



-----  
FN. 1. In the Notice of Errata, Dckt. 117, Movant corrects a typographical error in the Motion filed on October 7, 2020, in which the Movant is misidentified.  
-----

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$4,677.50 in post-petition payments past due. Declaration, Dckt. 102.

### **CHAPTER 13 TRUSTEE’S RESPONSE**

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on October 26, 2020. Dckt. 108. Trustee requests that the court take into consideration that the Debtor is delinquent \$7,965.00 under the last proposed plan and that the Debtor is \$4,677.50 delinquent to Movant. *Id.*, at 2. Moreover, Trustee notes that there is no plan pending with Debtor’s last proposed plan having been denied confirmation on September 29, 2020. *Id.*, at 1.

### **CHAPTER 13 DEBTOR’S RESPONSE**

The Chapter 13 Debtor filed a Response on October 27, 2020. Dckt. 111. Debtor asserts that an offer of \$243,000 for the Property was accepted on October 16, 2020 and requests a continuance of this Motion to after December 15, 2020 so as to allow for the lender documents to be received and the escrow and sale be completed. *Id.*, ¶¶ 5-6. Debtor explains that the Movant is completely protected with Movant having a claim of \$159,000 which will pay off with this sale and Debtor will still have equity of \$71,850 to be distributed to him. *Id.*, ¶ 5.

### **Reply of Movant**

Movant’s Reply (Dckt. 119) asserts that while the Debtor has now been in Chapter 13 for seven months, there has been no plan confirmed. That Debtor is in default in plan payments since September 2020. Movant asserts that the opposition is somewhat cryptic.

Further, it is asserted that if the court does not grant the relief requested, Debtor should be making an adequate protection payment to Movant.

### **DISCUSSION**

In the Motion for Relief from the Stay, Movant does not assert that cause exists because Movant is not adequately protected due to the amount of the secured claim being in excess of the value of the Property. The Motion is devoid of any allegation as to the value of the Property.

The Motion does clearly state that Movant asserts the right not only to the 10% non-default rate of interest in the Note that is secured by the Property, but also the 18% default rate of interest. This loan was made in 2018, and it appears that by extracting a 10% interest rate and an 18% default rate, Movant was well aware of a high likelihood of a default and delay in foreclosure, and has built that into the Note. Additionally, such may reflect that Movant was well aware of a limited financial acumen of the Debtor and limited ability to handle his finances.

The Motion states that pursuant to the longstanding defaults by Debtor, a non-judicial foreclosure sale was recorded on December 4, 2019. Motion, p. 2:22-24, Dckt. 99; Declaration, ¶ 9, Dckt. 102. Debtor's prior Chapter 7 case and this Chapter 13 case have stayed Movant from conducting the foreclosure sale. Declaration, ¶ 10; Dckt. 102.

Debtor's Opposition is simple—some unidentified person made an offer on October 16, 2020, to purchase the Property for \$243,000.00. Opposition, ¶ 2; Dckt. 111. This was after the Property was “put on the market” on September 27, 2020. *Id.*, ¶ 1. But due to the COVID-19 pandemic, an unidentified lender is “running behind on document preparation. *Id.*, ¶ 4.

The sales price is stated to be \$243,000, and after costs of sale, there is \$71,850.00 in equity in the Property to adequately protect Movant's claim. *Id.*, ¶ 5. Debtor seeks to have the hearing continued to December 15, 2020, so the loan documents can be completed, the sale closed.

A Declaration purporting to state Debtor's testimony under penalty of perjury is provided. Dckt. 112. However, this appears to merely be a cut and paste of Debtor's Counsel's arguments in the Opposition.

Debtor filed exhibits for his Opposition on October 10, 2020. Dckt. 114. The exhibits appear to bleed over into “Support Documents” filed with the exhibits. Dckts. 115, 116. Unfortunately, none of the exhibits have been authenticated as required by Federal Rules of Evidence 901 et seq.

### **Questionable Prosecution of Case**

A review of the Docket indicates that notwithstanding Debtor's Counsel arguing that the Property was “put on the market on September 27, 2020, and a offer was received on October 16, 2020,” Debtor has not sought to obtain authorization to employ a real estate broker (such authorization necessary for such professional to be compensated for the services provided), nor has the Debtor filed a motion for authorization to sell the property for a sale Debtor hopes to quickly close.

Ignoring these legal requirements under the Bankruptcy Codes is not indicative of a Debtor who is diligently pursuing a sale in good faith.

Looking at the original Schedules filed, Debtor stated under penalty of perjury that the Property had a value of only \$210,000. Schedule A/B, Dckt. 11 at 3. On Schedule D Debtor listed Movant as having a secured claim of (\$100,000). *Id.* at 11. This would then leave a \$110,000 in equity which Debtor could claim as exempt on Schedule C, citing California Code of Civil Procedure § 704.730 as the basis for the exemption. California Code of Civil Procedure § 704.730 provides:

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of

the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

Debtor does not state which provision is applicable, but two of them clearly are less than the \$110,000 he is claiming.

As this court addressed in connection with Movant and the 18% interest for what appears to have been a foreseen troubled lender and delayed payment, Movant appears to be more than adequately protected—if there was a financially competent debtor prosecuting a bankruptcy case. Civil Minutes, Dckt. 106.

However, Debtor has demonstrated that he does not have the financial and business knowledge to prosecute this case (the court giving the Debtor and Counsel the benefit of the doubt that the failure to obtain authorization to employ a real estate broker was mere inadvertence and not part of a scheme to get “free” real estate broker services). At this juncture, it appears the court has three choices:

1. Grant Relief From the Stay and Allow Movant, who clearly knew that this Debtor would not be able to pay the loan bank, to foreclose and take nearly \$100,000 in equity as a “bonus” for having made a loan with an 18% interest rate;
2. Order the appointment of a personal representative as provided in Federal Rule of Civil Procedure 25, as incorporated into Federal Rules of Bankruptcy Procedure 7025 and 9014, and then have that personal representative hire legal counsel to prosecute the sale of the Property, pay the claims in this case, and “save” for Debtor his exempt equity (after paying the costs and expenses of the personal representative and the professionals hired by the personal representative); or
3. Convert this case to Chapter 7, in which Debtor could not get a discharge in light of his December 2019 Chapter 7 case in which he was granted a discharge, and have the Chapter 7 trustee conduct hire the professionals, conduct the sale, have all of the trustee’s and trustee’s professionals expenses and fees paid, and “save” the debtor the equity in the property.

Though normally the court would order a debtor in this situation to make adequate protection payments from the monthly plan payments, Debtor’s defaults have documented that he is bereft of the financial ability to pay. As show on the original and various amended Schedules I filed in this case, Debtor has no income and is dependant upon gifts from his significant other and his sister to survive from day to day. See latest Amended Schedule I; Dckt. 83, in which Debtor lists having \$942 a month in Social Security, which is only 22.7% of his stated monthly income. His sister provides \$1,760, which is 42% of the stated monthly income, and his significant other provides \$942 (exactly the same as the stated amount of Social Security benefit received), which is an additional 22.7%. The balance of monthly income is stated to be \$500 in room rent paid by “Girlfriend’s Sister”). <sup>Fn.2.</sup>

-----  
 FN. 2. As shown on the Statement of Financial Affairs, Debtor’s lack of income is not a new turn of events. On the Statement of Financial Affairs, in response to Question 4, Debtor states having the following income from employment or business in the current year the case was filed and in the two preceding years:

YTD 2020	<b>NONE</b>
2019	<b>NONE</b>
2018	<b>NONE</b>

Dckt. 11 at 21. For other income, in response to Question 5, Debtor states receiving Social Security of \$11,000 +/- a year, plus some “income” form his “significant other.” *Id.* at 22.

In the Statement of Financial Affairs for his 2019 bankruptcy states that for 2017 that he had no income from employment or a business. 19-27969; Stmt. Fin. Affs., Question 4, Dckt. 1 at 31. His only other income stated in the prior case for 2019, 2018, and 2017 are the Social Security benefits. *Id.* at 32.  
 -----

Creditor has filed Proof of Claim No. 2-1 stating that the secured claim was (\$126,635) as of the commencement of this case. That has increased due to the accruing interest (even at the “meager” 10% non-default rate) and recoverable costs for Movant due to Debtor’s inability to prosecute this case over the past seven months. If the Property sells for \$243,000, and if the court authorizes the employment of a real estate broker for the personal representative or the Chapter 7 trustee, after allowing 8% for costs of sale, that would generate net sales proceeds of \$223,500 (this assumes that Debtor is current on the property taxes and there would not be a significant amount to be paid from the gross sales proceeds through the closing escrow).

From the \$223,500, if Movant’s claim has increased to (\$135,000), Movant not providing that amount in the Motion and Mr. Anderson not testifying as to the total amount in his Declaration, that would leave \$88,000 in proceeds. Assuming reasonable Chapter 7 trustee fees and professionals as necessary to close the purported sale of less than \$6,000.00 (for which the court will have the Debtor expressly agree to being paid from any proceeds in which an exemption could be claimed to avoid an argument later of whether such proceeds could be “surcharged” or the court could sanction the Debtor such amounts to pay the necessary trustee fees and professionals to “save” some of the exempt amount for Debtor and not have it lost to the impending foreclosure sale), Debtor would still walk away with more than \$80,000 of proceeds in which he could claim an exemption as may legally be claimed under California law.

At the hearing, Debtor’s counsel addressed the court, **XXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 5, 2020. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

TD Auto Finance LLC (“Movant”) seeks relief from the automatic stay to allow Movant to continue advancing a claim with Debtor’s automobile insurance carrier, Geico General Insurance Company with respect to an asset identified as a 2015 Toyota Yaris, VIN ending in 5683 (“Vehicle”). Movant has provided the Declaration of Roderick Owens to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joshua Adam Jarrell and Samantha Jane Jarrell (“Debtor”).

Movant argues that as lienholder of the Vehicle, Movant is the named loss payee. Thus, relief is needed so that they may obtain and apply the insurance proceeds to the remaining balance on the secured claim (estimated payoff is \$4,638.71). Declaration, Dckt. 34. According to the insurance carrier, the net settlement amount is \$10,089.49; and Movant adds that any overage will be sent to the Trustee’s office. *Id.*

**CHAPTER 13 TRUSTEE’S OPPOSITION**

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on October 23, 2020. Dckt. 38. Trustee notes that Debtor is current in plan payments under the confirmed plan and that Movant is

included in Class 2(A) of the plan with Trustee having disbursed a total of \$2,273.52 to Movant. *Id.*, at 1.

Trustee asserts that according to his records, the approximate payoff of debtor's Vehicle as of October 2020 is \$4,856.96. *Id.*, at 2. Trustee does not oppose the requested relief so long as the estimated pay amount is paid into the plan to be distributed to Movant pursuant to the plan. *Id.* Moreover, Trustee does not oppose the balance of the insurance proceeds being paid to the Debtor. *Id.*

## **DEBTOR'S RESPONSE**

Debtor filed a Response on October 26, 2020. Dckt. 42. Debtor informs the court that both the Vehicle and their residence were destroyed by the North Complex Fire and will file a motion to modify their plan so as to pay off and conclude the chapter 13 with the home insurance proceeds. Declaration, Dckt. 43, at 1. Further, Debtor request that the insurance proceeds claim be processed as requested by Trustee and that the balance be paid to debtors. *Id.*, at 2.

## **MOVANT'S REPLY**

Movant filed a Reply on October 28, 2020. Dckt. 45. Movant does not oppose Trustee's request that the insurance proceeds be paid to Trustee, and Debtor's request that the remaining balance be sent to the Debtor rather than the Trustee. *Id.*

## **DISCUSSION**

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, the vehicle has been destroyed and now there are insurance proceeds that exist/are to be paid for the vehicle. The Debtor concurs with the auto insurance proceeds being paid directly to the Chapter 13 Trustee, and for the Trustee to use the proceeds to pay Movant's secured claim. Then, the net proceeds of the insurance proceeds that remain after paying Movant's secured claim and the Chapter 13 Trustee's fees relating thereto, are to be disbursed to the Debtor, presumably for the Debtor to use in

connection with the costs and expenses of a replacement vehicle (whether directly or indirectly).

The court denies the Motion without prejudice, ordering the Debtor and Trustee to obtain the insurance proceeds and immediately, upon receipt, the Trustee paying the remaining secured claim of Movant.

The court shall issue an 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 TD Auto Finance LLC (“Movant”) 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 Motion is denied without prejudice, the court ordering that the Debtor and Trustee pursue payment of the insurance claim for this vehicle.

**IT IS FURTHER ORDERED** that the Debtor shall, and the Chapter 13 Trustee is authorized to independently, pursue the payment of the insurance claim for the loss of the 2015 Toyota Yaris, VIN ending in 5683, that all of the insurance proceeds shall be paid to the Chapter 13 Trustee in this case, and upon receipt the Trustee shall make a lump sum disbursement to full pay Movant on its secured claim for which the foregoing described vehicle is the collateral.

**IT IS FURTHER ORDERED** that , Geico General Insurance Company, or any other insurance company making payment for the damage or loss to said vehicle, is authorized to make payment of all insurance proceeds for such loss directly to the Chapter 13 Trustee, and that all such payments shall be made directly to the Chapter 13 Trustee.

## FINAL RULINGS

3. [19-25741-E-13](#)      MICHAEL/SARA ELDER      MOTION FOR RELIEF FROM  
[AP-1](#)                      Mikalah Liviakis                      AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A.      10-6-20 [\[20\]](#)  
VS.

**Final Ruling:** No appearance at the November 10, 2020 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient 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 October 6, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.**

JP Morgan Chase Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Subaru Ascent, VIN ending in 3009 (“Vehicle”). The moving party has provided the Declaration of Robert L. Kammeyer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Dean Elder (“Debtor”). Debtor is the lessee of the Vehicle.

Movant argues Debtor has not made five (5) post-petition payments, with a total of \$2,317.14 in post-petition payments past due. Declaration, Dckt. 23.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

## TRUSTEE'S NON-OPPOSITION

Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 27, 2020. Dckt. 27. Trustee notes that Debtor is delinquent in plan payments in the amount of \$2,611.01, and Movant is included in Section 4 of the confirmed plan, which calls for Debtor to be making direct payments to Movant. *Id.*

## DISCUSSION

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 \$30,100.00. Declaration, Dckt. 23. The NADA Valuation Report provided by Movant values the Vehicle at \$30,100.00. Exhibit 4, Dckt. 25.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 JP Morgan Chase Bank, N.A. ("Movant") 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 Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Subaru Ascent,

VIN ending in 3009 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

4. [20-21045-E-13](#) ANN CONRAD  
[JHK-1](#) Richard Kwun  
SANTANDER CONSUMER USA INC.  
VS.

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
10-12-20 [68]**

**Final Ruling:** No appearance at the November 10, 2020 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 12, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.**

Santander Consumer USA Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford Focus, VIN ending in 9562 (“Vehicle”). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ann Athlene Conrad (“Debtor”).

Movant argues Debtor has not made seven (7) post-petition payments, with a total of \$3,466.54 in post-petition payments past due. Declaration, Dckt. 71. Movant also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$3,961.76. *Id.*

## TRUSTEE'S NON- OPPOSITION

Chapter 13 Trustee, David Cusick (“Trustee”) filed a Non-Opposition on October 27, 2020. Dckt. 78. Trustee notes that the Debtor is current in plan payments but that Trustee has not disbursed any payments to Movant. *Id.* Trustee refers to Movant’s motion wherein Movant argues that the last payments made was received on June 14, 2019. *Id.*

## DISCUSSION

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 \$21,163.42 (Declaration, Dckt. 71). No valuation is provided to the Court.

Movant argues that though Debtor states in her Motion to Amend the now confirmed Chapter 13 Plan that the Vehicle was repossessed, Movant has not repossessed the Vehicle and is not in possession of the Vehicle. *Id.* See also Dckt. 50, ¶ 2.

A review of the confirmed Plan (Dckt. 54) lists Movant under Class 3 providing for the surrender of the Vehicle. Dckt. 54, at 4.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. See *J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant is not in possession of the Vehicle and payments are not being made to Movant.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the

Vehicle, 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.

**Federal Rule of Bankruptcy Procedure 4001(a)(3)  
Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 Santander Consumer USA Inc. (“Movant”) 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 Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Ford Focus, VIN ending in 9562 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Michael Hydorn of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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

No other or additional relief is granted.

5. [20-21379-E-13](#) RICHARD/CHANTIL RUSSO  
[JHK-1](#) Mark Wolff  
HYUNDAI LEASE TITLING TRUST  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-12-20 [34]

**Final Ruling:** No appearance at the November 10, 2020 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 12, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.**

Hyundai Lease Titling Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Hyundai Elantra, VIN ending in 7780 (“Vehicle”). The moving party has provided the Declaration of Brad Butti to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Richard Andrew Russo and Chantil Stephanie Russo (“Debtor”). Debtor is the Lessee of the Vehicle.

Movant argues the Lease matured on May 1, 2020, where all payments on the lease were due. Declaration, Dckt. 37. The last payment received from Debtor was on February 24, 2020. *Id.*, ¶ 7. Further, Movant states that the Vehicle was returned on July 18, 2020. *Id.*, ¶ 8.

#### **TRUSTEE’S NON-OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 27, 2020. Dckt. 43.

## DISCUSSION

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 \$11,258.80 (Declaration, Dckt. 37). No valuation of the Vehicle has been provided.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, 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.

### Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 Hyundai Lease Titling Trust (“Movant”) 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 Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Hyundai Elantra, VIN ending in 7780 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.