

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 18, 2016 at 1:30 P.M.

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1. [16-24217](#)-C-13 KANDICE WARD MOTION FOR RELIEF FROM  
EMM-1 Andrew Moher AUTOMATIC STAY  
9-14-16 [[17](#)]  
CONSUMER PORTFOLIO SERVICES,  
INC. 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 September 14, 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.

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

Consumer Portfolio Services, Inc., Creditor, seeks relief from the automatic stay with respect to the personal property of a 2013 Chrysler 200,

VIN 1C3CCBBB2DN509714. The moving party has provided the Declaration of Angelica Correa, a bankruptcy representative for Creditor, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Correa Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$707.80 in post-petition payments past due. The parties disagree as to the amount of debt owed to the Creditor. Creditor asserts that it is owed \$15,319.20, however the evidence cited to by the Creditor appears to show only \$14,151.34 owing to the Creditor (see exhibit 3). The Debtor asserts that the amount owed as of the date of the petition was \$14,120.00. Debtor and Creditor agree that the value of the collateral is between \$11,680.00 and \$11,772.00.

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response asserting that the debtor is current under the plan confirmed September 10, 2016. The creditor is included in Class 4 of the confirmed plan.

Moving party's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an 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 automatic stay provisions of 11 U.S.C. § 362(a) are not vacated. The Motion for Relief from the Automatic Stay is denied.

No other or additional relief is granted.

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