

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

October 29, 2013 at 1:30 p.m.

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1. [11-48286](#)-C-13 JOSEPH MESSINA MOTION FOR RELIEF FROM  
APN-1 James L. Bianchi AUTOMATIC STAY  
9-27-13 [[96](#)]  
TOYOTA LEASE TRUST VS.

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 August 27, 2013. 28 days' notice is required. This requirement was met.

**Final Ruling:** 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 Debtor 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 as consent 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 Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The court's decision is to grant the Motion for Relief from the Automatic Stay.** No appearance is required. The court makes the following findings of fact and conclusions of law:

Lessor, Toyota Lease Trust seeks relief from the automatic stay with respect to an asset identified as a 2010 Toyota Prius, VIN # ending in 3610. The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nishimura Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$1,135.82 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$19,585.48, as stated in the Nishimura Declaration. The value of the vehicle is not offered by Debtor in Schedules B and D or separately asserted by movant.

The Debtor filed a statement of non-opposition (Dkt. 102).

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).

Because Debtor demonstrates an intent to surrender possession of the property, Lessor will not be repaid the balance on the property. Lessor will be permitted to pursue state remedies to regain possession. The court shall issue a minute order terminating and vacating the automatic stay to allow Toyota Lease Trust to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow Toyota Lease Trust to gain immediate possession of the property and dispose of the same in a commercially-reasonable sale.

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 Toyota Lease Trust to pursue nonbankruptcy remedies with regard to the property commonly known as 2010 Toyota Prius, VIN # ending in 3610.