decl., Dockets 25, 26.

Movant argues Debtor has not made multiple pre and postpetition payments with a total arrearage of \$2,791.51. Decl. ¶ 7, Docket 25. However, Debtor has received a discharge on this case and intends to surrender the Vehicle. *Id.* at ¶ 9.

The Chapter 7 Trustee filed a nonopposition on September 16, 2024.

**DISCUSSION**

## **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 evidence shows Debtor is not making post-petition payments on the Vehicle, including at least the monthly payments for April, 2024 through August, 2024. Decl. ¶ 7, Docket 25. 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.

## **Prior Discharge**

Debtor was granted a discharge in this case on February 12, 2024. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

## **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, as Debtor intends to surrender the vehicle, 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 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 Americredit Financial Services, Inc. d/b/a GM Financial (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is granted as to the Bankruptcy Estate, 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 2022 Chevrolet Malibu, VIN ending in 9262 (“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 to the extent the Motion seeks relief from the automatic stay as to Cheryl Denice Cleveland (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) which terminates the stay as to Debtor.

**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.