

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 16, 2016 at 1:30 p.m.

1.	<u>15-27005</u> -E-13 APN-1	MICHELLE CAMPAU Richard L. Jare	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-8-16 [66]
	SANTANDER CONSUMER USA, INC. VS.		

Final Ruling: No appearance at the August 16, 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 July 8, 2016. By the court's calculation, 39 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.
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Michelle Campau ("Debtor") commenced this bankruptcy case on September 3, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Honda Insight, VIN ending in 9357 (the "Property"). The moving party has provided the Declaration of Janiscia Jackson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Janiscia Jackson Declaration provides testimony that Debtor has not made six post-petition payments, with a total of \$1,320.00 in post-petition payments past due.

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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 \$8,435.77, as stated in the Janiscia Jackson Declaration, while the value of the Property is determined to be \$8,500.00, as stated in Schedule B filed by Debtor.

RESPONSE TO MOTION

David Cusick, the Chapter 13 Trustee, filed a response asserting that Debtor is delinquent \$1,540.00 under the confirmed plan, having paid \$660.00.

RULING

The instant case was dismissed on August 10, 2016, for failure to make plan payments. Dckt. 80.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) *the time the case is dismissed;* or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of August 10, 2016, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on August 10, 2016.

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 Santander Consumer USA Inc. (“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 court confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the personal property commonly known as a 2010 Honda Insight, VIN ending in 9357, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the August 10, 2016, dismissal of this bankruptcy case filed by Michelle Campau, the Debtor.