

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

September 1, 2015 at 1:30 P.M.

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1. [11-43840](#)-C-13 EARL/HATTIE JOHNSON MOTION FOR RELIEF FROM  
TJS-2 C. Anthony Hughes AUTOMATIC STAY  
7-31-15 [[71](#)]  
USE CREDIT UNION VS.

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**Tentative Ruling:** 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 July 31, 2015. 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.

**The Motion for Relief From the Automatic Stay is denied.**

Use Credit Union seeks relief from the automatic stay with respect to the real property commonly known as 5950 14th Street, Sacramento, California. The moving party has provided the Declaration of KC Andrews to

introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$4,358.12 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this while the value of the property is determined to be \$178,000, as stated in Schedules A and D filed by Debtor.

### **Trustee's Response**

Debtor was advised that the Trustee's office did not receive a plan payment for the month of June therefore no mortgage payment disbursed. Debtor indicated they had purchased a cashier's check for June, and subsequently provided the Trustee's office with a copy of the purchaser copy of a cashier's check issued June 11, 2015 for \$2,179.06 (Exhibit A). The Trustee's office conducted a system search for the missing June payment but was unable to locate it. Debtor advised the Trustee that they contacted Wells Fargo and the cashier's check has not been negotiated. The Trustee's office requested Debtor contact the bank for a replacement as soon as possible.

The Trustee's records reflect 45 mortgage payments have become due (November 2011 14 through July 2015) with 44 having disbursed to the creditor for a total of \$73,464.40, reflecting a mortgage delinquency of \$1,716.30, or one payment, which appears to be due to the missing 17 June payment.

### **Debtor's Opposition**

A quick review of the Trustee's website of payments received reflects that the Trustee has \$2,406.48 on-hand, and has disbursed (43) forty-three payments of \$1,716.30, for a total of \$73,464.00, and \$2,684.52 in arrears. Lender was only delinquent the June 2015 payment at the time of filing the instant motion. They received a payment disbursed on July 31, 2015 and will receive two payments in the August disbursement, thus making the mortgage post-petition current.

The creditor's assertion that the Debtor's payments are "sporadic at times" does not amount to "cause" for relief.

### **Discussion**

The court maintains the right to grant relief from stay for cause when the 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 existence of missed payments by itself does not guarantee relief from stay. The evidence demonstrates that Debtors have only missed one payment in June. Given that the Debtors will reimburse Movant for the missed payment in August, the court does not find an adequate evidentiary basis for granting relief for "cause."

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 the creditor 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 for relief from the automatic stay provisions of 11 U.S.C. § 362(a) is denied.

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2. [12-22343](#)-C-13 BOATAMO MOSUPYOE  
TJS-1 David Foyil

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-22-15 [[146](#)]

JPMORGAN CHASE BANK N.A. VS.

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**Tentative Ruling:** 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 July 22, 2015. 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.

**The Motion for Relief From the Automatic Stay is granted.**

JPMorgan Chase Bank, N.A. seeks relief from the automatic stay with respect to a 2007 Toyota Yaris, Vehicle Identification Number JTDBT923871074699. The moving party has provided the Declaration of Maria Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the movant has not received a payment from Debtor since April 30, 2015 and that Debtor is delinquent on four chapter 13 plan payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$1,654.82 while the value of the property is determined to be \$3,300, as stated in Schedules A and D filed by Debtor.

**Trustee's Response**

The Trustee states that Debtor has missed 3.39 plan payments. In response to the Trustee's notice of default, Debtor proposed a modified plan on May 8, 2015, which the court denied.

## **Discussion**

The court maintains the right to grant relief from stay for cause when the 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 has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow JPMorgan Chase Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to exercise any and all rights arising under the security interest 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 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 the creditor 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 JPMorgan Chase Bank, N.A., its agents, representatives, and successors, to exercise any and all rights arising under the security interest and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the 2007 Toyota Yaris, Vehicle Identification Number JTDBT923871074699.

No other or additional relief is granted.

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3. [12-39871](#)-C-13 ANGELA LAWRENCE  
JHW-1 Chad Johnson

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-31-15 [[34](#)]

AMERICREDIT FINANCIAL  
SERVICES, INC. VS.

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**Final Ruling:** No appearance at the September 1, 2015 hearing is required.  
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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 31, 2015. Twenty-eight 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.**

Americredit Financial Services, Inc. seeks relief from the automatic stay with respect to a 2009 Nissan Altima, Vehicle Identification Number 1N4AL21EX9N466879. The moving party has provided the Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that movant is the lienholder on the vehicle and that movant has been informed that the vehicle was involved in a collision on July 2, 2015. The vehicle was declared a total loss by Debtor's insurer, USAA Insurance Co. Debtor's claim number is 27472904-7, and the movant is named as the loss payee.

Movant seeks relief from the automatic stay in order to recover on the insurance proceeds in the amount of \$8,587.33.

The court maintains the right to grant relief from stay for cause when the 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 has not made post-petition payments. 11 U.S.C.

§ 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Americredit Financial Services, Inc., and its agents, representatives and successors, to recover on the insurance proceeds in the amount of \$8,587.33 from USAA Insurance Co. with respect to claim 27472904-7 pertaining to a 2009 Nissan Altima, Vehicle Identification Number 1N4AL21EX9N466879.

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 the creditor 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 Americredit Financial Services, Inc., its agents, representatives, and successors, to recover on the insurance proceeds in the amount of \$8,587.33 from USAA Insurance Co. with respect to claim 27472904-7 pertaining to a 2009 Nissan Altima, Vehicle Identification Number 1N4AL21EX9N466879.

No other or additional relief is granted.

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4. [12-33279](#)-C-13 LAWRENCE/GLORIA BURNELL  
MDE-1 Scott de Bie

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-22-15 [[96](#)]

TOYOTA MOTOR CREDIT  
CORPORATION VS.

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**Tentative Ruling:** 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 July 22, 2015. 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.

**The Motion for Relief From the Automatic Stay is granted.**

Toyota Motor Credit Corporation seeks relief from the automatic stay with respect to a 2010 LEXUS ES350, vehicle identification number: JTHBK1EG6A2381792. The moving party has provided the Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$10,510.08 while the value of the property is determined to be \$27,000, as stated in Schedules A and D filed by Debtor. Debtors have missed 5 plan payments to the Trustee for a total plan delinquency in the amount of \$5,175.00. The last payment Movant received was in March, 2015. The loan matured on 5/4/2015 and is now due in full. Movant has not been provided with proof of insurance.



## Debtors' Opposition

Debtors have filed a proposed modified plan set for confirmation hearing on October 6, 2015. The modified plan calls for a payment of \$2,070 in August 2015. Payment should be received by Movant prior to this hearing.

## Discussion

The court maintains the right to grant relief from stay for cause when the 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 has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Toyota Motor Credit Corporation, 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.

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 the creditor 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 Toyota Motor Credit Corporation, its agents, representatives, and successors, to exercise any and all rights arising under the security interest and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the 2010 LEXUS ES350, vehicle identification number:JTHBK1EG6A2381792.

No other or additional relief is granted.

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