

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 1, 2022 at 10:00 a.m.

FINAL RULING

1.	<u>22-21378</u> -E-7 <u>AP-1</u>	MATTHEW O'MARA Stephan Brown	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-26-22 [<u>15</u>]
	JPMORGAN CHASE BANK, N.A. VS.		

Final Ruling: No appearance at the September 1, 2022 hearing is required.

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, Chapter 7 Trustee, and Office of the United States Trustee on July 26, 2022. By the court's calculation, 37 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). 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 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.

The Motion for Relief from the Automatic Stay is granted.
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JP Morgan Chase Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2018 Subaru Outback, VIN ending in 7595 (“Vehicle”). The moving party has provided the Declaration of Susie Casillas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Matthew Conor O'Mara (“Debtor”).

Movant provides evidence that it is the owner of the Vehicle. Movant has provided a Certificate of Title to substantiate its claim of ownership. Exhibit 2, Dckt. 20. Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant argues Debtor has not made two post-petition payments, with a total of \$431.66 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of \$431.66. *Id.*

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).

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 \$16,371.67 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be \$25,750.00, as stated on the NADA Valuation Report.

TRUSTEE’S NONOPPOSITION

On August 2, 2022, Chapter 7 Trustee, Nicki Farris, (“Trustee”), entered a docket entry indicating nonopposition.

DISCUSSION

Movant has presented a colorable claim for title to and possession of this vehicle. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Vehicle, including appropriate judicial proceedings and remedies to obtain possession thereof.

No other or additional relief is granted by the court.

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 for Relief from the Automatic Stay filed by JP Morgan Chase Bank, N.A. (“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, and its agents, representatives and successors, to exercise its rights to obtain possession, control, and disposition of the asset identified as a 2018 Subaru Outback, VIN ending in 7595 (“Vehicle”), including appropriate judicial proceedings and remedies to obtain possession thereof.

No other or additional relief is granted.