

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

December 5, 2024 at 10:00 a.m.

1. [24-23461](#)-E-7

ANTHONY LENO  
Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-1-24 [\[20\]](#)

DDFR, LLC 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. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on November 1, 2024. By the court's calculation, 34 days' notice was provided. 14 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 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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December 5, 2024 at 10:00 a.m.

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

## **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**

DDFR, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 19 Striped Moss Court, Roseville, California 95678, Placer County (“Property”). The moving party has provided the Declaration of Shawn Dhillon to introduce evidence as a basis for Movant’s contention that Anthony Jordan Leno (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Decl. Docket 21.

Movant presents evidence that it is the owner of the Property. Ex. A, Docket 27. 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 Placer on July 30, 2024, and the petition was filed roughly one week later. Mot. 3:11-13, Docket 20. Debtor has not paid rent since May 1, 2024. Decl. ¶ 9, Docket 21.

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).

The instant case was dismissed on November 25, 2024, as Debtor failed to appear at the 341 Meeting of Creditors. Dckt. 70.

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

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

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

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

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

(A) the time the case is closed;

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

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

11 U.S.C. § 362(c) (emphasis added).

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

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

(1) reinstates—

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

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

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

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

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

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 25, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on November 25, 2024.

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 DDFR, 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 denied without prejudice as moot, this bankruptcy case having been dismissed on November 25, 2024 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Anthony Jordan Leno (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 19 Striped Moss Court, Roseville, California 95678, Placer County, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 25, 2024 dismissal of this bankruptcy case.

2. [24-23304-E-7](#)      **NICHOLAS CASEY-BRACKETT**      **MOTION FOR RELIEF FROM**  
[DB-1](#)      **Pro Se**      **AUTOMATIC STAY**  
11-7-24 [\[32\]](#)

**TRACEY SAVORN VS.**

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

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 7, 2024. By the court’s calculation, 28 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 granted.</b>
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Tracey Savorn (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 10900 Stourport Way, Rancho Cordova, CA 95670 (“Property”). The moving party

has provided the Declaration of Tracey Savorn to introduce evidence as a basis for Movant's contention that Nicholas Carl Casey-Brackett ("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. ¶ 2, Docket 37.

The Chapter 7 Trustee filed a Nonopposition on November 11, 2024.

Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento, case no. 24UD00004. *Id.* at ¶ 7. The bankruptcy petition was filed before a judgment could be reached. Movant testifies she has not been paid rent from Debtor since May of 2024. *Id.* at ¶ 10.

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 Tracey Savorn (“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 10900 Stourport Way, Rancho Cordova, CA 95670.

**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.

MICHELLE SANTOS VS.

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

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 48 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.

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

#### 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

Michele Santos ("Movant") seeks relief from the automatic stay to allow *Michelle Santos v. Bohr S. Bhandal, Paramjit Kaur, Auto Financial Group, Inc., Richa Singh*; Superior Court of California, County of Santa Clara; Case No. 23CV421935 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Julia L. Covello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Bohr Singh Bhandal ("Debtor").

The Motion states a long series of proceedings and disputes between Movant, the Debtor, and Third-Parties. The court summarizes this history as follows:

- A. On June 1, 2020, Movant and Debtor entered into a purchase agreement in which Movant sold her business to Debtor. Debtor then defaulted in the payments due to Movant. Motion, p. 2:3-7; Dckt. 14.
- B. Movant commenced an Arbitration against the Debtor in September 2020. The Arbitration Award was issued to Movant for breach of contract and unjust enrichment in September 2021. The total Arbitration award, including fees and costs, totaled (\$614,912.42). *Id.*; p. 2:8-19.
- C. The Arbitration Award was confirmed in a Judgment issued in *Santos v. Bhandal*, California Superior Court for Santa Clara County, Case No. 21CV38675 (“State Court Judgment”) on July 1, 2022. Abstracts of Judgment were issued, as a well as a personal property judgment lien. *Id.*; p. 2:20-25.
- D. On September 17, 2021, two weeks after the Arbitration Award, Debtor’s ex-wife, Parmjit Kaur, filed for dissolution of their marriage. A marital settlement agreement was executed on November 3, 2021. The marital settlement agreement includes statements concerning the liabilities of Debtor and his ex-wife, as well as how various assets were held prior to the martial settlement agreement. *Id.*; p. 2:24-3:15.
- E. The dissolution of marriage was not disclose in discovery conducted in the State Court Litigation. *Id.*; 3:16-23.
- F. Movant attempted to execute on various bank accounts of Debtor, which the ex-wife then asserted that she separately owned. *Id.*; p. 4:4-25.
- G. On August 31, 2024, filed a second State Court action, asserting claims under the Uniform Voidable Transfers Act, California Superior Court for Santa Clara County, Case No. 23CV421935 (“State Court Voidable Transfer Action”). Restraining orders and preliminary injunctions were issued in the State Court Voidable Transfer Action. *Id.*; 5:1-23.
- H. On May 13, 2024, the State Court Voidable Transfer Action was amended to add the Debtor’s Daughter (“Daughter”) as a Defendant. *Id.*; 6:4-9.
- I. Debtor filed Bankruptcy on August 15, 2024.
- J. Debtor has failed to appear at various enforcement and discovery proceedings in the two State Court actions.

In the Motion, Movant states:

Here, [Movant] and [Debtor] are litigating a fraudulent transfer case in the Superior Court of California, County of Santa Clara. This Bankruptcy Court must abstain from adjudication the fraudulent transfer case and lift the stay to allow it to proceed to judgment. Otherwise - it will merely “help” [Debtor’s] scheme to avoid satisfaction of the Arbitration Award and fraudulently transfer assets.



*Id.*; p. 7:24-28.

Here, it is asserted that Debtor quit claimed Debtor's interest in real property located in Dublin, California to his ex-wife on March 26, 2021, and such is the subject of the State Court Voidable Transfer Action. It is further asserted that such property is subject to the judgment lien of Movant. This transfer is approximately three years prior to the filing of the current Bankruptcy Case.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 22, 2024. Dckt. 21. Debtor opposes any relief against him in an attempt to impose personal liability on Debtor, Debtor asserting the deadline to file an adversary proceeding was on November 18, 2024. No adversary was ever filed. Debtor does not appear to oppose relief from stay to allow the State Court Litigation to proceed, but does object to any finding of personal liability.

## **MOVANT'S REPLY**

Movant filed a Reply on November 27, 2024. Docket 24. Movant states that her arguments have not been sufficiently rebutted, and relief should be granted. Further, 28 U.S.C. § 1334(c) permits this court's abstention in the State Court Litigation dispute.

## **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).

## **State Court Proceedings and Bankruptcy Discharge**

The court has before it the State Court Judgment and the State Court Voidable Transfer Action through which Movant is seeking to enforce its State Court Judgment.

As Debtor points out, he was granted a discharge in this Bankruptcy Case on November 26, 2024. Order of Discharge; Dckt. 23. Movant is listed as a creditor with an unsecured claim on Schedule E/F. Dckt. 1 at 21.

On the Statement of Financial Affairs, in response to Question 9, whether within one year prior to the August 15, 2024 filing of the current Bankruptcy Case the Debtor was a party of any lawsuit, court action, or administrative proceeding, Debtor responded “No.” Dckt. 1 at 32. However, Debtor was a party to the State Court Action in which the Judgment was entered and is stated to be a party in the State Court Voidable Transfer Action (See Motion, p. 5:1-5; Dckt. 14; Dec. ¶ 18; Dckt. 17).

No adversary proceeding has been commenced by Movant for a determination that the Debtor’s obligation to her should not be discharged. The deadline for filing such an complaint expired on November 18, 2024. Notice of Chapter 7 Case, ¶ 9; Dckt. 6.

The automatic stay as to the Debtor terminated upon the entry of the discharge. 11 U.S.C. § 362(c)(2)(C). However, this does not terminate the automatic stay as to property of the Bankruptcy Estate.

With the termination of the stay as to the Debtor upon entry of the discharge, the discharge injunction (protecting a debtor personally, exempt assets of a debtor, and future acquired assets of a debt) goes into effect. 11 U.S.C. § 524(a). However, this does not terminate any lien rights of a creditor or the rights of a trustee and bankruptcy estate to recover properties for the bankruptcy estate.

Congress provides in 11 U.S.C. § 544(a) the rights of a bankruptcy trustee to avoid transfers, including the rights that a creditor has to avoid transfers made by a debtor. See 5 Collier on Bankruptcy (16th Edition) ¶ 544.06.

At this juncture, it appears that to the extent that the right to avoid transfers made by Debtor, that power and right rests with the Bankruptcy Trustee in this Bankruptcy Case. While the Trustee has filed a Report of No Distribution (September 18, 2024 Docket Entry Report), it may well be that the Trustee was not aware of the State Court Voidable Transfer Action and the rights of a creditor to avoid such a transfer.

If the Trustee wants to transfer such rights to Movant, the Trustee may seek such authorization. If Movant and Trustee strike an agreement for the prosecution of such an action, again, the Trustee may seek such authorization.

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 Michele Santos (“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 **XXXXXXX** .

4. [24-23117-E-7](#)  
[AGM-1](#)

SHARON LITTLEJOHN  
Eric Seyvertsen

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-5-24 [\[21\]](#)

JAMSON WU 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.

**NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR**

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on the relief from stay, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). 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)(1).

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on November 5, 2024. By the court's calculation, 30 days' notice was provided. 14 days' notice is required. However, Movant has not served Debtor's attorney or other interested parties. At the hearing, **XXXXXXX**

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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<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Jamson Wu (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 9957 West Taron Drive, Elk Grove, California 95757 (“Property”). The moving party has provided the Declaration of Ali G. Moua to introduce evidence as a basis for Movant’s contention that Sharon Littlejohn (“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. Ex. A, Lease Agreement, Docket 23.

Based on the evidence presented, Debtor would be at best a tenant at sufferance. Debtor has not made rental payments for the months January 2023 through August of 2024. Mot. ¶ 11, Docket 21.

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.

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 Jamson Wu (“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 9957 West Taron Drive, Elk Grove, CA 95757.

No other or additional relief is granted.

5. [24-23927-E-7](#)  
[DB-1](#)

BLUE LEAD GOLD MINING,  
LLC  
Kristy Hernandez

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
TO CONFIRM TERMINATION OR  
ABSENCE OF STAY  
11-21-24 [\[27\]](#)

COUNTY OF NEVADA 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, Debtor’s Attorney, Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on November 21, 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, 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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<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">xxxxxxx</span>.</b>
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## PRELIMINARY MATTERS

In the Motion, Movant asks that the court determine that an irrevocable letter (“Letter”) of credit from Heritage Bank (“Heritage”) in the amount of \$42,500 is not property of the bankruptcy estate. Counsel should note such a determination is not made in the context of a Motion for Relief. To determine an interest in Property is to be done through an adversary proceeding. Fed. R. Bankr. P. 7001(b) (Rule 3012, determination of amount of secured claim, or Rule 4003(d), exemptions, do not apply to the determination that the Bankruptcy Estate has no interest).

Then, in the Memorandum of Points and Authorities in support, Movant refines its argument and requests the automatic stay does not apply to the Letter. This is a different request from determining who

owns the Letter. However, in either event, Movant has not pleaded adequate facts to support a finding that the Letter is not property of the Estate.

Alternatively, Movant requests that the court grant *nunc pro tunc* relief to November 15, 2024, as to the Letter. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations “retroactive approvals,” it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and “retroactive approval” when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court).

This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor’s estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

At the hearing, **XXXXXXX**

## THE MOTION

County of Nevada (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 18272 Red Dog Road Nevada City, California, and all entitlements issued by the County to conduct mining activities that are appurtenant to the Mining Property (“Property”). The court abandoned the Property back to the Debtor on November 14, 2024. Order, Docket 22. However, pursuant to 11 U.S.C. § 363(a)(6), Movant still requires relief from stay to enforce its rights in the Property.

Movant has provided the Declaration of Brian Foss to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 32.

In the Motion, Movant argues that cause exists for relief from stay based upon the ordered abandonment. Mot. 2:5-9, Docket 27. Such allegation is bare-bones and insufficient on its own to support this court granting the order. *See Fed. R. Bankr. P. 9013* (pleading with particularity standard.) At the hearing, **XXXXXXX**

Movant directs the court to the Memorandum of Points and Authorities for a more detailed description of the grounds for relief. Movant explains that Debtor is required to provide certain financial assurance mechanisms to the County to ensure that the County could fund the reclamation of the Mining Property, in accordance with California Public Resource Code section 2773.1(b), in the event that the Debtor abandoned the Mining Property or otherwise became financially incapable of completing its reclamation plan. Mem. 2:19-22, Docket 29. These financial assurances include the Letter in the amount of \$43,500, and a certificate of deposit from Bank of America in the amount of \$274,737.39. *Id.* at 3:6-7. Movant also

explains that Heritage, learning that its letter of credit would expire on November 18, 2024, drew on that letter of credit prior to relief being granted. *Id.* at 4:5-13. Movant is asking for retroactive relief as to actions taken regarding this Letter.

As cause for relief, Movant argues Debtor's failure to perform the necessary environmental clean-up actions to remedy the various environmental issues created or exacerbated by Debtor's preparations to mine the property constitutes grounds under 11 U.S.C. § 362(d)(1). Mem. 4:20-22. Movant has already issued a Violation Warning Letter and a Corrective Action Notice with respect to the Mining Property, stating there was evidence of sediment transport on the property and that two active discharges were occurring on the property. Without conducting reclamation efforts, the Mining Property could pose a significant threat of environmental contamination to a nearby waterway. *Id.* at 6:8-12. Therefore, to protect from these environmental impacts, the County requests relief from stay so that it may follow the statutory procedure for release of the funds held in the financial assurance mechanisms provided by the Debtor to the County. *Id.* at 6:13-15.

## **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).

Here, Debtor has failed to properly maintain the Property, which has posed environmental concerns and risks as the Property is in an unsafe condition. Movant has sent warnings to Debtor in an attempt to remedy the problems, but to no avail. Therefore, the court determines that cause exists for terminating the automatic stay, specifically Debtor's failure to safely and properly maintain the condition of the Property. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **Annulment Nunc Pro Tunc: Retroactive Relief**

The Ninth Circuit recognizes the bankruptcy court's wide discretion in granting relief from the automatic stay, including granting "retroactive relief from the stay." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

Here, Movant does not identify any conduct it engaged in, that may be in violation of the stay, without knowledge of the Bankruptcy Case having been filed. In fact, it appears Movant was fully aware of any actions it took against the Debtor that may have constituted a violation, specifically drawing on the Letter while the bankruptcy case is ongoing. In the event the court determines the stay does apply to the Letter, Movant states it needed to violate the stay and draw on the Letter to avoid a complete loss of the funds as the Letter was set to expire on November 18, 2024. Mem. 7:22-28. Such an explanation may support the court's decision in balancing the equities, but it does not satisfy the first factor of the test in *National*.

Further, Movant expressly and clearly requests that the court grant relief *nunc pro tunc*, and that any annulment must be *nunc pro tunc*. See prayer for relief, requesting:

2. Granting its motion and confirming that the automatic stay provided by 11 U.S.C. § 362(a) does not apply to the Heritage Bank Letter of Credit, or if the Court does find that the stay applies to the Heritage Bank Letter of Credit, **annulling the stay *nunc pro tunc*** to November 15, 2024.

Motion, p. 2:28-3:3; Dckt. 27.

The Motion itself does not state with particularity the grounds, factual and legal, upon which an annulment of the stay is warranted, other than:

["c]ause" for relief from stay pursuant to 11 U.S.C. section 362(d)(1) exists based upon the abandonment of the real property generally located at 18272 Red Dog Road Nevada City, California 95959, including all entitlements issued by the County to conduct mining activities that are appurtenant to the Mining Property (the "Mining Property") and the Debtor's financial incapability of completing reclamation of the Mining Property. Reclamation bond funds were provided by the Debtor to ensure that reclamation of the mine is performed in accordance with the Debtor's approved reclamation plan. Pub. Resources § 2773.1(a). Without conducting reclamation efforts, the Mining Property could pose a significant threat of environmental contamination to a nearby waterway. To protect from these environmental impacts, the County requests relief from stay so that it may follow the statutory procedure for release of the funds held in the financial assurance mechanisms provided by the Debtor to the County. Pub. Resources Code, § 2773.1, subd. (d).

Motion, p. 2:6-17. With respect to the *Nunc Pro Tunc* Annulment, the grounds states are:

The County also respectfully requests that the Court enter a finding an irrevocable letter of credit from Heritage Bank in the amount of \$42,500 (the "Heritage Bank LOC") is not an asset of the Debtor's bankruptcy estate. The Heritage Bank LOC served as the County's collateral to partially secure the Debtor's performance of its reclamation obligations and is not the property of the Debtor. Therefore, no relief from stay is required to draw down from such letter of credit. In the alternative, if the Court determines that the Heritage Bank LOC is an asset of the Debtor's estate, the County requests entry of an order annulling the stay *nunc pro tunc* to November 15, 2024.



*Id.*; p. 2:18-14. It does not cite any specific facts to fulfill the test in *National*.

In the Points and Authorities Movant only cites to a California Court of Appeals Decision for the proposition that a letter of credit is not property of the Bankruptcy Estate and drawing on it does not violate the automatic stay provisions of 11 U.S.C. § 362(a). *Rreef America Reit II Corp. YYYY v. Samsara Inc.*, 91 Cal.App. 5th 609, 621-621 (2023). It appears that Movant could not find any federal court cases addressing the question of the application of the federal law arising under 11 U.S.C. § 362 and § 541. However, the court notes that in the Rreef decision the State Court makes reference to two bankruptcy cases.

The Points and Authorities also provides the following legal analysis and basis for the *Nunc Pro Tunc* Annulment of the automatic stay:

Alternatively, in the event that the Court determines that the Heritage Bank LOC is an asset of the Debtor's estate, the County requests that the Court enter an order annulling the stay *nunc pro tunc* to November 15, 2024, because the County needed to draw down such letter of credit to avoid a complete loss of the funds if the Heritage Bank LOC were to expire, which was set to occur on November 18, 2024. See Foss Decl. ¶ 10. Good cause exists for such an annulment of the stay because the County will require all of the funds available under both the Heritage Bank LOC and the Bank of America CD in order to complete the reclamation process and simply could not afford to risk their loss.

Points and Authorities, p. 7:22-8:1. No legal authorities are provided for the court to determine that such "good cause" existed. This Bankruptcy Case was filed on August 30, 2024. In the Points and Authorities it is argued that Movant "became aware" on November 6, 2024, that the Letter of Credit was going to expire on November 18, 2024, so it took action by making demand thereon.

At the hearing, **XXXXXXX**

~~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.~~

### **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.

Although Movant has not pleaded adequate facts to support granting this form of relief, the court will do so to expedite the reclamation process and prevent any further environmental harm. Counsel is reminded again of the pleading with particularity standard imposed by Fed. R. Bankr. P. 9013.

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 County of Nevada (“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 and annulled effective November 12, 2024, 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 18272 Red Dog Road Nevada City, California, and all entitlements issued by the County to conduct mining activities that are appurtenant to the Mining Property (“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.~~

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~~**IT IS FURTHER ORDERED** that the Motion is granted to the same extent as mentioned in the prior paragraph concerning the irrevocable letter of credit from Heritage Bank in the amount of \$42,500 and a certificate of deposit from Bank of America in the amount of \$274,737.39.~~

**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 additional or other relief is granted.

**PRIME GROUP, LLC 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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 4, 2024. By the court's calculation, 31 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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<b>The Motion for Relief from the Automatic Stay is granted.</b>
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#### **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).

#### ***NUNC PRO TUNC RELIEF REQUESTED***

As a preliminary matter, Prime Group, LLC is seeking a "retroactive authorization" rather than nunc pro tunc authorization. The Ninth Circuit has noted that nunc pro tunc approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). Nunc pro tunc amendments are usually used to correct errors in the

record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations “retroactive approvals,” it is customary, but not necessarily correct, to refer to them generically as nunc pro tunc in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using nunc pro tunc and “retroactive approval” when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court).

This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor’s estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

## THE MOTION

Prime Group, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 180 South Lexington Drive #722, Folsom, California 95630 (“Property”). The moving party has provided the Declaration of Daniela Cuen to introduce evidence as a basis for Movant’s contention that Vanessa Lynn Franklin (“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. ¶ 3, Docket 80. Debtor did not pay rent for September of 2024. *Id.* at ¶ 5. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on September 13, 2024. However, Movant was unaware that Debtor had filed this petition on July 8, 2024. Decl. ¶ 8, Docket 80. Movant learned of the petition on or about October 15, 2024. This Motion was subsequently filed, seeking retroactive relief.

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.

## **Annulment: Retroactive Relief**

The Ninth Circuit recognizes the bankruptcy court's wide discretion in granting relief from the automatic stay, including granting "retroactive relief from the stay." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

While using the legal term *Nunc Pro Tunc* in the title of the Motion and in the prayer requesting the relief, the body of the Motion and legal authorities clearly state that it is retroactive relief which is requested, and cites cases provides such retroactive relief, not *nunc pro tunc* relief.

Here, the court finds that annulment of the stay is warranted. The evidence shows Movant was not aware of the bankruptcy petition when filing the unlawful detainer action and taking other actions against Debtor. Moreover, Debtor failed to pay rent in September, which is conduct that prejudices Movant. Therefore, the stay is annulled through and up to September 5, 2024, when Movant began taking actions against Debtor.

### **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 Prime Group, 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 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and

remedies to obtain possession of the property commonly known as 180 South Lexington Drive #722, Folsom, California 95630.

**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.

7. [24-23691](#)-E-7  
[DWE-1](#)

**TOU XIONG**  
**Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-5-24 [\[18\]](#)**

**LAKEVIEW LOAN SERVICING, LLC  
VS.**

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

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 5, 2024. By the court's calculation, 30 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
------------------------------------------------------------------

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to Tou Xiong's ("Debtor") real property commonly known as 6 Herbosa Vista Ct., Sacramento California 95824 ("Property"). Movant has provided the Declarations of Chastity Wilson and Alina Pustynovich to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Dockets 20, 21.

Movant argues Debtor has not made at least nine payments in total, including two post-petition payments, for a total arrearage of \$37,156.63. Decl. ¶ 5, Docket 20.

## 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 \$486,364.28 (Id. at ¶ 4), while the value of the Property is determined to be \$478,000, as stated on the Broker's Price Opinion attached as authenticated Exhibit D, 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.

### 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 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).

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.

### 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 there is no equity and Debtor has stated his intent to surrender the Property, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:17-18, Docket 18.

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 Lakeview Loan Servicing, 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 6 Herbosa Vista Ct., Sacramento California 95824 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.



# FINAL RULINGS

8. [24-24152-E-7](#)  
[SAD-1](#)

ANGELIQUE BRACONE  
Kristy Hernandez

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
10-14-24 [\[18\]](#)

U.S. BANK TRUST NATIONAL  
ASSOCIATION VS.

**Final Ruling: No appearance at the December 5, 2024 Hearing is required.**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice not 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, counsel for Movant reported that the Certificate of Service was not filed due to a clerical error and that it was being corrected.

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.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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## REVIEW OF MOTION

U.S. Bank National Association, as trustee for LB Dwelling Series V Trust, its assignees and/or successors in interest (“Movant”) seeks relief from the automatic stay with respect to Angelique Marie Bracone’s (“Debtor”) real property commonly known as 1236 Buck Ridge Court, Rocklin, CA 95764 (“Property”). Movant has provided the Declaration of Sarah Wasson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 21.

Movant argues Debtor relief should be granted pursuant to 11 U.S.C. § 362(d)(1) because Movant is not adequately protected as Debtor has no equity in the Property. Movant argues that, since it is owed \$1,054,352.89, and where there are two other liens on the Property totaling \$267,760.31, and the Property being valued at \$1,275,000, Movant is not adequately protected. There have been no allegations from Movant that Debtor is not making contractual monthly payments. Debtor appears to intend to surrender the Property.

## **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 \$1,322,113.20 (Declaration ¶¶ 12, 13, Docket 21), while the value of the Property is determined to be \$1,275,000, as stated in Schedules A/B and D filed by Debtor. Docket 15 at 3.

### **11 U.S.C. § 362(d)(1): Deny Relief Because “No Equity” Is Not Cause**

Movant’s contention that mere lack of equity is “cause,” as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that a debtor has no equity in the estate is not sufficient standing alone to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass’n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981). Moving party has not adequately pleaded or provided an evidentiary basis for granting relief for “cause.”

### **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 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).

Subject to correction of the clerical error on documenting service of the Motion, Notice, and supporting pleadings, 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.

### **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.

### **Continuance of Hearing**

The court continues the hearing to 1:30 p.m. on December 5, 2024, to allow Movant to correct the record and document the service of the Motion, Notice, and supporting pleadings.

### **DECEMBER 5, 2024 HEARING**

The court continued the Motion for Relief to allow Movant an opportunity to properly supplement the record and effectuate service. A review of the Docket on December 1, 2024 reveals that service has been properly effectuated.

No opposition has been made to the Motion at the first hearing, and the hearing was continued for the administrative purpose of correctly documenting (there being a clerical error) service of the pleadings..

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 1236 Buck Ridge Court, Rocklin, CA 95764 (“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.

The court having continued the hearing, the court waives the fourteen day stay of enforcement as provided in Federal Rule of Bankruptcy Procedure 4001(a)(3).

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 U.S. Bank National Association, as trustee for LB Dwelling Series V Trust, its assignees and/or successors in interest (“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 1236 Buck Ridge Court, Rocklin, CA 95764 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

9. [24-23760-E-7](#)  
[MJ-1](#)

**SCOTT/DELIA STEPHAN**  
**Stephen Johnson**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
**10-2-24 [17]**

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

**Item 9 thru 10**

**Final Ruling:** No appearance at the December 5, 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 October 2, 2024. By the court’s calculation, 64 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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AmeriCredit Financial Services, Inc. dba GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 GMC Yukon, VIN ending in 5336 (“Vehicle”). The moving party has provided the Declaration of Adriana Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Scott Patrick Stephan and Delia Pistone Stephan (“Debtor”). Decl., Docket 19.

Movant argues Debtor has not made a payment since June of 2024 with a total arrearage of \$4,164.27 at the time of filing this Motion. Declaration ¶ 6, Docket 19. This arrearage includes at least one post-petition delinquent payment.

The Chapter 7 Trustee filed a Nonopposition on October 8, 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 20. 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 \$59,729.51 (Declaration ¶ 7 Docket 19), while the value of the Vehicle is determined to be \$59,725, as stated on the J.D. Power Valuation Report. Ex. D at 11, Docket 20.

### **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.

**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 the value of the Vehicle is in decline due to continuing default, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:20-21, Docket 17.

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. dba 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, 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 GMC Yukon, VIN ending in 5336 (“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.

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

**Final Ruling:** No appearance at the December 5, 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 October 10, 2024. By the court’s calculation, 56 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. dba GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 GMC Sierra, VIN ending in 4019 (“Vehicle”). The moving party has provided the Declaration of Adriana Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Scott Patrick Stephan and Delia Pistone Stephan (“Debtor”). Decl., Docket 28.

Movant argues Debtor has not made a payment since June of 2024 with a total arrearage of \$3,978.30 at the time of filing this Motion. Declaration ¶ 6, Docket 28. This arrearage includes at least one post-petition delinquent payment.

Debtor filed a Statement of Intention at Docket 1 where they show their intent to surrender the Vehicle.

**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 \$46,027.70 (Declaration ¶ 7 Docket 19), while the value of the Vehicle is determined to be \$63,925, as stated on the J.D. Power Valuation Report. Ex. D at 11, Docket 29.

### **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.

### **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 the value of the Vehicle is in decline due to continuing default, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:14-15, Docket 26.

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. dba 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, 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 GMC Sierra, VIN ending in 4019 (“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.