

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

July 19, 2016 at 1:30 P.M.

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1. [12-27834](#)-C-13 BJOERN WENN MOTION FOR RELIEF FROM  
JHW-1 Mary Ellen Terranella AUTOMATIC STAY  
6-16-16 [[29](#)]  
PRA RECEIVABLES MANAGEMENT,  
LLC VS.

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**Final Ruling:** No appearance at the July 19, 2016 hearing is required.  
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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).

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.

**Below is the court's tentative ruling.**  
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Local Rule 9014-1(f)(1) Motion - Hearing Required.

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 June 16, 2016. Twenty-eight 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). 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). 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.

<b>The Motion for Relief From the Automatic Stay is moot having been resolved by stipulation of the parties.</b>
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Creditor, Portfolio Recovery Associates, LLC, assignee of National Capital Management, LLC, assignee of Santander Consumer USA, Inc., assignee of CitiFinnancial Auto, by and through its servicing agent, PRA Receivables

Management, LLC seeks relief from the automatic stay with respect to an asset identified as a 2007 KIA Sorento, VIN ending in 6216 (the "Vehicle"). The moving party has provided the Declaration of Melinda Kauffman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kaufmann Declaration provides testimony that the Vehicle was involved in a collision on January 12, 2016. The Vehicle was declared a total loss by Debtor's insurance carrier, USAA, the claim number on which was 19955414-7, and on which Movant is named the loss payee. Movant has been advised that Debtor wishes to retain the Vehicle. On May 26, 2016, Movant received insurance proceeds in the amount of \$9,439.95 from USAA. Movant seeks relief from the automatic stay in order to apply the insurance proceeds to the remaining balance on the secured claim, and forward any overages to Trustee's office.

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

Chapter 13 Trustee responds to the instant motion, providing to the court that Debtor is delinquent \$750 under the confirmed plan. Debtor has paid a total of \$12,249 to date. Claim #3 was filed 05/10/12 claiming \$27,371.53 as secured. An order confirming plan and valuing the collateral was entered 06/25/12/ The secured claim was valued at \$12,400 and any deficiency was allowed as a general unsecured claim. \$3,240.26 remains to be paid on the secured portion of the claim. No disbursements have been made on the general unsecured split claim of \$14,971.53.

#### **STIPULATION**

On July 15, 2016, parties submitted a stipulation, Dckt. 39, resolved this motion as to the disposition of insurance proceeds on the 2007 KIA Sorento. Parties have agreed that chapter 13 trustee shall hold the insurance proceeds in the amount of \$6,199.69 in a separate interest-bearing account; that chapter 13 trustee will release the funds to debtor upon completion of the plan and receipt of discharge; that Creditor shall release its lien on the insurance proceeds upon completion of the plan and receipt of discharge or once Creditor's debt is paid in full, whichever occurs earlier; and Creditor will receive the insurance proceeds if Debtor is to complete his plan and receive a discharge, or the underlying bankruptcy case is dismissed, the underlying bankruptcy case is converted to another chapter. The court has or will enter an order approving said stipulation.

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 Creditor ("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 motion for relief from the automatic stay is moot by stipulation of the parties resolving the underlying motion.

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