

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

September 24, 2013 at 1:30 p.m.

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1. [13-26738](#)-C-13 LORRIN FERDINAND MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
8-23-13 [[28](#)]  
HARLEY-DAVIDSON CREDIT CORP.  
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 23, 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:

Harley-Davidson Credit Corporation seeks relief from the automatic stay with respect to the personal property commonly known as a 2008 Harley-Davidson FXDF DYNA FAT BOB. The moving party has provided the Declaration of Marrieta Svoboda to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. The Svoboda Declaration, dated August 20, 2013, states that the Debtor is delinquent three (3) post-petition payments, with a total of \$567.96 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 property is determined to be \$8,929.05, as stated in the Svoboda Declaration, while the value of the property is determined to be \$7,800.00, as stated in Schedule B filed by

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Debtor.

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

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 Harley Davidson to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

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 Harley Davidson to exercise rights arising under applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the personal property commonly known as 2008 Harley-Davidson FXDF DYNA FAT BOB.

LEWIS OPERATING CORP. 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:

Lewis Operating Corporation seeks relief from the automatic stay with respect to a lease agreement related to commercial property located at 2731 Del Paso Road, Suite 100, Sacramento, California. The moving party has provided the Declaration of John Dvorak to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. The Dvorak Declaration, dated August 23, 2013, states that the Debtor is delinquent \$130,085.43 on lease payments pre-petition and an additional \$69,743.12 on the lease payments post-petition.

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

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 Lewis Operating Corporation to seek all applicable nonbankruptcy remedies against Debtor.

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 Lewis Operating Corporation to exercise rights arising under applicable nonbankruptcy law with regard to Debtor's lease of commercial property located at 2731 Del Paso Road, Suite 100, Sacramento, California.