



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 18, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION NON-INDIVIDUAL
5-9-2024 [[1](#)]

GREGORY TAYLOR/ATTY. FOR DBT.

NO RULING.

2. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[OHS-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION TO
CONFIRM TERMINATION OR ABSENCE OF STAY
8-30-2024 [[224](#)]

TRAILS END UNITED FOR CHANGE/MV
GREGORY TAYLOR/ATTY. FOR DBT.
MARC LEVINSON/ATTY. FOR MV.

NO RULING.

1. [24-13112](#)-A-7 **IN RE: MARIA FERREYRA CHAVEZ**
[KL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2024 [[11](#)]

ASHLY ALBERTI/MV
JERRY LOWE/ATTY. FOR DBT.
LIOR KATZ/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on November 20, 2024. Doc. #18. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, Ashly Alberti ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to proceed with a state court action in Tulare County Superior Court Case No. VCU313307 (the "State Court Action") against debtor Maria Ferreyra Chavez ("Debtor"). Doc. ##11, 15. The State Court Action is in reference to a car accident that Movant alleges was caused by Debtor and resulted in property damage and injuries to Movant. Id. Debtor had an auto insurance policy in place at the time of the accident. Memo P & A, Doc. #15.

Debtor filed this chapter 7 bankruptcy case on October 28, 2024. Doc. #1. Prepetition, on April 2, 2023, Movant was a passenger in a vehicle driven by Movant's husband when Debtor allegedly failed to yield to traffic when Debtor entered an intersection and caused a collision with the vehicle in which Movant was a passenger. Memo P & A, Doc. #15. Movant sustained injuries and property damage due to the impact. Id. Movant sought to recover monies under Debtor's auto insurance policy, but Debtor's auto insurer failed to tender the limits of Debtor's policy. Id. Thereafter, Movant filed the State Court Action on

September 23, 2024 to recover general and special damages. Ex. A, Doc. #14; Memo P & A, Doc. #15.

In Debtor's opposition, Debtor objects to the motion on the basis that: (1) Movant's motion is ambiguous as to who or what Movant seeks relief against; (2) Movant cites no legal authority; and (3) if Movant requests to proceed against Debtor's auto insurance company, this matter is moot because Debtor's auto insurance company is not the party in bankruptcy. Doc. #18.

In Movant's response, Movant states Debtor's opposition lacks any argument that supports denying the motion and addresses each argument Debtor raises. Doc. #20. First, Movant believes the relief sought is not ambiguous because in the motion, memorandum of points and authorities, declaration and exhibits, Movant specifically states that Movant seeks relief from the automatic stay to resume her State Court Action against Debtor so Movant can recover against Debtor's auto insurer only. Doc. #11-17, 20. Second, Movant asserts the proper legal authority for relief was cited to pursuant to Movant's memorandum of points and authorities, which analyzed the Curtis factors and various other caselaw to support granting the motion. Doc. #15, 20. Lastly, Movant states she is seeking relief from the automatic stay to resume her State Court Action against Debtor in state court and clarifies that Movant will limit any recovery in the State Court Action to the limits under Debtor's auto insurance policy. Doc. #20.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the automatic stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant relief from the automatic stay will allow Movant to proceed with her litigation against Debtor and will result in a complete resolution of the matter. Neither Debtor nor the estate would suffer financially from litigation because Debtor is still covered by auto insurance. Permitting Movant to pursue a judgment in state court will not prejudice the interests of Debtor as Movant is seeking monetary compensation from Debtor's auto insurer only and no money will be taken from the estate. Further, the interests of judicial economy favor granting relief from the automatic stay because Movant is seeking limited recovery from Debtor's auto insurance and Movant's claims concern state law that does not need to be decided by this court. Finally, not granting Movant relief from the automatic stay will burden Movant if Movant is not able to proceed with her claims in the State Court Action in a timely manner.

For these reasons, the court finds that cause exists to lift the stay to permit Movant to proceed in state court with the State Court Action and enforce any resulting judgment only against the available limits of Debtor's auto insurance policy.

Accordingly, the court will overrule Debtor's opposition and grant the motion pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed in state court with the State Court Action and enforce any resulting judgment only against the available limits of Debtor's auto insurance policy. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Movant seeks recovery only from Debtor's auto insurance.

2. [24-13149](#)-A-7 **IN RE: MANUEL MADRID, III**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-4-2024 [\[17\]](#)

STRIKE ACCEPTANCE, INC./MV
MARIO LANGONE/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was set for hearing on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #24. However, Federal Rules of Bankruptcy Procedure 4001(a)(1) and 9014 require service of a motion for relief from stay be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B

The movant, Strike Acceptance, serviced by Peritus Portfolio Services II, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Nissan Altima, VIN: 1N4BL4BVXLN303039 ("Vehicle"). Doc. #17.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is five payments past due in the amount of \$5,201.24 plus late fees of \$59.84, repossession fees in the amount of \$1,561.00, and attorney fees of \$944.00. Decl. of Dan Balmer, Doc. #19.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at \$15,684.00 and the amount owed to Movant is \$25,008.50. Balmer Decl., Doc. #19; Decl. of Johnnelle Gomez, Doc. #20.

Accordingly, pending opposition being raised at the hearing, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least one post-petition payment and the Vehicle is a depreciating asset.

3. [24-12857](#)-A-7 **IN RE: CARLOS MIRANDA**
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2024 [\[19\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
BENNY BARCO/ATTY. FOR DBT.
MEHRDAUD JAFARNIA/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Chevrolet Silverado 1500, VIN: 3GCPWCEKXKG125725 ("Vehicle"). Doc. #19.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,287.70, which includes late fees of \$55.80. Decl. of Adriana Arredondo, Doc. #22. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$27,600.00 and the debtor owes \$40,076.56. Arredondo Decl., Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

4. [24-12678](#)-A-7 **IN RE: LLOYD JOHNSTON**
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-28-2024 [\[15\]](#)

UNITED WHOLESALE MORTGAGE, LLC./MV
MICHAEL REID/ATTY. FOR DBT.
MEHRDAUD JAFARNIA/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, United Wholesale Mortgage, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 609 Monterey Ave., Chowchilla, California 93610 ("Property"). Doc. #15.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$8,675.14. Decl. of Mary Gracia, Doc. #17.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The Property is valued at \$250,000.00, and the debtor owes \$261,207.11. Gracia Decl., Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least five payments, both pre- and post-petition, to Movant.