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Counsel to the Chapter 7 Trustee

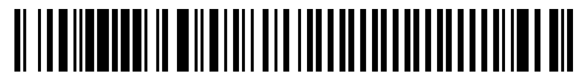
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 7
TRICOLOR HOLDINGS, LLC, *et al.*,[1]	)	Case No. 25-33487 (MVL)
Debtors.	)	

TRUSTEE'S OBJECTION TO CLAY COOLEY'S AMENDED MOTION TO LIFT AUTOMATIC STAY AND MOTION FOR ALLOWANCE OF SETOFF

Anne Elizabeth Burns, solely in her capacity as the duly appointed chapter 7 bankruptcy trustee (the "Trustee") for Tricolor Holdings, LLC and its various debtor affiliates (collectively, the "Debtors"), by and through her undersigned counsel, hereby files this objection (the "Objection") to Arlington N. Motor Company, LLC, CC New Ventures, LLC, Cooley Holdings

[1] The Debtors in these chapter 7 cases are as follows: Tricolor Holdings, LLC, TAG Intermediate Holding Company, LLC, Tricolor Auto Group, LLC, Tricolor Auto Acceptance, LLC, Tricolor Insurance Agency, LLC, Tricolor Home Loans LLC dba Tricolor Mortgage, Tricolor Real Estate Services, LLC, TAG California Holding Company, LLC, Flexi Compras Autos, LLC, TAG California Intermediate Holding Company, LLC, Tricolor California Auto Group, LLC, Tricolor California Auto Acceptance, LLC, Risk Analytics LLC, Tricolor Tax, LLC, Tricolor Financial, LLC, Tricolor Auto Receivables LLC, Tricolor Asset Funding, LLC, and Apoyo Financial, LLC.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3, LLC, Irving N. Motor Company, LLC, and Plano K. Motor Company's (the "Movants") *Amended Motion to Lift Automatic Stay and Motion for Allowance of Setoff* [Docket No. 952] (the "Amended Motion"), which purports to amend the *Motion for Relief from Automatic Stay and in the Alternative Request for Turnover of Titles* [Docket No. 299] (the "Original Motion"), and respectfully states as follows:

PRELIMINARY STATEMENT

1. The mere fact that the Amended Motion continues to be prosecuted and is set for an in-person evidentiary hearing constitutes an incredible waste of judicial and estate resources. The Movants have carried this motion for nearly six months, have held numerous phone conferences with the Trustee's professionals, and have set this matter for final hearing for a singular purpose: to gain settlement leverage on the Trustee by withholding post-petition sale proceeds in an effort to convince the Trustee to capitulate that two transfers that occurred on September 13, 2025, three days after Petition Date (defined below) *somehow* should be set off against claims against the Debtors. Simply put, the Trustee finds these tactics worthy of publicly denouncing; if an auto dealership purchases a trade-in vehicle for which a Tricolor debtor entity is the lienholder, they must immediately remit such payment to the Trustee. Holding such funds in an effort to improve negotiation leverage is not simply legally improper and unfounded, it is conduct that the Trustee reserves the right to seek damages for.

2. Nearly six months ago, the Movants filed the Original Motion which alleged that the Movants had remitted payment to the Debtors in connection with six different trade-in transactions and that the Debtors had failed to provide the title effectuating such transfers. After several meet and confers, the facts demonstrated that for the majority of the transactions at issue, the Movants had either (a) paid the Debtors and received the corresponding titles, (b) not paid the

Debtors and therefore not received the titles, and, incredibly, (c) not paid the Debtors yet received the applicable titles.[2] Nonetheless, in late December, counsel for the Movants believed that a right to setoff existed and that such argument would be imminently brought before the Court.

3. Now, through their Amended Motion filed in late March, the Movants haphazardly attempt to shoehorn two post-petition transactions into a purported right to setoff. From the perspective of the Trustee, this Amended Motion was, at most, a $6,290.00 issue on its face. Specifically, the parties and the Court can summarily dismiss the notion that two transactions that occurred on September 13, 2025, are eligible for setoff. The Trustee *specifically requested* any supporting documentation whatsoever that would somehow demonstrate that deal documents executed on September 13, 2025, could be back dated or actually occurred at some date prior to the Petition Date. Counsel for the Movants represented the relevant documentation would be provided by close of business on March 23, 2026; no such documentation has been provided to the Trustee to date. Therefore, the only legitimate transaction at issue to even meet the prepetition requirement of setoff was the August 26, 2025, transaction in the amount of $6,290.00.

4. Were the issue isolated to just that transaction, resolution of a potential setoff amount need not require any ink spilled on pleadings and most certainly not an in-person evidentiary hearing. However, solely in an attempt to bolster their negotiating position, the Movants have inappropriately wielded two tools: first, they argue without any factual or legal support that the setoff amount should include $17,631.00 on account of the two transactions that

[2] Based on representations from counsel to Movant on April 6, 2026, payment for one vehicle (VIN ending 4355) was mailed and received by the Debtors. Upon receipt of such check, the Debtors processed the title transfer; however, according to counsel for the Movants, the Movants issued a stop check as a result of the filing of the Debtors' bankruptcy cases. Therefore, for at least one of the vehicles identified in the Movants Exhibit C, the Movants have received title from the Debtors but have failed to remit payment. Nonetheless, these allegations regarding this transaction are not before the Court in the Amended Motion and are wholly separate and apart from the three transactions at issue in the Amended Motion.

occurred on September 13, 2025, and second, despite acknowledging *for months* that post-petition trade-ins are not eligible for setoff and that such payoffs must be remitted to the Trustee, they have failed to remit payment on account of nearly all of these transactions.

5. To compound the senselessness of proceeding on the Amended Motion, the Movants now assert that they remitted payment on account of the $6,290.00 pre-petition transaction in December 2025, placing this transaction outside the scope of any potential setoff. [3] Nonetheless, the Movants persist. With respect to the relief sought in the Amended Motion, the only two transactions identified in the pleading still at issue are the two transactions occurring on September 13, 2025. Given that the Movants admit that such transactions are obviously post-petition, the Trustee is hopeful the Movants will withdraw their Amended Motion and not require the Trustee to expend further estate resources regarding this matter.

6. With respect to the parts in which the Movants claim an ownership interest, any such inventory was explicitly abandoned pursuant to the *Order (I) Authorizing the Trustee to (A) Reject Certain Unexpired Real Property Leases and (B) Abandon Certain Personal Property and (II) Granting Related Relief* [Docket No. 488]. To the extent the Movants assert an ownership in parts utilized in vehicles sold pursuant to the *Order Granting Chapter 7 Trustee's Amended Emergency Motion to (I) Sell Estate Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Establish Sale Procedures, and (III) Granting Related Relief* [Docket No. 593], the Movants are certainly free to assert a lien in the proceeds like any other party. The Movants assertion that cause exists to lift the automatic stay by virtue of the Trustee's failure to provide adequate protection related to the parts is therefore baseless.

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[3] Although the Trustee received a check in mid-December from the Movants, the amount received was slightly less than the $6,290.00 at issue (in an amount of $5,784.06). The Trustee is working with the Movants to understand the source of the discrepancy between these two amounts.

7. For the reasons set forth herein, the Movants are not entitled to the relief requested and the Amended Motion should be denied.

BACKGROUND

I. The Chapter 7 Cases

8. On September 10, 2025 (the "Petition Date"), the Debtors commenced their chapter 7 cases (the "Chapter 7 Cases") by filing voluntary petitions for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court").

9. On September 10, 2025, the Office of the United States Trustee for Region 6 (the "U.S. Trustee") appointed the Trustee in the Chapter 7 Cases.

10. On October 30, 2025, the Movants filed the Original Motion seeking relief from the automatic stay to exercise their state law remedies, among other relief.

11. On March 19, 2026, the Movants filed the Amended Motion seeking (i) relief from the automatic stay to exercise their state law remedies, (ii) adequate protection, and (iii) allowance of setoff, among other relief.

II. The Parts and Titles

12. The Movants assert that prior to the commencement of the Chapter 7 Cases, the Debtors purchased 639 automotive parts, totaling $152,066.25 (the "Parts"), from the Movants. The Movants further assert that the amount owed by the Debtors for the Parts remains due.

13. The following vehicles (the "Vehicles") are at issue in the Amended Motion:

A. 2016 Chevrolet Tahoe VIN-1GNSCAKC8GR465099, traded in on September 13, 2025 (the "2016 Chevrolet Tahoe"),

B. 2015 Toyota Rav4 VIN - JTMZFREV9FD053330, traded in on September 13, 2025 (the "2015 Toyota Rav4"), and

C. 2014 Nissan Rogue VIN - JN8AS5MT1EW613530, traded in on July 21, 2025 (the "2014 Nissan Rogue").

14. The Movants assert that the title for the 2014 Nissan Rogue has not been sent to the Movants, despite the payment being remitted to the Debtors. Based on the Trustee's information and belief, the title for the 2014 Nissan Rogue was electronically released to the Movants on January 9, 2026. Although the physical title was received by the Movants, the Trustee was made aware on April 6, 2026, that there may be additional hurdles to clear prior to the Texas Department of Motor Vehicles issuing the corresponding electronic title. These issues can be sorted out cooperatively by the Trustee and the Movants to ensure that the Movants gain full ownership of the title at issue.

15. Also based on information and belief, a payoff amount has not been received by the Trustee from the Movants for the 2016 Chevrolet Tahoe and 2015 Toyota Rav4. The title for each of these vehicles has not been released to the Movants because a payoff amount has not been received by the Trustee. According to the Amended Motion, the 2016 Chevrolet Tahoe and 2015 Toyota Rav4 were traded in on September 13, 2025, three days after the Petition Date.

OBJECTION

16. Under 11 U.S.C. § 553(a), to maintain a right to setoff, the Movants bear the burden of proving the following:

A. A debt exists from the creditor to the debtor and that debt arose prior to the commencement of the bankruptcy case;
B. The creditor has a claim against the debtor which arose prior to the commencement of the bankruptcy case; and
C. The debt and claim are mutual obligations.

Braniff Airways, Inc. v. Exxon Co. U.S.A., 814 F.2d 1030, 1036-37 (5th Cir. 1987)).

17. At this time, the Trustee has no reason to dispute that the Debtors owe a debt to the Movants on account of the automobile parts. The only legitimate legal and factual issues in this matter are whether the Trustee's claim against the Movants arose prior to the commencement of the bankruptcy case.

I. The Movants Are Not Entitled to Setoff Pre-Petition Debts against Post-Petition Debts.

18. As set forth in the Amended Motion, the Movants seek to setoff $23,931.00 arising from three separate transactions. After review of the alleged facts in the Amended Motion, the Trustee confirmed receipt of $5,784.06 from the Movants in mid-December 2025 purportedly on account of the transaction that occurred on July 21, 2025 (the only legitimate pre-petition transaction for which the Movants requested setoff in the Amended Motion). As set forth in FN 3, although this amount differs slightly from the $6,290.00 setoff amount requested by the Movants, the Trustee assumes that this payment nullifies any requested setoff on account of this particular transaction.

19. $17,631.00 of the requested amount arises from the two remaining transactions that both occurred on September 13, 2025. On this issue, the Fifth Circuit has explicitly held on numerous occasions that "pre-petition debt cannot be set off against post-petition debt, because then they would not be mutual." *In re Galaz*, 480 F. App'x 790, 793 (5th Cir. 2012) (citing *In re Braniff Airways, Inc.*, 42 BR 443, 452-53 (N.D. Tex. Bankr. 1984) and *Braniff Airways, Inc. v. Exxon Co. U.S.A.*, 814 F.2d 1030, 1036-37 (5th Cir. 1987)).

20. The Movants expressly acknowledge that their obligation to pay for the 2016 Chevrolet Tahoe and 2015 Toyota Rav4 (in a total amount of $17,631.00) arose post-petition. Nonetheless, in paragraph 18 of the Amended Motion, the Movants attempt to shove a square peg in a round hole by stating that Texas Financial Code 348.408 states that dealers have 25 days from

the trade-in to pay the lender. Further, the Movants go on to state that customers became aware of Tricolor's bankruptcy and therefore rushed to trade-in their vehicles.

21. What either of these two statements have to do with whether these transactions occurred pre-petition, the Trustee knows not. Ironically, the Texas Financial Code section cited by the Movants places a state regulatory mandate upon the Movants to immediately turnover funds due to the Trustee on account of post-petition trade-ins. Along with a litany of Bankruptcy Code sections and common law, it is the exact statutory provision the Trustee will cite in a turnover complaint if such funds are not immediately transferred to the Trustee on account of these post-petition sales.

II. The Movants Have Not Established Any Right of Setoff Under Applicable Nonbankruptcy Law.

22. While Section 553(a) preserves a right to setoff, that right must first exist under "applicable non-bankruptcy law" (e.g., state law). *Citizens Bank v. Strumpf*, 516 U.S. 16, 18 (1995). Instead of identifying the applicable non-bankruptcy law that could give rise to the Movants' asserted setoff rights, the Movants cite *In Braniff Airways, Inc.* for the proposition that "reciprocal debts between Movant and the Debtor(s) give Movant the right to setoff" and that "[u]nder federal bankruptcy law, a creditor who holds mutual prepetition claims against the debtor is entitled to setoff." 814 F.2d at 1039.[4] To date, the Movants have not provided the Trustee with any evidence or argument that their purported right to setoff is grounded in non-bankruptcy law or in the transaction documentation between the parties.

[4] The reporter cite used on page 8 of the Amended Motion for the *Braniff* case was 700 F.2d 935, but this opinion makes no mention of setoff and appears entirely unrelated to the issues in this matter. Therefore, the Trustee assumes that the Movants intended to cite *Braniff Airways, Inc. v. Exxon Co., U.S.A.*, 814 F.2d 1030 (5th Cir. 1987), cited previously in the Amended Motion.

III. The Movants Fail to Demonstrate that "Cause" Exists to Grant Relief from the Automatic Stay for the Parts.

23. "The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws." *In re Timbers of Inwood Forest Assocs., Ltd.*, 793 F.2d 1380, 1409 (5th Cir. 1986), on reh'g, 808 F.2d 363 (5th Cir. 1987), *aff'd sub nom. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) (quoting H.R. Rep. 95-595, 340 (1977), U.S.C.C.A.N. 1978, p. 6296). Specifically, the automatic stay protects against, among other things, (i) "the commencement or continuation … of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case," (ii) "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," and (iii) "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. § 362(a)(1), (3), and (6).

24. Section 362(d)(1) of the Bankruptcy Code provides that a court shall grant relief from the automatic stay "for cause." However, the Bankruptcy Code does not offer guidance as to what constitutes "cause," but rather, the reviewing court must determine whether cause exists on a case-by-basis. *See, e.g.*, *In re Reitnauer*, 152 F.3d 341, 343 n.4 (5th Cir. 1998); *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017) (explaining that whether "cause" exists is a fact-intensive inquiry "committed to the discretion of the bankruptcy judge … that must be determined on a case-by case basis.").

25. While there is no set list of circumstances that a bankruptcy court is required to consider in evaluating whether section 362(d)(1) "cause" exists to lift the automatic stay, courts

have often looked to the following case-specific factors: (i) whether lifting the stay will result in any great prejudice to the debtor or the bankruptcy estate, (ii) whether any hardship to a non-debtor of continuation of the stay outweighs any hardship to the debtor, and (iii) whether the creditor has a probability of prevailing on the merits of the case. *See BDA Design Group, Inc. v. Official Unsecured Creditors' Committee*, No. 3:13-cv-01568-O, 2013 WL 12100467, at *6 (N.D. Tex. Sept. 2, 2013).

26. Critically, the movant carries the initial burden on the stay relief, and only if the movant makes a *prima facie* case does the debtor need respond. *See In re Kowalsky*, 235 B.R. 590, 594 (Bankr. E.D. Tex. 1999) (citing *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1285 (2nd Cir. 1990)). "If a movant fails to make a prima facie showing, the court should deny the relief requested." *Id*. (citing *In re Keene Corp.*, 171 B.R. 180, 182 (Bankr. S.D.N.Y. 1994)).

27. Here, the Amended Motion should be denied because the Movants have not demonstrated that cause exists to lift the automatic stay in connection with the Parts.

A. The Movants Are Not Secured Creditors Entitled to Adequate Protection.

28. Under Bankruptcy Code section 362(d)(1), the Court may grant relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). The burden rests initially on the moving party to establish a prima facie case that "cause" exists to lift the stay. *See In re Sonnax,* 907 F.2d at 1285. If that burden is not met, the motion must be denied.

29. Here, the Movants cannot assert that their interest in the Parts is not adequately protected because as unsecured creditors the Movants are not entitled to adequate protection of their interest. Section 361 of the Bankruptcy Code describes adequate protection as relief given "of an interest of an entity in property" to protect that property interest from decline in value. 11

U.S.C. § 361. Unsecured creditors typically have no specific interest in particular property of the estate and do not have an interest to be adequately protected. *In re Babcock & Wilcox Co.*, 250 F.3d 955, 960-61 n. 12 (5th Cir. 2001) (describing that an unsecured creditor, as opposed to a senior lienholder, would not be entitled to adequate protection).

30. The Movants identify no collateral that secures their interest and do not allege a perfected security interest in the Parts. The Movants only assert a right to payment for the Parts. The Movants' request for adequate protection is therefore unsupported and should be rejected.

31. As the Movants are not entitled to adequate protection as unsecured creditors, the lack of adequate protection for the Parts cannot establish a prima facie case that cause exists to lift the stay. The Movants request for relief from the automatic stay should be denied.

II. The Movants Are Improperly Withholding Estate Property.

32. Separate from the Vehicles for which the Movants seek setoff, the Movants admit through the Amended Motion that they are holding post-petition vehicle proceeds for other trade-ins, in the amount of $84,609.06, which is owed to the estate. The Movants have yet to turn over these funds to the Trustee. The vehicle sales proceeds are not eligible for setoff as they arose post-petition and the Movants do not even claim that the vehicle proceeds are being held in connection with any claim for setoff. The Movants' approach is an impermissible exercise of self-help and cannot be allowed, particularly in these Chapter 7 Cases where equality of distribution is paramount.

33. The Movants' conduct violates the automatic stay under section 362, the mandatory turnover requirements under section 542(a), and the fundamental principles of chapter 7 administration. Creditors are not permitted to unilaterally escrow estate property or hold funds as leverage for self-help remedies.

34. The Trustee is prepared to make a formal turnover demand and/or file a turnover motion pursuant to section 542 of the Bankruptcy Code, if the Movants continue to exercise control over estate property.

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CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court deny the Amended Motion, sustain the Objection, and grant the Trustee such other relief as is just and proper.

Dated: April 7, 2026
Dallas, Texas

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CERTIFICATE OF SERVICE

I do hereby certify that on April 7, 2026, a true and correct copy of the foregoing document was served via CM/ECF for the United States Bankruptcy Court for the Northern District of Texas on all parties authorized to receive electronic notice in this case.

/s/ Grayson Williams
Grayson Williams