

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

March 5, 2019 at 1:30 p.m.

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|----|--------------------------------|------------------|--------------------------------|
| 1. | <a href="#">18-23161</a> -C-13 | ROBERT PATTERSON | MOTION FOR RELIEF FROM         |
|    | <a href="#">JHW</a> -1         | Mikalah Liviakis | AUTOMATIC STAY AND/OR MOTION   |
|    |                                |                  | FOR RELIEF FROM CO-DEBTOR STAY |
|    |                                |                  | 1-25-19 [ <a href="#">46</a> ] |

ACAR LEASING LTD VS.

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**Final Ruling:** No appearance at the March 5, 2019 hearing is required.

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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, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2019. 28 days' notice is required. That requirement was 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). 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.

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| <b>The Motion for Relief from the Automatic Stay is granted.</b> |
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ACAR Leasing LTD d/b/a GM Financial Leasing ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Traverse, VIN ending in 5049 ("Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Patterson ("Debtor").

The Aaron Rangel Declaration provides testimony that Debtor's confirmed Chapter 13 Plan provides for direct payment to Movant in Section 4.02

of the Plan. Dckt. 35. Debtor has not provided Movant with monthly payments of \$369.91 for September 2018 through December 2018 in the total amount of \$1,479.64. The Aaron Rangel Declaration does not seek to introduce evidence establishing the Vehicle's value.

#### **CHAPTER 13 RESPONSE:**

On February 19, 2019, the Chapter 13 Trustee filed a response noting that Debtor's confirmed Plan (Dckt. 35) provide for the direct payment of Movant with Post-Petition payments of \$366.00.

#### **DISCUSSION**

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. Here Debtor has not made the required post-petition payments set forth in the Plan.

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 vehicle is jointly owned by non-filing individual Theresa Tagle Patterson.

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.

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 ACAR Leasing LTD d/b/a GM Financial Leasing ("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 Chevrolet Traverse ("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 Theresa Tagle Patterson 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).

No other or additional relief is granted.

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2. [18-23571](#)-C-13 TIMOTHY JANOVICH  
[EAT](#)-1 Eric Schwab

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-5-18 [[39](#)]

WELLS FARGO BANK, N.A. VS.

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**No 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.  
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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, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2018. 28 days' notice is required. That requirement was 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). 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.

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| <b>The Motion for Relief from the Automatic Stay is <span style="color: red;">xxxxxx</span>.</b> |
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Timothy Patrick Janovich's ("Debtor") real property commonly known as 703 Main Street, Roseville, California ("Property"). Movant has provided the Declaration of Rachel Mdarcella Cathcart Love to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rachel Mdarcella Cathcart Love Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$5,591.12 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default.

**DEBTOR'S OPPOSITION:**

Debtor filed an Opposition on November 20, 2018. Dckt. 47. Debtor asserts that he filed this Chapter 13 bankruptcy proceeding to prevent the foreclosure on the subject Property. Debtor asserts that the alleged non-payments were paid through his Chapter 11 bankruptcy; however, the Movant refused tender of the payments from the Chapter 11 administrator. This bankruptcy proceeding was filed as an attempt to pay the alleged arrears to this lender which may have accumulated between the date of confirmation of the

Chapter 11 Plan and the date of the filing of this Chapter 13 case. Dckt. 48, Janovich Declaration.

#### **TRUSTEE'S RESPONSE:**

The Trustee responds that he does not oppose the Motion. The Trustee flags for the court that the Movant is included in Debtor's proposed Plan as both a Class 2A creditor with regard to the mortgage arrears and as a Class 4 creditor regarding the first mortgage. The Trustee further notes that the Debtor has not filed a Motion to Confirm the Plan and was notified in September that an Amended Plan would be file, but to date has not been filed. Dckt. 45.

#### **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$126,934.02 as stated in the Rachel Mdarcella Cathcart Love Declaration and Schedule D. The value of the Property is determined to be \$304,952.00, as stated in Schedules A and D.

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 requires additional testimony from the parties in order to determine whether cause exists for terminating the automatic stay, as a result of purported defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432. At the December 4, 2018 hearing, the parties agreed to continue the hearing.

The January 29, 2019 hearing was continued due to a calendaring error by Debtor's counsel. The Parties agreed to continue this matter in light of the prior efforts to resolve the matter, which were not completed due to the calendaring error.

~~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 Property, 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.~~

~~No other or additional relief is granted by the court.~~

~~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 Wells Fargo 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** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 703 Main Street, Roseville, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~No other or additional relief is granted.~~

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3. [17-27496](#)-C-13  
[APN-2](#)

DAVID TAYLOR  
Dale Orthner

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-25-19 [[33](#)]

TOYOTA MOTOR CREDIT  
CORPORATION VS.

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**Final Ruling:** No appearance at the March 5, 2019 hearing is required.  
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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, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2019. 28 days' notice is required. That requirement was 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). 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.**

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Toyota Corolla, VIN ending in 5703 ("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by David Raleigh Tayolr ("Debtor").

The Rahnea Spooner Declaration provides testimony that Debtor's confirmed Chapter 13 Plan provides for direct payment of the lease payments to Movant. Further, the Declaration provides testimony that the lease reached maturity on October 8, 2018 and the Debtor has surrendered possession of the Vehicle to the Movant.

#### **CHAPTER 13 TRUSTEE RESPONSE:**

On February 19, 2019, the Chapter 13 Trustee filed a response noting that Debtor's confirmed Plan (Dckt. 25) provides for the assumed lease to be paid by Debtor. Dckt. 39.

## DISCUSSION

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case. The court finds that the lease has matured and the Debtor has already surrendered possession of the Vehicle to the 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.

### **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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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 Toyota Motor Credit Company("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 2015 Toyota Corolla("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.

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