

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 19, 2023 at 10:00 a.m.

FINAL RULINGS

1.	<u>23-90171-E-7</u> <u>KMM-1</u>	JOSHUA MILLER Steven Alpert	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-8-23 <u>[19]</u>
WELLS FARGO BANK, N.A. VS.			

Final Ruling: No appearance at the October 19, 2023 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 September 8, 2023. By the court's calculation, 41 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 denied as moot as to the Debtor, but the Motion is granted as to the Estate.

Wells Fargo Bank, N.A., d.b.a. Wells Fargo Auto (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2022 Tesla Model 3, VIN ending in 3625 (“Vehicle”). The moving party has provided the Declaration of Donna Sallee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joshua Scott Miller (“Debtor”).

Movant argues Debtor has not made 4 post-petition payments, with a total of \$3,352.36 in post-petition payments past due. Declaration, Dckt. 22. Movant also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$3,352.36. *Id.*

J.D. Power Guide Report Provided

Movant has also provided a copy of the J.D. Power Guide Valuation Report for the Vehicle. Exhibit D, Dckt. 21. 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).

TRUSTEE’S NON-OPPOSITION

The Chapter 7 Trustee filed a Non-Opposition on September 18, 2023.

DISCUSSION

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 \$48,597.48 (Declaration, Dckt. 22), while the value of the Vehicle is determined to be \$43,675.00, as stated on the J.D. Power Guide Report, which is slightly more than the retail value as stated in Schedules A/B and D filed by Debtor.

Additionally, the Debtor stated in his Statement of Intention that he intended to surrender possession of the vehicle to Movant. Statement of Intention, Dckt. 1.

Prior Discharge

Debtor was granted a discharge in this case on July 24, 2023. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 Wells Fargo Bank, N.A., d.b.a. Wells Fargo Auto (“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, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2022 Tesla Model 3, VIN ending in 3625 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Joshua Scott Miller (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot, 11 U.S.C. § 362(c)(2)(C) providing that the automatic stay terminated as to Debtor upon the July 24, 2023 entry of Debtor’s discharge (Dckt. 15) in this Case.

No other or additional relief is granted.