

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 3, 2016 at 1:30 p.m.

1. [15-26888](#)-E-13 PATRICK FIELD
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-5-16 [[20](#)]

HYUNDAI LEASE TITLING TRUST VS.

Final Ruling: No appearance at the May 3, 2016 hearing is required.

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 April 5, 2016. By the court's calculation, 28 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). 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.

Patrick Field ("Debtor") commenced this bankruptcy case on August 31, 2015. Hyundai Lease Titling Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Kia Sorento, VIN ending in 9653 (the "Vehicle"). The moving party has provided the Declaration of Efrain Navarro to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Navarro Declaration provides testimony that the lease agreement has reached maturity as of March 23, 2016 and Debtor has surrendered possession of the Vehicle.

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

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\$16,102.80, as stated in the Navarro Declaration, which is the remaining balance.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 19, 2016.

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. *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 and the estate have not made post-petition payments, the lease agreement has matured, and the Debtor has already surrendered possession. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue an order terminating and vacating the automatic stay to allow Hyundai Lease Titling Trust, 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving 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 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 2013 Kia Sorento, VIN ending in 9653 ("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 (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.