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Collier Consumer Bankruptcy Forms

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Part CS6 Modifying, Maintaining and Enforcing the Automatic Stay *

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§ CS6.05 Modification of Stay to Allow Eviction from Leased Premises

Form No. CS6.05-1 Notice of Motion and Motion for Relief from Stay--Unlawful Detainer; Supporting Declaration(s); 11 U.S.C. § 362n*

UNITED STATES BANKRUPTCY COURT

[Name of District]

[Caption as Official Form 16B, See Form No. CS26.02-2]

NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(1) (with supporting declarations)

(MOVANT: _____)

(Unlawful Detainer)

1. NOTICE IS HEREBY GIVEN to the Debtor(s), Debtor's(s') attorney, and other interested parties ("Responding Party") that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting relief from the automatic stay or for an order confirming that the automatic stay does not apply as to Debtor(s) and Debtor's(s') bankruptcy estate on the grounds set forth in the attached Motion.

NOTICE IS ALSO GIVEN to the Trustee as an additional Responding Party, because the Motion relates to a nonresidential property.

2. Hearing Location:

3. a. This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule *[Cite Applicable Local Rule]*. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of the Motion.

This Motion is being heard on SHORTENED TIME. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence must be filed and served: at the hearing at least _____ court days before the hearing.

(1) A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).

(2) A Motion for Order Shortening Time was filed per Local Bankruptcy Rule [Cite Applicable Local Rule] and was granted by the Court and such motion and order have been or are being served upon the debtor and trustee, if any. .

4. [If Applicable: You may contact the Bankruptcy Clerk's office to obtain a copy of an approved court form for use in preparing your response, or you may prepare your response using the format required by Local Bankruptcy Rule [Cite Local Bankruptcy Rule]].

5. If you fail to file a written response or fail to appear at the hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Dated: [Date of Signature]

Print Law Firm Name (if applicable)

Print Name of Individual Movant or Attorney for Movant

Signature of Individual Movant or Attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY (Unlawful Detainer)
(MOVANT: _____)

1. **The Property at Issue:** Movant moves for relief from the automatic stay to obtain possession of the residential or nonresidential premises at the following address (the "Property"):

Street:
Apartment/Suite No.:
City, State, Zip Code:

The Property is: Residential Nonresidential

2. **Case History:**

a. A Voluntary Involuntary Petition under Chapter 7 11 12 13 was filed on (specify date):

b. An Order of Conversion to Chapter 7 11 12 13 was

entered on (*specify date*):

- c. Plan was confirmed on (*specify date*):
- d. Other bankruptcy cases of the Debtor were pending within the year ending on the petition date. See attached Declaration.:
- e. Plan was confirmed on (*specify date*):
- c. Other bankruptcy cases affecting this Property have been pending within the two years ending on the petition date. See attached Declaration.

3. Grounds for Relief from Stay:

- a. Pursuant to *11 U.S.C. § 362(d)(1)*, cause exists because, as of petition date, Debtor(s) had no right to continued occupancy of the premises, as follows:
- (1) An unlawful detainer judgment in favor of Movant was entered pre-petition.
- A. The debtor has not filed with the petition and served on the Movant the certification required under *11 U.S.C. § 362(l)(1)*.
- B. The debtor or adult dependent of debtor has not deposited with the Clerk any rent that would become due during the 30-day period after the filing of the petition.
- C. The debtor or adult dependent of debtor has not filed and served on the Movant the further certification required under *11 U.S.C. § 362(l)(2)* that the entire monetary default that gave rise to the judgment has been cured.
- D. The Movant has filed and served an objection to the certification referenced in (a)(1)(A) and/or (a)(1)(C) above. A copy of the objection is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
- (2) An unlawful detainer proceeding was commenced pre-petition.
- (3) Movant acquired title to the premises by foreclosure sale pre-petition and recorded the deed within the period provided by state law for perfection.
- (4) Movant acquired title to the premises by foreclosure sale postpetition and recorded the deed within the period provided by state law for perfection.
- (5) The lease or other right of occupancy expired by its terms prepetition.
- (6) The lease has been rejected or deemed rejected by operation of law.

- (7) Lease payments have not been made since the filing of the petition.
- (8) An eviction action has been filed to obtain possession of the subject residential property on grounds of endangerment of the property or because of illegal use of controlled substances on the property and Movant has filed and served upon Debtor a certification that such an action was filed or that within the 30 days preceding the certification Debtor has endangered the subject property or illegally allowed the use of controlled substances on the property. A copy of Movant's certification is attached as Exhibit _____. Debtor has has not filed an objection to Movant's certification. A copy of Debtor's objection, if any, is attached as Exhibit _____. A hearing on this objection is set for: _____.
- b. Pursuant to *11 U.S.C. § 362(d)(2)(A)*, Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.
- c. The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.
- (1) Movant is the only creditor or one of very few creditors listed on the master mailing matrix.
- (2) Other bankruptcy cases have been filed asserting an interest in the same property.
- (3) The Debtor(s) filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) have been filed.

4. Evidence in Support of Motion: (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)

- Movant submits the attached Unlawful Detainer Declaration to provide evidence in support of the Stay Motion pursuant to Local Bankruptcy Rules.
- Other declaration(s) are also attached in support of this motion.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

1. Termination of the stay to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to obtain possession of the Property..
2. Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as set forth in the attached Declaration(s).

- 3. An order confirming that the automatic stay does not apply.
- 4. Alternatively, if immediate relief from stay is not granted with respect to the Property because the Property is the subject of a lease that may be assumable:
 - a. Establishment of a deadline for assumption or rejection of the lease.
 - b. Adequate protection in the form of regular payments at the lease rate from petition date until assumption or rejection of the lease.
- 5. Additional provisions requested:
 - a. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
 - b. Termination or modification of the Co-debtor Stay of *11 U.S.C. § 1201* or *§ 1301* as to the above-named co-debtor, on the same terms and conditions.
 - c. That the 10-day stay prescribed by *Bankruptcy Rule 4001(a)(3)* be waived.
 - d. See Extraordinary Relief Attachment (*Attach Optional Form*).
 - e. For additional relief requested, see attached continuation page.
- 6. This order will be binding in any and all chapters following any later conversion of this case to a case under a different chapter of Title 11 of the United States Code, unless a specific exception has been provided herein.

Dated: *[Date of Signature]*

Respectfully submitted,

Movant Name

Law Firm Name (if applicable)

By: _____

Signature

Name: _____

Individual Movant or Attorney for Movant

UNLAWFUL DETAINER DECLARATION
(MOVANT: _____)

I, _____, declare as follows:
(Print Name of Declarant)

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the residential or nonresidential real property that is the subject of this Motion ("Property") because:

- I am the Movant and owner of the Property.
- I manage the Property as the authorized agent for the Movant.
- I am employed by Movant as (state title and capacity):
- Other (*specify*):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the rental of this Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. The address of the Property that is the subject of this Motion is:

Street Address:
Apartment/suite no.:
City, State, Zip Code:

4. Movant is the legal owner of the Property, or the owner's legally authorized agent. A true and correct copy of the Trustee's Deed upon Sale, lease, rental agreement, or other document evidencing Movant's interest in the Property is attached as Exhibit _____. A true and correct copy of any applicable document establishing Movant's authority as agent for the owner is attached as Exhibit _____.

5. The Property is: residential property non-residential property

a. Debtor(s) occupies the Property

- on a month-to-month tenancy pursuant to a lease that is in default
- after a foreclosure sale on: other (*specify*):

b. Debtor(s) has/have failed to pay the monthly rent of \$_____ since the following date (*specify date*):

c. In addition, Debtor(s) has/have failed to pay other obligations under the lease, including the following (*See attached continuation page for itemization*):

- (1) Common area maintenance charges
- (2) Property taxes
- (3) For additional obligations, see attached continuation page.

6. Debtor(s)'s bankruptcy petition in this case was filed on (*specify date*):

7. Procedural status in state court (*indicate all that apply, and provide dates for completed steps*):

a. Movant caused a Notice to Quit to be served upon the Debtor(s) on (*specify date*)

A true and correct copy of which is attached hereto as Exhibit _____

b. Before the filing of the petition, Movant had commenced an unlawful detainer proceeding in state court and completed the following:

(1) Movant filed a Complaint for Unlawful Detainer against the Debtor(s), a true and correct copy of which is attached as Exhibit _____, on (*specify date*):

(2) Trial was held on (*specify date*):

(3) An Unlawful Detainer Judgment against the Debtor(s), a true and correct copy of which is attached as Exhibit _____, was entered on the Complaint for Unlawful Detainer on (*specify date*):

(4) A Writ of Possession for the Property, a true and correct copy of which is attached as Exhibit _____, was issued by the state court on (*specify date*):

(5) The Debtor has not filed with the petition and served on the Movant the certification required under *11 U.S.C. § 362(l)(1)*.

(6) The Debtor or adult dependent of Debtor has not deposited with the Clerk any rent that would become due during the 30- day period after the filing of the petition.

(7) The debtor or adult dependent of debtor has not filed and served on the Movant

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the further certification required under *11 U.S.C. § 362(l)(2)* that the entire monetary default that gave rise to the judgment has been cured.

(8) Movant has filed and served an objection to Debtor's certification referenced in paragraph (5) and/or (7) above, a copy of which is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.

(9) An eviction action has been filed to obtain possession of the Property on grounds of endangerment of the Property or because of illegal use of controlled substances on the Property and Movant has filed a certification that such action was filed or that Debtor has endangered the subject property within 30 days preceding the certification or allowed the illegal use of controlled substances on the Property. A copy of Movant's certification is attached hereto as Exhibit _____. Debtor has has not filed an objection to Movant's certification. A copy of Debtor's objection, if filed, is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.

c. The lease was rejected on _____ (date):

(1) by operation of law.

(2) by Order of the Court.

d. The regular lease payments have not been made since the filing of the petition.

8. Debtor(s) has/have no equity in the Property because Debtor(s) does/do not have a lease interest that could be assumed or assigned under *11 U.S.C. § 365*.

9. The Property is not necessary to an effective reorganization because (*specify*):

a. The Property is residential and is not producing income for the Debtor(s).

b. The Property is commercial, but no reorganization is reasonably in prospect.

c. Other (*specify*):

10. The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.

a. Movant is the only creditor or one of very few creditors listed on the master mailing matrix.

- b. Other bankruptcy cases have been filed asserting an interest in the same property.
- c. The Debtor(s) filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) have been filed.
- d. Other (*specify*):

11. Other bankruptcy cases that have prevented Movant from recovering possession of this Property include the following:

a. Case Name:

Case Number:

Chapter:

Date Filed:

Date Dismissed:

Relief from stay re this Property

was was not granted.

b. Case Name:

Case Number:

Chapter:

Date Filed:

Date Dismissed:

Relief from stay re this Property

was was not granted.

c. See attached continuation page for more information about other cases.

12. Movant seeks annulment of the automatic stay so that the filing of the bankruptcy petition does not affect any and all of the actions set forth in paragraph 7 that were taken after the filing of the bankruptcy petition in this case.

a. These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.

b. Although Movant knew about the bankruptcy filing, Movant had previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting this Property as set forth in paragraph 11 above.

c. For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on _____ at _____. (city, state)

Print Declarant's Name

Signature of Declarant

PROOF OF SERVICE

STATE OF [Name of State]

COUNTY OF [Name of County]

1. I am over the age of 18 and not a party to the within action. My business address is as follows:

2. **Regular Mail Service:** On [Date of Service], pursuant to Local Bankruptcy Rule [Cite Applicable Local Rule], I served the documents described as: NOTICE OF MOTION and MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (including supporting declarations) on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at [Place of Mailing], addressed as set forth on the attached list.

Note: If the Notice and Motion have been served pursuant to an Order Shortening Time ("Order"), you must file a Proof of Service that indicates that the notice and service requirements contained in the Order have been met.

3. **See attached list for names and addresses of all parties and counsel that have been served.** (In the manner set forth in Local Bankruptcy Rule [Cite Applicable Local Rule], specify capacity in which service is made; e.g., Debtor, Debtor's Attorney, Trustee, Trustee's Attorney, Creditors Committee or 20 largest unsecured creditors, etc.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: [Date of Signature]

Type Name

Signature

Form No. CS6.05-2 Order Granting Motion for Relief from Stay--Unlawful Detainer; 11 U.S.C. § 362n*

UNITED STATES BANKRUPTCY COURT

[Name of District]

[Caption as Official Form 16B, See Form No. CS26.02-2]

ORDER GRANTING MOTION FOR RELIEF FROM STAY UNDER 11 U.S.C. § 362

(Unlawful Detainer)

(MOVANT: _____)

1. The Motion was: Contested Uncontested Settled by Stipulation

2. The street address of the residential property (the "Property") to which this Order applies is as follows

(specify):

Street:

Apartment/Suite no.:

City, State, Zip Code:

3. The Court orders that the Motion is granted under 11 U.S.C. § 362(d)(1) and (d)(2). The stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a), if applicable, (the "Stay") is/are terminated as to Debtor(s) and Debtor's(s) bankruptcy estate with respect to Movant, its successors, transferees and assigns ("Movant"). Movant may enforce its remedies to obtain possession of the Property in accordance with applicable non-bankruptcy law, but may not pursue any deficiency claim against the Debtor(s) or property of the estate, except by filing a Proof of Claim in this bankruptcy case pursuant to 11 U.S.C. § 501.

The Court further orders as follows:

a. Movant shall not cause the Debtor(s) to be locked out before the following date

(specify):

b. The Stay is annulled retroactive to the petition date. Any post-petition acts taken by Movant to enforce its remedies to obtain possession of the Property shall not constitute a violation of the Stay.

c. This Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

d. All provisions of this Order also apply to relief from the co-debtor stay under 11 U.S.C. § 1201 or § 1301, as applicable to the above-named co-debtor.

e. The 10-day stay provided by Bankruptcy Rule 4001(a)(3) is waived.

f. The provisions set forth in the Extraordinary Relief Attachment shall also apply.

(Use Optional Form)

g. See attached continuation page for additional provisions. :

Dated: _____

[Name of Judge]

United States Bankruptcy Judge

(OPTIONAL)

EXTRAORDINARY RELIEF ATTACHMENT

(MOVANT: _____)

(This Attachment is the continuation page for Paragraph _____ of the foregoing Order)

Based upon evidence of efforts by Debtor(s) or others acting in concert with Debtor(s) to delay, hinder or defraud Movant by abusive bankruptcy filings, this Court further orders as follows:

1. This Order is binding and effective in any bankruptcy case commenced by or against any successors, transferees, or assignees of the above-named Debtor(s) for a period of 180 days from the hearing of this Stay Motion.
 - without further notice.
 - upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

2. This Order is binding and effective in any bankruptcy case commenced by or against any successors, transferees, or assignees of the above-named Debtor(s) for a period of 180 days from the hearing of the Motion
 - without further notice.
 - upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

3. This Order is binding and effective in any bankruptcy case commenced by or against any debtor(s) who claim(s) any interest in the Property for a period of 180 days from the hearing of the Motion
 - without further notice.
 - upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

4. This Order is binding and effective in any future bankruptcy case, no matter who the debtor(s) may be
 - without further notice.
 - upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

5. The Debtor(s) is/are hereby enjoined from transferring all or any portion of the Property for a period of 180 days from the hearing of the Motion except as may be authorized by further order of this

Court, and any transfer in violation of this Order is void.

6. The Sheriff or Marshal may evict the Debtor(s) and any other occupant from the subject Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing of this Stay Motion.

without further notice.

upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable non-bankruptcy law.

7. Other (*specify*):

Judge's Initials

NOTICE OF ENTRY OF JUDGMENT OR ORDER AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule [*Cite Applicable Local Rule*], that an ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (in whole or in part) was entered on (*specify date*):

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (*specify date*):

Dated: _____

[*Name of Clerk*]

Clerk of the Bankruptcy Court

By: _____

Deputy Clerk

Legal Topics:

For related research and practice materials, see the following legal topics:
Bankruptcy Law Claims General Overview Bankruptcy Law Reorganizations Plans General Overview Contracts Law Types of Contracts Lease Agreements General Overview

FOOTNOTES:

(n1)Footnote *.

Source: This form is adapted from Central District of California Local Form F 4001-1M.UD, approved for use in that court. It may be adapted for use in other jurisdictions. Consult local rules concerning requirements.

(n2)Footnote *.

Source: This form is adapted from Central District of California Local Form F 4001-10.UD, approved for use in that court. It may be adapted for use in other jurisdictions. Consult local rules concerning requirements.

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