

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 8, 2013 at 1:30 p.m.

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1. [13-30309](#)-C-13 MICHAEL/ARLENE DISESSA MOTION FOR RELIEF FROM
APN-1 Richard L. Jare AUTOMATIC STAY
8-27-13 [[17](#)]
NISSAN-INFINITI, LT VS.

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 August 27, 2013. 28 days' notice is required. This requirement was met.

Final 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 Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Lessor, Nissan-Infiniti, LT seeks relief from the automatic stay with respect to an asset identified as a 2013 Nissan Leaf, VIN # ending in 5381. The moving party has provided the Declaration of Jessica Laubler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Lessor states that pursuant to the Chapter 13 Plan put forth by Debtor(s), Debtors reject the prevailing contractual agreement and intends to surrender possession of the property to the Lessor. The remaining sums due under the prevailing Lease Agreement include the purchase option to be paid by Debtor, in the amount of \$36,991.61 (not including excess mileage and/or wear and tear on the property). Lessor cannot be assured of repayment of the remaining balance on the subject property, and Lessor

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lacks adequate protection for its claim under 11 U.S.C. § 362.

The Chapter 13 Trustee filed a statement of non-opposition.

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).

Because Debtor intends to surrender possession of the property, Lessor will not be repaid the balance on the property. Lessor will be permitted to pursue state remedies to regain possession. The court shall issue a minute order terminating and vacating the automatic stay to allow Nissan-Infiniti to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow Nissan-Infiniti to gain immediate possession of the property and dispose of the same in a commercially-reasonable sale.

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 Nissan-Infiniti to pursue nonbankruptcy remedies with regard to the property commonly known as 2013 Nissan Leaf, VIN # ending in 5381.

2. [13-23022](#)-C-13 JAY REESE
PD-1 Stephen J. Johnson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-10-13 [[54](#)]

U.S. BANK, N.A. VS.

Local Rule 9014-1(f)(1) Motion - Response Filed by Chapter 13 Trustee
No Opposition filed by Debtor

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 September 10, 2013. 28 days' notice is required. This requirement was met.

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 Chapter 13 Trustee having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, U.S. Bank National Association, solely as Trustee for the RMAC Trust, Series 2013-4T, seeks relief from the automatic stay with respect to the real property commonly known as 16133 Aurora Way, Meadow Vista, California. The moving party has provided the Declaration of Bertha A. Culp to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Culp Declaration, dated August 30, 2013, states that Debtor has not made 5 post-petition payments, with a total of \$16,723.85 in post-petition payments due. 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 \$701,304.64, as stated in the Laubler Declaration, while the value of the property is determined to be \$509,853.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee maintains that Debtor is current under the proposed plan filed September 9, 2013, and that Debtor has paid a total of \$1,000 to date. Debtor's proposed plan (Dckt. #48) includes the property in Class I, and reports the Creditor as Bank of America, N.A.

Debtor scheduled \$16,723.85 in arrears and a monthly contract installment of \$3,220.00 in Class I of the proposed plan, and proposes payments of \$200.00 for months 1-9, followed by payments of \$3,770.76 for months 10-60. Debtor is currently in month 6 of the plan. Debtor did not propose any additional provisions regarding the Class 1 monthly contract

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installment.

According to the Trustee and the accompanying Declaration of Ed Weedman, filed September 11, 2013, Debtor has tendered the following payments:

<u>Post Date</u>	<u>Description</u>	<u>Post Amount</u>
4/25/2013	Money Order	\$200.00
5/23/2013	Money Order	\$200.00
6/25/2013	Money Order	\$200.00
7/24/2013	Money Order	\$200.00
8/23/2013	Money Order	\$200.00
Total		\$1,000

A review of the Debtor's Amended Plan, filed on September 9, 2013, shows that Debtor has scheduled \$16,723.85 in arrears and that Debtor proposed submitting a monthly payment of \$200 from his earnings to complete the Plan. Trustee is also correct in stating that Debtor proposed a monthly contract installment amount of \$3,220.00 for the creditor as a Class 1 Creditor.

Movant is to be paid \$3,220.00 a month on its Class 1 Claim and \$334.48 on its pre-petition arrearage. Movant asserts in the Motion that it has not received any post-petition payments, with the Debtor being in default since April 1, 2013. This non-payment is consistent with the Debtor's plan which does not fund any post-petition payment for this Class 1 claim until the 10th month of the plan. By then, the Debtor will be \$28,980.00 in default in post-petition payments. The Debtor's proposed plan is grossly underfunded.

The Debtor has not filed an opposition to the Motion and his default is entered by the court.

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).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank, N.A., Trustee for the RMAC Trust, Series 2014-4T, and its agents, representatives and successors, and all other

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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 moving party has pleaded adequate facts and has not presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is also granted.

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 Serrano El Dorado Owners' Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 16133 Aurora Way, Meadow Vista, California.

IT IS FURTHER ORDERED that the stay 14-day stay of enforcement of this order pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

No further or additional relief is granted.

3. [13-30950](#)-C-13 JUAN/EVITA MORENO
JHW-1 Douglas B. Jacobs

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-29-13 [[19](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

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 Debtors, Debtors' Attorney, the Chapter 13 Trustee, and the U.S. Trustee on August 29, 2013. 28 days' notice is required. That requirement was met.

Final 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). 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. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Creditor, AmeriCredit Financial Services, seeks relief from the automatic stay with respect to an asset identified as a 2004 Chevrolet Trailblazer, VIN ending in 7881. The moving party has provided the Declaration of James Hogan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hogan Declaration, dated August 29, 2013 states that the Debtor is in default for monthly payments due on November 10, 2012, though August 10, 2013, each in the amount of \$362.20. The last payment received by Creditor was in February 8, 2013. Creditor's pleadings show that Debtor is delinquent in ten pre-petition payments, with a total \$3,625.00 past due.

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 \$11,690.06. Debtor did not list the property in his bankruptcy schedules, or his Chapter 13 Plan. The vehicle was recovered pre-petition on August 14, 2013.

The Chapter 13 Trustee has filed a statement of non-opposition.

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).

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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 to proceed under applicable nonbankruptcy laws to enforce its remedies and repossess with regard to the subject asset.

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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow AmeriCredit Financial Services to exercise rights arising under applicable nonbankruptcy laws with regard to Debtor's 2004 Chevrolet TrailBlazer, VIN # ending in the last four digits of 7881.

4. [12-41876](#)-C-13 ALAN/BEVERLY HILL
MRG-1 Michael A. Scheibli

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-12-13 [[105](#)]

U.S. BANK NATIONAL
ASSOCIATION VS.
CASE DISMISSED 9/9/13

Final Ruling: The case having previously been dismissed on September 9, 2013, the Motion is denied as moot.

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 to for Relief from
Automatic Stay having been presented to the
court, the case having been previously
dismissed, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is
denied as moot.

5. [13-26298](#)-C-13 KENT RENARD
JHW-1 James L. Keenan

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-10-13 [[22](#)]

FORD MOTOR CREDIT COMPANY,
LLC VS.

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 Debtors, Debtors' Attorney, the Chapter 13 Trustee, and the U.S. Trustee on August 29, 2013. 28 days' notice is required. That requirement was met.

Final 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). 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. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Creditor, Ford Motor Credit Company, LLC, seeks relief from the automatic stay with respect to an asset identified as a 2009 Ford F150, VIN# ending in 4733. The moving party has provided the Declaration of Mary Alli, Account Services Representative for Creditor, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Alli Declaration, dated September 6, 2013, states that the Debtor is in default to Creditor for monthly payments coming due January 21, 2013 through August 21, 2013, each in the amount of \$525.28. Debtor has made no post-petition payments, and the last payment received by Creditor was January 14, 2013. Debtor is delinquent in 3 pre-petition payments of \$1,634.37 and 4 post-petition payments of \$2,101.12.

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 \$14,689.15. Debtor did not list the value of the property in Schedule B of his petition, and did not list the subject property in his Chapter 13 Plan. The property was recovered pre-petition in April 23, 2013.

The Chapter 13 Trustee has filed a statement of non-opposition.

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 Ford Motor Credit Company, LLC, to proceed under applicable nonbankruptcy laws to enforce its remedies with regard to the asset.

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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ford Motor Credit Company, LLC, to exercise rights arising under applicable nonbankruptcy laws with regard to Debtor's 2009 Ford F150, VIN# ending in the last four digits of 4733.