

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**May 25, 2021 at 1:30 p.m.**

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1.	<b><u>20-21313-E-13</u></b> <b>TIFFANY MILLER</b> <b><u>APN-1</u></b> <b>Mohammad Mokarram</b> <b>HARLEY-DAVIDSON CREDIT CORP</b> <b>VS.</b>	<b>MOTION FOR RELIEF FROM</b> <b>AUTOMATIC STAY</b> <b>4-23-21 [42]</b>
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**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, and Office of the United States Trustee on April 23, 2021. By the court's calculation, 32 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 granted.**

Harley-Davidson Credit Corp, as assignee of Eaglemark Savings Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Harley-Davidson XL883N Iron, VIN ending in 7361 ("Vehicle"). The moving party has provided the Declaration of Hemlata Mistry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tiffany Renee Miller ("Debtor").

Movant argues Debtor has not made 12 post-petition payments, with a total of \$1,793.16 in post-petition payments past due. Declaration, Dckt. 44.

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**

On May 10, 2021, Trustee filed a Non-Opposition noting for the court that Trustee does not oppose the relief requested and informing the court that Debtor is delinquent in plan payments and due to this delinquency, Trustee has not made any disbursements to Movant. Dckt. 48.

## **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 \$9,0353.07 (Declaration, Dckt. 44). Debtor values the Vehicle at \$6,000, as stated in Schedules A/B and D filed by Debtor, which is slightly less than Movant's valuation at \$6,755.00.

### **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.

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

Harley-Davidson Credit Corp, as assignee of Eaglemark Savings Bank (“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 Harley-Davidson XL883N Iron (“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.

2. [19-21660-E-13](#)      **DAVID EMBERLIN**  
[DPC-1](#)

**CONTINUED MOTION TO DISMISS  
CASE  
4-19-21 [69]**

**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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss 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 respondent 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.

<b>The Motion to Dismiss is <del>granted</del>, and the case is <del>dismissed</del>.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis

that the debtor, David Charles Emberlin (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$19,447.40 delinquent in plan payments, which represents multiple months of the \$3,312.93 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor and NewRez, LLC have reported that they are actively negotiating a forbearance of payment of existing defaults, which forbearance would then be part of Debtor’s Plan. The Tentative Ruling on this Motion to Dismiss set for hearing on May 19, 2021, stated that if Debtor’s counsel had confirmed that the Chapter 13 Trustee was continuing the hearing on this Motion to Dismiss, then counsel did not need to appear. No opposition was filed to the Motion to Dismiss.

At the May 19, 2021 hearing no appearance was made by Debtor’s counsel and the Chapter 13 Trustee’s counsel stated that he had not agreed to continue the hearing on this Motion to Dismiss. Counsel for the Trustee also stated that Debtor’s counsel had not contacted Trustee’s counsel concerning the Motion to Dismiss.

Rather than dismissing the case and then potentially subjecting the court, Trustee, and Debtor to an emergency motion to vacate the dismissal order while the creditor then began to proceed with a foreclosure, the court continued the hearing one week, ordering both Debtor and Debtor’s counsel to appear at the May 25, 2021 continued hearing if they oppose the dismissal of this case. Order, Dckt. 77.

At the continued hearing on May 25, 2021, **XXXXXXX**

~~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 to Dismiss the Chapter 13 Case filed by David Cusick, the  
Chapter 13 Trustee, 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 granted and the bankruptcy case is  
dismissed.~~