

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

February 10, 2015 at 1:30 P.M.

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1. [14-25512](#)-C-13 VISHAAL VIRK MOTION FOR RELIEF FROM  
JHW-1 Peter Macaluso AUTOMATIC STAY  
1-13-15 [[71](#)]  
CARMAX BUSINESS SERVICES,  
LLC VS.

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**Final Ruling:** No appearance at the February 10, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2015. Twenty-eight days' notice is required. This requirement has been met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Creditor, Carmax Business Services, LLC, seeks relief from the automatic stay with respect to a 2008 Ford Focus, ending in VIN 6594. The moving party has provided the Declaration of Tiffany Leo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. The Leo Declaration states that the Debtors have not made 8 post-petition payments, with a total of \$2,104.56 in post-petition payments past due.

**TRUSTEE'S RESPONSE**

Trustee has filed a statement of non-opposition.

**DISCUSSION**

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Carmax Business Services, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Carmax Business Services, LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2008 Ford Focus, ending in VIN 6594, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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2. [14-30795](#)-C-13 STEVEN ASHLEY AND TROY MOTION FOR RELIEF FROM  
JHW-1 NEELY AUTOMATIC STAY  
Mikalah Liviakis 1-9-15 [[17](#)]  
CARMAX FUNDING SERVICES, LLC  
VS.

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**Final Ruling:** No appearance at the February 10, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 9, 2015. Twenty-eight days' notice is required. This requirement has been met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Creditor, Carmax Funding Services, LLC, seeks relief from the automatic stay with respect to a 2005 Lincoln LS. The moving party has provided the Declaration of Tiffany Leo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Leo Declaration states that the Debtors have not made 2 post-petition payments, with a total of \$865.80 in post-petition payments past due. Debtor has not made 5 pre-petition payments, with a total of \$2,164.50 pre-petition payments past due. Creditor provides that the full amount owing on the vehicle is \$16,048.29. From the evidence provided to the court, Debtors did not include the vehicle in their schedules or Chapter 13 plan, and on June 9, 2014, Debtors have voluntarily surrendered their vehicle to Movant, as stated in the Leo Declaration.

#### **CHAPTER 13 TRUSTEE**

Chapter 13 Trustee has filed a statement of non-opposition.

#### **DISCUSSION**

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in

the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Creditor, Carmax Funding Services, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has pleaded adequate facts and pleaded sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Carmax Funding Services, LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2005 Lincoln LS, VIN ending in 0644, and applicable nonbankruptcy law to obtain possession of said asset to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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