UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 26, 2016 at 1:30 p.m.

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1. 13-33111-E-13 SARAH RICHEY
NLG-1 Rebecca Ihejirika

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-25-16 [48]

SETERUS, INC. VS.

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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 March 25, 2016. By the court's calculation, 32 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). 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.

Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc.("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2291 & 2293 Babette Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Holley Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are 19 post-petition defaults in the payments on the obligation secured by the Property, with a total of

$30,844.22 in post-petition payments past due. The Declaration also provides evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of $9,022.68.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on April 12, 2016.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $216,884.46, secured by Movant's first deed of trust as stated in the Caldwell Declaration and Schedule D filed by Sarah Richey ("Debtor"). The value of the Property is determined to be $127,500.00 as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a 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, including defaults in post-petition payments which have come due. 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 or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(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 an order terminating and vacating the automatic stay to allow Movant, 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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim in the total amount of $$216,884.46 for all matters relating to this Motion.

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

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 Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc. ("Movant") 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 immediately vacated to allow Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc., 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 2291 & 2293 Babette Way, Sacramento, California .

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim.

No other or additional relief is granted.

2. 15-27219-E-13 BRIAN CLARK **MOTION FOR RELIEF FROM**
AP-1 Mark Wolff **AUTOMATIC STAY**
3-16-16 [28]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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 March 16, 2016. 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). 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.

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-13 Mortgage Pass-Through Certificates, Series 2007-13 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4214 West 62nd Street, Los Angeles, California (the "Property"). Movant has provided the Declaration of Peter Murphy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Murphy Declaration states that Maurice Clark, the original borrower and owner of the Property, issued an unauthorized Grant Deed in September as a gift to Brian Clark ("Debtor") without consideration. Movant asserts that the purpose transferring a fractional interest in property to Debtor was to hinder and delay Movant from seeking relief against the original borrower.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on April 12, 2016.

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the

court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Movant's argument's are well-taken. Debtor has not listed the Property on his Schedules, and it is unclear what agreement, if any, there was between him and Maurice Clark for payment. Debtor's failure to list the Property support's Movant's claim that transfer to Debtor of a property interest here was merely a tactic to delay payment or foreclosure. The Movant does not implicate the Debtor as part of the "scheme" but rather asserts that the transfer was without the Debtor's participation or acquiescence, the original transferor seeks to implicate the automatic stay for the transferor's own benefit by purporting to transfer real property into a random bankruptcy by making it appear that such a transfer to the bankruptcy has occurred.

Furthermore, Debtor has not opposed this Motion.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfers of interests in the subject property to beneficiaries who then filed several bankruptcies were a deliberate attempt as a stay to any foreclosure. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute order terminating and vacating the automatic stay to allow The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-13 Mortgage Pass-Through Certificates, Series 2007-13 , 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 also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

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 The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-13 Mortgage Pass-Through Certificates, Series 2007-13, 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 4214 West 62nd Street, Los Angeles, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

Requests for attorneys' fees and costs, if any, shall be by post-order timely filed costs bill or motion for attorneys' fees.

No other or additional relief is granted.

3. **16-20361-E-13 DANIEL MASSEY** **MOTION FOR RELIEF FROM**
APN-2 Corrina Roy **AUTOMATIC STAY**
3-21-16 [21]

BMW FINANCIAL SERVICES, N.A., LLC VS.

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.

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 March 21, 2016. By the court's calculation, 36 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). 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.

Daniel Massey ("Debtor") commenced this bankruptcy case on January 22, 2016. BMW Financial Services N.A., LLC, service provider for Financial Services Vehicle Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 BMW 428xi, VIN ending in 5484 (the "Vehicle"). The moving party has provided the Declaration of Christine Hickman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hickman Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $586.83 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of $1,543.13.

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 $39,337.53, as stated in the Hickman Declaration, while the value of the Vehicle is determined to be $32,248.00, as stated in Schedules B and D filed by Debtor.

OPPOSITION TO MOTION

Debtor filed an opposition on April 12, 2016. Dckt. 31. Debtor states that the post-petition default resulted from that payment being mistakenly included in Debtor's Plan payment, which had not provided for post-petition payments. Debtor states that he has cured his post-petition arrears at the time of filing this opposition. Debtor states further the that pre-petition arrears are being provided for through the Chapter 13 Plan.

TRUSTEE'S RESPONSE TO MOTION

On March 30, 2016, David Cusick, the Chapter 13 Trustee, filed a response. Dckt. 28. The Trustee states that Debtor has been paying into his Plan, and that the Plan provides for Movant's pre-petition arrears.

The Debtor is current under the proposed plan. The current proposed plan lists creditor under Section 3.02 - Executory Contracts and Unexpired Leases, and includes pre-petition arrears of $1,278.00 with a monthly dividend of $58.09. The Proof of Claim No 1 filed by Movant lists $14,775.09 with $1,278.00 in lease arrears

RULING

The Movant's arguments are well-taken. Debtor states that post-petition arrears have been accounted for, but Debtor has not supported that assertion by signed statement under penalty of perjury. Debtor has submitted no other evidence showing that he has become current. Furthermore, Debtor is a lessee here, and therefore has a mere possessory interest. The court maintains the right to grant relief from stay for cause when a 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 and the estate have 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 an order terminating and vacating the automatic stay to allow BMW Financial Services N.A., LLC, service provider for Financial Services Vehicle Trust , and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

Movant has not pleaded adequate facts and presented sufficient evidence to

support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not 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 BMW Financial Services N.A., LLC, service provider for Financial Services Vehicle Trust ("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 2014 BMW 428xi, VIN ending in 5484 ("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 the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.
>
> **IT IS FURTHER ORDERED** that the Movant party having established that the value of the Vehicle subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim.
>
> No other or additional relief is granted.

4. 15-25168-E-13 DEBRA MCCLAIN
15-2152 KSR-1
MCCLAIN V. SULLIVAN ET AL

CONTINUED MOTION TO COMPEL RESPONSES TO DEMAND TO PRODUCE DOCUMENTS, COMPEL ANSWERS TO INTERROGATORIES, COMPEL DISCLOSURES, AND FOR MONETARY SANCTIONS
2-9-16 [31]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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's attorney on February 9, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Compel 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 and other parties in interest are entered.

The Motion to Compel Discovery is dismissed without prejudice, at the request of the Movant.

Dusty Sullivan, one of the Defendants, ("Defendant") filed this Motion to Compel responses to Demand to Produce Documents, Compel Answers to Interrogatories, Compel Fed. R. Civ. P. 26(a) Disclosures, and for Monetary Sanctions on February 9, 2016. Dckt. 31.

On February 16, 2016, the Plaintiff-Debtor filed her Federal Rule of Civil Procedure 26(a)(1) disclosures. FN.1.

FN.1. References to "Rule" are a reference to the Federal Rules of Civil Procedure and references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure.

REVIEW OF MOTION

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 7007, upon which the request for relief is based:

> PLEASE TAKE NOTICE, that on March 15, 2016, at 3:00 p.m. in Courtroom 33 in the United States Bankruptcy Court Eastern

> District of California located at 501 I Street, Sacramento, California, Defendant Dusty Sullivan will move this Court for an order compelling Plaintiff Debra K. McClain to answer and respond to the demand for production of documents, interrogatories, and for monetary sanctions in a sum equal to $1,200.00 against Plaintiff Debra K. McClain, and to compel Plaintiff Debra K. McClain to file her disclosures pursuant to Fed. R. Civ. P. 26(a)
>
> This motion will be based upon this notice of motion and motion, and concurrently filed exhibits, memorandum of points and authorities and declaration of Kirk Rimmer.

The Motion does not comply with the requirements of Federal Rule of Civil Procedure 7 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the grounds are located elsewhere in the pleadings. This is not sufficient.

The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Civil Procedure 7(b) is incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A

Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

REVIEW OF MOTHORITIES

Dusty Sullivan, one of the Defendants in this Adversary Proceeding, ("Defendant") filed this Motion to Compel responses to Demand to Produce Documents, Compel Answers to Interrogatories, Compel Fed. R. Civ. P. 26(a) Disclosures, and for Monetary Sanctions on February 9, 2016. Dckt.31. The Motion to Compel does not set forth with particularity the grounds for the relief requested as required by Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007.

Defendant has filed a three page "Points and Authorities" which appears to state facts and grounds, rather than legal points, authorities, and citations in support of the motion, upon which the relief is based. For this motion only, the court treats the Mothorities (the combined motion and points and authorities) as the "motion" stating such grounds. The legal "authorities" and "points" stated in the Points and Authorities consists of: (1) referencing Federal Rule of Civil Procedure 26(a) for required initial disclosures, (2) referencing Federal Rule of Civil Procedure 37(d)(1) as authorizing Defendant to file a motion to comply discovery and Rule 26(a) disclosures, and (3) referencing that Rule 26(a) allows Defendant to receive attorneys' fees for having to prosecute a motion to compel.

Review of "Grounds" Stated in Mothorities

On November 17, 2015, Defendant served on Debra McClain ("Debtor-Plaintiff") and Debtor-Plaintiff's counsel: (1) Demand to produce documents; and (3) Interrogatories. Responses were due September 15, 2014.

More than thirty days have elapsed from the date responses were due.

On January 11, 2016, Defendant alleges that his counsel sent an email to Debtor-Plaintiff's counsel, noting that the responses to the demand of documents and interrogatories were overdue and that the responses were needed by January 22, 2016.

On January 20, 2016, after a status conference, the Defendant's counsel

allegedly met personally with Debtor-Plaintiff's counsel. At this meeting, Defendant's counsel allegedly noted that they still had not received the discovery responses.

Based on the stipulation of the parties, the court issued a scheduling order that required initial disclosures to be made by December 21, 2015. Dckt. 16.

The court's scheduling order required that initial disclosures be due by August 4, 2014 and discovery, including the hearing of all discovery motions, to close on December 31, 2014. Dckt. 14.

Defendant requests that the court order Debtor-Plaintiff to deliver, without objections, her responses to the interrogatories, and the demand to produce documents, and to deliver her Fed. R. Civ. P. 26(1) disclosures. Defendant also requests that the court order Debtor-Plaintiff to pay Defendant $1,200.00 as and for attorney's fees in making this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action."

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

> [T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2)conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

Fed. R. Civ. P. 37 also requires that the moving party must have in good faith conferred or attempted to confer with the opposing party regarding the discovery dispute. Id. The court in *Shuffle Master* noted that good faith "cannot be shown merely through the perfunctory parroting of statutory language ... to secure intervention; rather[,] it mandates a genuine attempt to resolve the discovery dispute through non-judicial means." Id. The movant must show good faith and the party need actually attempt a meeting or conference. Id. Courts have found that "conferment" requirement entails "two-way communication,

communication which is necessary to genuinely discuss any discovery issues and to avoid judicial recourse." *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 398-99 (S.D. Tex. 2012).

Initial Disclosures

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). F. R. Civ. P. 26(a)(1).

Sanctions

In the Defendant's "Mothorities," Defendant cites to Federal Rule of Civil Procedure 37(d) for "sanctions." However, the motion is a motion to compel, and Defendant has asked for the court to award attorneys' fees for bringing the Motion. The relief requested is that provided in Federal Rule of Civil Procedure 37(a)(3)(A) and (B), and (5). This provisions also include compelling a party to provide the Rule 26(a) disclosures, an issue which is not included in the Federal Rule of Civil Procedure 37(d) sanctions. The court considers the Motion under Rule 37(a).

Federal Rule of Civil Procedure 37(a)(5) (emphasis added) provides for the payment of expenses if a movant successfully has the court grant a Motion to Compel. Specifically, the Rule states:

> "(5) Payment of Expenses; Protective Orders.
>
> (A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--**-the court must**, after giving an opportunity to be heard, **require the party or deponent whose conduct necessitated the motion**, the party or attorney advising that conduct, or both to **pay the movant's reasonable expenses incurred in making the motion**, **including attorney's fees**. But the court **must not order** this payment if:
>
> (I) the **movant filed** the motion **before attempting in good faith to obtain** the disclosure or discovery **without court action**;
>
> (ii) the opposing party's **nondisclosure,** response, or objection was **substantially justified**; or

(iii) **other circumstances** make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion."

DISCUSSION

On February 16, 2016, the Plaintiff-Debtor filed her Fed. R. Civ. P. 26(1) disclosures. This is after the Motion now before the court was filed.

Plaintiff-Debtor has not filed an opposition to the present Motion. The Plaintiff-Debtor has not presented to the court any objections to the discovery propounded by Defendant.

Beginning with the Interrogatories, Defendant has propounded 44 individual interrogatories. Exhibit B, Dckt. 33. From the court's review, each interrogatory is directed to a specific paragraph of the Amended Complaint and requests facts or other information relating to the allegations in those paragraphs. The Defendant has also requested production of writings which support the interrogatory responses. Exhibit A, *Id*.

Meet and Confer Requirement

The court first considers Movant's satisfaction of the "meeting and confer" requirement of Rule 37(a). In the Mothorities, Movant states that on January 11, 2016, he sent an email to Plaintiff-Debtor's counsel reminding said counsel that the responses were overdue. The email specifically stated:

> Peter: See the attached demand to produce documents, interrogatories and proof of service. The discovery was mailed to you on November 17, 2015 and is now about a month overdue. As you know, the last date for discovery is April 30, 2016 pursuant to the Court's October 21, 2015 order, so time is of the essence for your client's responses. I need the responses by January 22, 2016 Also, on December 1, 2015 I sent you an e-mail (attached) requesting a deposition date for your client. Having heard no response, I am setting her deposition for February 17, 2016 at 10:00 a.m. in my office. See the attached notice of taking deposition which I am mailing today.

Dckt. 33, Exhibit D.

Additionally, Defendant's counsel met with Plaintiff-Debtor's counsel on January 20, 2016 (the day of the Status Conference in this Adversary Proceeding), at which time Plaintiff-Debtor's counsel stated that the discovery would be provided within a week. The Discovery was due the middle of December 2015, having been served on November 17, 2015.

The certification does not include an identification of the reasons for the non-production and how the parties attempted to address it. Conversely, Plaintiff-Debtor has not asserted any reason for the inability to timely, or untimely by the end of January 2016, to provide the discovery.

In light of there being no opposition and the testimony of counsel for Defendant that there was a stated later date by which Plaintiff-Debtor's counsel stated the discovery would be produced, there is certification of an adequate "meet and confer" by the attorneys.

At the hearing, Defendant's counsel reported that some documents have been provided, but not all.

Sanctions

The court, having found that the Defendant had properly attempted to meet-and-confer without judicial interference to settle the discovery dispute, finds that the instant Motion is appropriate.

On February 16, 2016, the Plaintiff-Debtor filed the Rule 26(a) initial disclosures. This is partial satisfaction of the Defendant's Motion to Compel. However, there is no evidence that the Plaintiff-Debtor have provided the requested documents nor the responses to the interrogatories.

Fed. R. Civ. P. 37(a)(5)(A) contemplates the exact situation where a Motion to Compel is granted and the disclosure has been provided after the Motion was filed. In this situation, the court "must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." A court may, in its discretion, award costs and expenses of the Motion against the unsuccessful party or deponent, which expenses can include attorney's fees. 10 COLLIER ON BANKRUPTCY ¶ 7037.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) .

In the Defendant's "Mothorities," the Defendant requests $1,200.00 in attorney's fees "as a result of Defendant Sullivan's experienced litigation attorney Kirk Rimmer preparing this motion and accompanying documents, and attending the hearing in this matter." Dckt. 32. In his declaration, Mr. Rimmer states that he has been a member of the State Bar for 33 years and charges $300.00 per hour for litigated matters. Mr. Rimmer states that

> It will take me four hours to prepare this declaration, the notice of motion and motion to compel discovery, the exhibits, the memorandum of points and authorities and to attend the hearing on this motion.

Dckt. 34.

MARCH 24, 2016 HEARING

At the hearing, the court was informed that Mr. Cianchetta, Plaintiff-Debtor's attorney, recently had undergone back surgery and was unable to attend the March 24, 2016 hearing. Counsel for Defendant advised the court that some of the documents have been produced, with Plaintiff-Debtor's attorney advising that the additional documents were collected, but he was awaiting the executed verification from his client.

Defendant's attorney requested that the court continue the hearing, rather than ruling on it at the March 24, 2016 hearing. Further, the court was advised that the discovery deadlines may need to be extended if depositions are determined to be necessary after receiving the documents.

The court had specially set the continued hearing to a convenient date and time for the parties, in light of the court's calendar. Additionally, the court has authorized the filing of motions to extend discovery using the 14-day notice provisions of Local Bankruptcy Rule 9014-1(f)(2), to be specially set for the continued hearing date on this Motion. Upon consideration of the facts and circumstances in this Adversary Proceeding and Plaintiff's attorney's surgery, this affords additional time for the parties to meet and confer, with the court being able to conduct an initial hearing on the discovery motion prior to the close of discovery under the current scheduling order.

WITHDRAWAL

The Defendant filed a "Withdrawal of Motion" for the pending Motion to Compel and for Sanctions, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Defendant's Motion to Compel and for Sanctions**.

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 Compel filed by Defendant 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 to Compel is dismissed without prejudice.

5. 15-27079-E-13 LANNES SHARMAN **MOTION FOR RELIEF FROM**
DBJ-1 Michael Hays **AUTOMATIC STAY**
3-29-16 [21]

MICHAEL HOLMES VS.

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.

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 March 29, 2016. By the court's calculation, 28 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). 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.

The hearing on the Motion for Relief From the Automatic Stay has been continued pursuant to stipulation of the parties. Order, Dckt. 35.

6. 13-29882-E-13 VASILIY ORMANZHI
NLG-1 Peter Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-25-16 [62]

SETERUS, INC. VS.

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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 March 25, 2016. By the court's calculation, 32 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). 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.

Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc.("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5526 20th Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Holley Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of $5,645.80 in post-petition payments past due.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on March 29, 2016.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $258,285.29(including $175,798.29 secured by Movant's first deed of trust) as stated in the Caldwell Declaration and Schedule D filed by Vasiliy Ormanzhi

("Debtor"). The value of the Property is determined to be $150,000.00 as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a 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, including defaults in post-petition payments which have come due. 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 or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(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 an order terminating and vacating the automatic stay to allow Movant, 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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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

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 Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc. ("Movant") 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 immediately vacated to allow Seterus, Inc. as the authorized subservicer for Federal National Mortgage Association, creditor c/o Seterus, Inc., 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 5526 20th Avenue, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim.

No other or additional relief is granted.