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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re:

11 **NICOLE R. PRAUSE**

12 Debtor.

Case No.: 2:20-BK-17525

Chapter 7

13 **CREDITOR ALEXANDER RHODES'**
14 **REPLY TO NICOLE R. PRAUSE'S**
15 **RESPONSE TO MOTION FOR RELIEF**
16 **FROM STAY**

Date: December 8, 2020

Time: 10:00 a.m.

Crtrm.: 1545

THE MALONEY FIRM, APC

TABLE OF CONTENTS AND AUTHORITIES

I.	INTRODUCTION	1
II.	RELEVANT FACTUAL AND PROCEDURAL HISTORY	2
	A. Discharge Was Already Granted o Prause.....	2
	B. Prause’s Coverage In The Defamation Action	3
	D. Jurisdictional Questions In The Defamation Action.....	4
	E. Prause’s Continuing Post-Petition Defamation Of Rhodes	4
III.	LEGAL ARGUMENT.....	4
	A. Rhodes Appropriately Seeks Relief From Stay For Cause To Litigate The Defamation Action And To Stop Post Petition Defamation.....	4
	B. “Cause” Exists To Allow Rhodes Relief From Stay To Litigate The Defamation Action.....	5
	1. Relief From Stay Will Resolve All Issues As To Rhodes	6
	2. The Defamation Action Lacks Connection To The Bankruptcy Case	6
	3. Prause And Liberos Are Not Fiduciaries	7
	4. There Is No Specialized Tribunal	7
	5. Prause’s Insurance Carrier Is Covering Her Defense	7
	6. The Defamation Action Involves No Other Parties	7
	7. No Other Creditors Will Be Prejudiced By The Defamation Action	8
	8. There Is No Equitable Subordination Under § 510 (c)	8
	9. There Is No Resulting Judicial Lien	8
	10. The Interests Of Judicial Economy Support Allowing The Defamation Action To Proceed.....	8
	11. Delays In The Defamation Action Arise Solely From Prause’s Dilatory Behavior In Discovery.....	9
	12. The “Balance Of Hurt” Favors Allowing Rhodes To Complete Litigation In The Defamation Action.....	9
IV.	CONCLUSION.....	10

TABLE OF CONTENTS AND AUTHORITIES

CASES

<u>Acevedo v. Van Dorn Plastic Mach. Co.,</u> 68 B.R. 495, 498 (Bankr. E.D.N.Y. 1986).....	8
<u>Grogan v. Garner,</u> 498 U.S. 279, 285	6, 9
<u>In re Am. Spectrum Realty, Inc.,</u> 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015).....	6, 7, 9
<u>In re Berlin,</u> 513 B.R. 430, 436 (Bankr. E.D.N.Y. 2014).....	8
<u>In re Curtis,</u> 40 B.R. 795, 806 (Bankr. D. Utah 1984)	6
<u>In re Elmore,</u> 94 B.R. 640, 678 (Bankr. C.D. Cal. 1988).....	4
<u>In re Kemble,</u> 776 F.2d 802, 807 (9 th Cir. 1985)	8
<u>In re MacDonald,</u> 755 F.2d 715, 717 (9 th Cir. 1985)	4
<u>In re Salzer,</u> 52 F.3d 708 (7 th Cir. 1995)	5
<u>In re Sangha,</u> 597 B.R. 902, 915 (Bankr. C.D. Cal. 2019).....	9
<u>In re Santa Clara County Fair Association, Inc.,</u> 180 B.R. 564, 566 (9 th Cir. BAP 1995).....	7
<u>In re Tiscareno,</u> 551 B.R. 1, 20 (Bankr. N.D. Cal. 2016)	9
<u>In re Universal Life Church, Inc.,</u> 127 B.R. 453, 455 (E.D. Cal. 1991).....	4
<u>In re Wardrobe,</u> 559 F.3d 932, 937 (9 th Cir. 2009)	5

TABLE OF CONTENTS AND AUTHORITIES

STATUTES

11 U.S.C.A. § 362.....	4
11 U.S.C.A. § 510.....	6, 8
11 U.S.C.A. § 522.....	6
11 U.S.C.A. § 523.....	8, 9

THE MALONEY FIRM, APC

1 **I. INTRODUCTION**

2 Creditor Alexander Rhodes (“Rhodes”) seeks an order from this Court allowing him to
3 pursue an action in the Federal District Court in Pennsylvania for defamation, an action that would
4 result in a nondischargeable debt against the debtor. Debtor Nicole R. Prause (“Prause”) and her
5 company Liberos LLC (“Liberos”) were sued by Rhodes for defamation (the “Defamation Action”),
6 and Prause and Liberos initiated bankruptcy on the eve of deposition, largely in order to utilize the
7 bankruptcy stay to avoid providing testimony and producing documents. Now, despite the fact that
8 **discharge was already granted** in this bankruptcy, Prause opposes this Motion hoping to further
9 what the Court in the Defamation Action called “dilatory conduct.” As such, Rhodes respectfully
10 asks this court grant his motion for relief from stay in order to pursue the Defamation Action and to
11 stay the resulting adversary proceeding against Prause while the Defamation Action concludes.

12 To briefly restate the background, Rhodes created a website which provides support and
13 resources to recovering porn addicts (generally “NoFap”). Rhodes asserts that Prause, a self-
14 proclaimed sex researcher, and Liberos, Prause’s for-profit sex research company, have continually
15 engaged in a defamation campaign against Rhodes for over two years. Rhodes initiated the
16 Defamation Action against Prause and Liberos in October of 2019. The Court in the Defamation
17 Action entered discovery orders against Prause and Liberos after they refused to participate in
18 discovery in good faith, finding their actions to be “dilatory conduct” and “obfuscation.” Thereafter,
19 Prause and Liberos filed bankruptcy to avoid having to sit for deposition and produce documents in
20 the Defamation Action. With the benefit of the bankruptcy stay in place, Prause and Liberos
21 continued making defamatory statements about Rhodes. Rhodes has filed an adversary proceeding
22 against Prause to protect his rights, (Docket No. 24), but wishes that matter to be stayed while he
23 completes the litigation in the Defamation Action.

24 Prause opposes this motion by arguing that “Movant has not even successfully established
25 jurisdiction in the Western District of Pennsylvania Case,” (Response Points and Authorities, 1:21-
26 22), and erroneous claims that granting Rhodes’ motion “contravenes the interests of judicial
27 economy,” (*id.* At 1:17). These arguments fail for multiple reasons. First, based on Prause’s own
28 failure to oppose all of the motions for relief as to herself and her company, Prause cannot argue that

denying the motion will protect Prause from participating in litigation in other jurisdictions. As referenced in his moving papers, Rhodes filed a Motion for Relief from Stay in the bankruptcy of Prause's wholly owned entity Liberos, (Docket No. 16, Case No. 2:20-BK-17672), but Liberos failed to respond to that Motion. As such, Prause will continue to be pulled into litigation in Pennsylvania as the Defamation Action proceeds, no matter the outcome of this Motion. Additionally, creditor Aaron Minc filed both an Adversary Proceeding, (Docket No. 23), and a Motion for Relief from Stay to continue pursuing Prause in ongoing litigation in Ohio, (Docket No. 20). However, Prause failed to file any response as to that motion. Presumably, Prause will participate in litigation in Ohio as a result of Mr. Minc's Motion.

Second, Prause already received discharge in this action, with the trustee failing to find any assets within the estate to distribute to creditors. As such, this litigation will have no effect on the administration of the bankruptcy estate.

Third, the Defamation Action can resolve fairly easily, pending Prause's cooperation with discovery. To that end, the delays to date are the result of Prause' own "dilatory conduct" and "obfuscation" during discovery. To deny this Motion would be to permit Prause to benefit from her own bad acts in litigation.

As such, Rhodes asks that this court grant his requested relief as follows: (1) grant a relief from stay to allow Rhodes to pursue the Defamation Action and liability against Prause for post-petition activity; and (2) to stay the Adversary Proceedings until the Defamation Action has concluded.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

C. Discharge Was Already Granted o Prause

This Court granted an order of discharge as to Prause on November 23, 2020. Docket No. 29. Prause filed her Response to this Motion on the following day, November 24, 2020. Docket No. 30. As of this date, there has been no change from the Trustee's statement that "No property appears to be available to pay creditors." Docket No. 5.

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B. Prause's Coverage In The Defamation Action

In contrast to the Adversary Proceeding, in which Prause and Liberors will have to pay for their own defense, there is currently coverage being paid for by insurance in the Defamation Action:

As noted above, the Policy imposes on Chubb a duty to defend covered matters. Along these lines, we are pleased to advise that **Chubb will defend you and Liberors LLC in this matter** subject to this reservation of rights.

Prause Dec. Ex. B, emphasis added.

C. Prause's Dilatory Conduct In The Defamation Action

In the Defamation Action, Rhodes requested leave to conduct jurisdictional discovery regarding many of Prause's claims raised by a Motions to Dismiss she had filed. This request was granted by the Court on May 15, 2020, and the Court allowed Rhodes to initiate discovery upon Prause, Liberors, and other entities. Rhodes Dec. Ex. 1, page 678. Ultimately, the Court granted an order to compel Prause to respond to jurisdictional discovery in the Defamation Action, finding that her refusal to appropriately respond to discovery amounted to "**dilatory** conduct" and "obfuscation." Rhodes Dec. Ex. 1, page 802, emphasis added.

Rather than provide responses as directed—without objection and limited redactions to protect Prause's personal information—Prause responded to the written discovery with improper objections, refusals to produce certain documents required by the Court's order, and improper over-redactions to documents she had been ordered to produce. Further, Prause appears to have intentionally timed the bankruptcy stay in this matter and the Liberors LLC bankruptcy to block Rhodes from conducting depositions in the Defamation Action. Stebbins Dec. ¶ 8. The Court in the Defamation case stayed that matter, as it should, but issued the following order with the stay, acknowledging Prause's use of bankruptcy to avoid participating in discovery:

To the extent that Plaintiff asserts that the initiation of bankruptcy filings is an attempt to interfere with the scheduled key discovery in this case, Plaintiff may seek relief from the Bankruptcy Court.

Rhodes Dec. Ex. 1, page 892.

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D. Jurisdictional Questions In The Defamation Action

The question of jurisdiction needs to be resolved in the Defamation Action, but Rhodes has sufficient evidence to believe that, once the deposition of Prause concludes, it will be resolved in his favor. For example, Prause has intentionally availed herself of Pennsylvania, conducting related business in Pennsylvania, earning income in Pennsylvania, and directing the defamatory statements at issue to Pennsylvania's jurisdiction. *See* Rhodes Dec. Ex. 1, pages 444-448; Supp. Rhodes Dec. ¶¶ 6-10; Contract, Stebbins Dec. Ex. 6. Notwithstanding, that question is for the Court in the Defamation Action.

E. Prause's Continuing Post-Petition Defamation Of Rhodes

Even after initiating this bankruptcy, Prause continues to make post-petition defamatory statements against Rhodes. For example, on October 14, 2020, the date of Prause's continued Creditors' Meeting in this action (necessitated by her failure to disclose intellectual property assets and turn over contractual documents requested by the Trustee), Prause tweeted from an account using the Liberos trademark that Rhodes "came to LA planning to kill" her. Supp. Rhodes Dec. Ex. 3. Additionally, Prause made similar defamatory statements about Rhodes via the Twitter handle @BrainOnPorn and other online platforms on a frequent basis. *Id.* ¶ 14. It is clear that without the declaratory and injunctive relief requested in the Defamation Action, Prause plans to continue defaming Rhodes while she is protected by the procedural barriers of the bankruptcy stay.

III. LEGAL ARGUMENT

A. Rhodes Appropriately Seeks Relief From Stay For Cause To Litigate The Defamation Action And To Stop Post Petition Defamation

By his motion, Rhodes has asked this Court to (1) grant relief from stay to allow Rhodes to continue and complete the Defamation Action, in seeking liability, damages, declaratory relief, and injunctive relief against Prause and Liberos; and (2) stay the Adversary Proceedings to allow the Defamation Action to conclude. It is appropriate to grant the relief "for cause," and the Court is granted latitude sufficient to grant the requested relief. 11 U.S.C. § 362 (d)(1); *In re Elmore*, 94 B.R. 640, 678 (Bankr. C.D. Cal. 1988); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). *In re Universal Life Church, Inc.*, 127 B.R. 453, 455 (E.D. Cal. 1991) ("The legislative history of § 362

(d)(1) states that ‘a desire to permit an action to proceed to completion in another tribunal may provide [] cause’ for relief from a stay”).

Further, as Prause and Liberos continue their defamatory attacks against Rhodes, the order should be wide enough to ensure that Rhodes’ litigation can enjoin and seek liability against Prause for post-petition defamation, in spite of Prause’s opposition to the Motion. See also In re Salzer, 52 F.3d 708 (7th Cir. 1995) (once a Chapter 7 debtor's leasehold interest had been rejected by the Chapter 7 trustee, debtor's new leasehold interest with the lessor was not subject to the automatic stay); In re Wardrobe, 559 F.3d 932, 937 (9th Cir. 2009) (“numerous avenues of relief are available to a creditor to ensure that any resulting judgment does not violate the scope of the order”).

As such, and to repeat, Rhodes seeks an order for relief from stay to pursue the Defamation Action in its current non-bankruptcy venue, and to stay the Adversary Proceedings until the Defamation Action concludes.

B. “Cause” Exists To Allow Rhodes Relief From Stay To Litigate The Defamation Action

As admitted in Prause’s Response, the following factors should be weighed in determining whether cause exists to grant Rhodes’ requested relief:

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 foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;

8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510 (c);

9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522 (f);

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and

12. The impact of the stay on the parties and the “balance of hurt.”

In re Am. Spectrum Realty, Inc., 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015).

As set out below, Prause is incorrect in claiming that several factors weigh against granting relief from the stay and staying Rhodes’ Adversary Proceeding, but rather, the total weight of those factors creates cause for Rhodes’ requested relief.

1. Relief From Stay Will Resolve All Issues As To Rhodes

The Defamation Action will resolve the entirety of Rhodes’ claims, and also act as collateral estoppel as to the Adversary Proceedings against Prause and Liberos, such that any questions remaining for the Adversary Proceedings will be issues of law to be decided on summary judgment. Grogan v. Garner, 498 U.S. 279, 285 (collateral estoppel applies to nondischargeability actions). Therefore—contrary to Prause’s claims—allowing Rhodes to complete the Defamation Action will allow this Court to avoid re-trying the same case in the Adversary Proceedings. As such, a determination in the Defamation Action will resolve all issues, and “[t]his factor weighs in favor of granting relief from stay.” In re American Spectrum Realty, Inc., 540 B.R. at 739.

2. The Defamation Action Lacks Connection To The Bankruptcy Case

Allowing Rhodes to litigate the Defamation Action, rather than the Adversary Proceedings, will remove complications, and, as a result of Prause already receiving discharge in this bankruptcy action, it is absurd to claim that the Defamation Action will somehow interfere with administration of Prause’s bankruptcy. “The **most important** factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another is the effect of such litigation on the administration of the estate.” In re Curtis, 40 B.R. 795, 806 (Bankr. D. Utah 1984), emphasis added. Clearly, the Defamation Action arises from pre-petition statements made by Prause and Liberos, and

1 although Prause continues to make defamatory statements, those statements are also unrelated to the
2 bankruptcy. Further, as Prause is insured in the Defamation Action, the assets of the bankruptcy
3 estate will be unaffected by the continued defense of the Defamation Action as her insurance pays
4 for that defense. Most importantly, Prause was **already discharged** and the trustee has not found
5 any assets to distribute to the estate.

6 In contrast, forcing the parties to litigate the matter in the Adversary Proceedings will result
7 in substantial attorneys' fees for Prause, damaging the estate. In re American Spectrum Realty, Inc.,
8 540 B.R. at 739 ("denying relief from stay may result in additional fees and costs"). Additionally, as
9 noted by the Court in the Defamation Action, Prause timed her bankruptcy petition specifically to
10 avoid participating in discovery in the Defamation Action. As such, "[t]his factor weighs in favor of
11 granting relief from stay." Id. at 740.

12 **3. Prause And Liberos Are Not Fiduciaries**

13 The Parties agree that this factor is not applicable.

14 **4. There Is No Specialized Tribunal**

15 The Parties agree that there is no specialization in the tribunal adjudicating the case.

16 **5. Prause's Insurance Carrier Is Covering Her Defense**

17 Insurance covers the defense of the Defamation Action, weighing in favor of relief of stay.
18 While under a reservation of rights, Prause's litigation costs in the Defamation Action have been and
19 will continue to be covered by insurance—with no evidence to the contrary—a fact weighing in
20 favor of granting relief from stay. In re Santa Clara County Fair Association, Inc., 180 B.R. 564, 566
21 (9th Cir. BAP 1995). In other words, there is no benefit to the bankruptcy estate to force Prause to
22 pay for the defense of the Adversary Proceedings from her personal finances, rather than allowing
23 insurance to pay for the defense of the Defamation Action.

24 **6. The Defamation Action Involves No Other Parties**

25 The debtors, Prause and Liberos, are the only defendants to the Defamation Action. As
26 discharge has been granted, and these are the only parties, relief from stay should be granted.

27
28 ////

7. No Other Creditors Will Be Prejudiced By The Defamation Action

The Defamation Action will not prejudice any other creditors. Prause was already granted discharge **and** the trustee has found no assets to distribute from the bankruptcy estate. Rather, the opposite is true, as allowing insurance to provide a defense to the Defamation Action reduces the burden on the bankruptcy estate and Prause. Prause incorrectly argues that granting relief to Rhodes will “favor Movant over other creditors who are seeking relief in other lawsuits against Defendant in both the bankruptcy court and other jurisdictions,” somehow resulting in prejudice to those other creditors. Response Memorandum 14:17. However, there is no relation between the Defamation Action and the other creditors’ claims against Prause. Each of the claims deals with separate claims and issues, and the benefits of access to insurance defense in the Defamation Action are a net benefit to Prause.

8. There Is No Equitable Subordination Under § 510 (c)

No subordination or indemnity claims against the estate will arise as a result of the Defamation Action.

9. There Is No Resulting Judicial Lien

No judicial lien would result from the Defamation Action.

10. The Interests Of Judicial Economy Support Allowing The Defamation Action To Proceed

The nondischargeable nature of the claims at issue in the Defamation Action and Prause’s “dilatory” behavior in discovery therein, alone, are sufficient reason to grant Rhodes’ requested relief. The nondischargeable nature of a tort at issue in an action in another venue is sufficient reason to find cause to grant a relief form stay. Acevedo v. Van Dorn Plastic Mach. Co., 68 B.R. 495, 498 (Bankr. E.D.N.Y. 1986). Further, “dilatory behavior” on the part of the debtor in the non-bankruptcy forum is properly considered as weighing in favor of allowing relief of stay and for the matter to proceed in the non-bankruptcy forum. In re Kemble, 776 F.2d 802, 807 (9th Cir. 1985). A defamation per se case is clearly non-dischargeable. In re Berlin, 513 B.R. 430, 436 (Bankr. E.D.N.Y. 2014) (“The Court finds that the Debtor made the defamatory statements with the intent to injure the Plaintiffs, thereby establishing ‘willfulness’ within the meaning of section 523 (a)(6)”; In

1 re Tiscareno, 551 B.R. 1, 20 (Bankr. N.D. Cal. 2016) (“Defamatory claims may be non-
2 dischargeable under § 523 (a)(6)”; see also In re Sangha, 597 B.R. 902, 915 (Bankr. C.D. Cal.
3 2019) (“Court shall enter partial summary judgment as to the ‘maliciousness’ prong of § 523 (a)(6)”
4 in relation to claim of slander). The trial in the Defamation Action would act as collateral estoppel as
5 to Rhodes’ claims against Prause and Liberos. Grogan, 498 U.S. at 285 (collateral estoppel applies to
6 nondischargeability actions). As such, “[t]his factor weighs in favor of granting relief from stay,”
7 heavily. In re American Spectrum Realty, Inc., 540 B.R. at 742.

8 Prause argues that allowing the Defamation Action to proceed inhibits judicial economy,
9 because, “This case could be more conveniently and efficiently heard in bankruptcy court.”
10 Response Memorandum 8:12-14. Simply put, that is not the case. Denying this Motion would result
11 in a split of the Defamation Action, as Prause did not direct Liberos to oppose Rhodes’ motion for
12 relief from stay in Liberos’ bankruptcy action. Further, the argument ignores that Prause’s bad acts,
13 “dilatory conduct,” and “obfuscation” are the sole cause the Defamation Action has not yet resolved
14 the jurisdictional question. Finally, this bankruptcy case has already granted Prause discharge, and as
15 such, there is no reason to stop the Defamation Action from proceeding in Rhodes’ chosen forum.

16 **11. Delays In The Defamation Action Arise Solely From Prause’s Dilatory**
17 **Behavior In Discovery**

18 The Defamation Action will not slow down the bankruptcy. Rather, Prause already received
19 discharge, and how long the Defamation Action takes to resolve will have no impact on the
20 bankruptcy estate or other creditors. Rather, the Defamation Action should resolve expeditiously,
21 provided Prause ceases engaging in “dilatory conduct” and “obfuscation.”

22 **12. The “Balance Of Hurt” Favors Allowing Rhodes To Complete Litigation**
23 **In The Defamation Action**

24 If the Motion is denied, Rhodes will be prejudiced in the following ways:

- 25 • It will allow Prause to avoid the consequences of her bad acts in the Defamation Action,
26 namely discovery orders favoring Rhodes as a result of Prause’s “dilatory conduct” and
27 “obfuscation;”
28

- It will force Rhodes to split the Defamation Action, and continue litigating in Pennsylvania as to Liberors (and Rhodes as the principal of Liberors), but also litigate against Prause in the Adversary Proceeding in this Court;
- It will allow Prause to continue her post-petition tortious activity, without allowing Rhodes the ability to seek relief from the Court in relation thereto.

Prause argues that granting Rhodes' Motion will result in "draining resources and favoring one creditor." Response Memorandum 9:14-15. Simply put, that is not true. As repeatedly stated, Prause's defense in the Defamation Action is covered by insurance, while her defense in the Adversary Proceedings is not. Further, discharge was already granted, and there are no assets to distribute from the estate. Finally, under the cover of the bankruptcy stay, Prause has continued making defamatory attacks against Rhodes, intentionally damaging him professionally and personally. As such, the balance of hurt favors granting this Motion.


IV. CONCLUSION

In summary, Rhodes respectfully requests the Court to grant Rhodes' requested relief, granting relief from the automatic bankruptcy stay in the Defamation Action and staying the Adversary Proceedings until the Defamation Action is concluded. Further, because discharge was already granted, there is no reason why the question of defamation should not be decided in a non-bankruptcy forum. In contrast, to deny this Motion, given that Prause did not direct Liberors to oppose Rhodes' motion for relief from stay in that adversary proceeding, would force Rhodes and Prause to litigate the same issues, twice, and in two different forums.

DATED: December 1, 2020

THE MALONEY FIRM, APC

By: _____


GREGORY M. SMITH, ESQ.
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Attorneys for Creditor
ALEXANDER RHODES.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
The Maloney Firm, APC, 2381 Rosecrans Ave., Suite 405, El Segundo, California 90245

A true and correct copy of the foregoing document entitled (*specify*):

**CREDITOR ALEXANDER RHODES' REPLY TO NICOLE R. PRAUSE'S RESPONSE TO
MOTION FOR RELIEF FROM STAY**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/01/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

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

12/01/2020

Date

Marilyn Vigil

Printed Name

Signature