UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 18, 2018 at 1:30 p.m.

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1. **18-24173-E-13 CCR-2** | **FERRIC/STACY COLLONS** | **Peter Macaluso** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **9-4-18 [39]**

RANCHO MURIETA AIRPORT, INC.
VS.

Tentative Ruling: 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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13, and Office of the United States Trustee on September 4, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

RANCHO MURIETA AIRPORT, INC., a California Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a three self-storage units and the contents therein located at property commonly known as 7443 Murieta Drive, Rancho Murieta, California, Units S293, 39,

and S30 ("Property"). The moving party has provided the Declaration of Anatosha Von Vorst to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ferric and Stacy Collons ("Debtor").

The Vorst Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of $1,170.00 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 $1,850.00.

Movant's Motion requests relief of stay in part to permit Movant to pursue enforcement of its statutory lien in all Debtor's personal property located within Debtor's three storage units to satisfy amounts owed to Movant for rent, labor, late payment fees, or other charges incurred pursuant to the rental agreement. Cal. Bus. & Prof. Code § 21702.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to this Motion on September 6, 2018. Dckt. 47. Trustee notes Movant is included in Section 4.02 of the proposed plan as an executory contract or unexpired lease concerning post-petition payments and prepetition arrears for three leased storage units. Debtor is delinquent $810.00 under the proposed plan and has not yet commenced payments under the plan. Movant has filed an objection to confirmation of the proposed plan asserting that the rental agreements are substantially in default, the plan proposes curing default by making the minimum payment required over 5 years, and that the listed amount of direct payment of $500 should be $525.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed 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.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. 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 pleading with particularity 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." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and

the court. By hiding possible grounds in 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 any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant's Motion leaves the court to guess what relief it is requesting, and fails to identify the property subject to relief. Movant's Motion states:

> A. Debtor Ferric J. Collons entered into rental agreements for three individual storage units in February 2018. Debtors made the initial payment on each unit and took possession of the units. Thereafter, Debtor made two additional monthly payments in March and April 2018. The last payment made on each unit was on April 18, 2018. Dckt. 39, ¶ 1.
>
> B. This bankruptcy case was filed on July 3, 2018. Since the date of filing, no postpetition payments have been made. Since these are storage units, neither the debtor nor the estate have any equity in the property and it is not necessary for an effective reorganization. For these reasons, immediate relief from stay under 11 U.S.C. §362(d)(1) and (d)(2) is appropriate. *Id.*, ¶ 2.

While the Motion states grounds for granting relief, no prayer or request for relief is actually made within the Motion itself. Nor is any description of the contents of the storage units provided. Movant is attempting to sell Property of the Estate and has not stated within its Motion what it is selling, how much the property is allegedly worth, or what the value of its claim is.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion is based upon:

A. The Memorandum of Points and Authorities;
B. The Declaration of Anatasha Van Vorst;
C. The Relief From Stay Summary Sheet;
D. The accompanying Exhibits;
E. Any pleadings of which the court takes judicial notice; and
F. Whatever else is presented prior to or at the hearing.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

Therefore, the Motion is denied without prejudice.

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 RANCHO MURIETA AIRPORT, INC., a California Corporation ("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 Motion for Relief From Automatic Stay is denied.

2. **14-20321-E-13** **DWIGHT BROWN** **CONTINUED STATUS CONFERENCE**
18-2081 **W. Scot deBie** **RE: COMPLAINT**
5-31-18 [1]

BROWN V. DREAM BUILDERS INVESTMENTS, LLC

Related Item 5 - Motion for Default Judgment

Plaintiff's Atty: W. Scott deBie
Defendant's Atty: unknown

Adv. Filed: 5/31/18
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:
Continued from 9/5/18 to be conducted in conjunction with Plaintiff's Motion for Entry of Default Judgment.

3. **14-20321-E-13** **DWIGHT BROWN** **CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT**
18-2081 **W. Scott deBie** **7-17-18 [12]**
SDB-4

BROWN V. DREAM BUILDERS INVESTMENTS, LLC

Tentative Ruling: 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.

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 Defendant, creditors, on July 17, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment 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 Entry of Default Judgment is granted.

Before the court is what one might anticipate is a simple motion for entry of a default judgment to clear title to property after the secured claim, as determined pursuant to 11 U.S.C. § 506(a), has been paid in full and the Chapter 13 Plan was completed. Though the creditor refusing/failing to reconvey the deed of trust will have the privilege of paying mandatory statutory damages and contractual attorney's fees to the consumer debtor, some creditors believe it is financially advantageous to pay those fees instead of reconveying a deed of trust.

However, as the present situation shows, the situation can be much direr for the consumer debtor and consumerdebtor's attorney when the creditor, and creditor's predecessor, create a murky, cloudy chain of tile for the note and deed of trust. Such a situation could be construed (no such determination has been

made in this matter, at this time) as a plan to create an ongoing cloud on title of the consumer's home, for which some future purchaser of the note will later demand payment.

REVIEW OF MOTION

Dwight Alan Brown ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on July 17, 2018. Dckt. 12. Plaintiff-Debtor seeks an entry of default judgment against "Dream Builders Investments, LLC" (also identified in the Motion with the name "Dreambuilders Investments, LLC"), named as "Defendant" in the instant Adversary Proceeding No. 12-02081.

The instant Adversary Proceeding was commenced on May 31, 2018. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 31, 2018. Dckt. 3. The complaint and summons were served on "Defendant." Dckt. 6.

"Defendant" failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on July 13, 2018. Dckt. 11.

REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint for injunctive relief against "Defendant." The Complaint contains the following general allegations as summarized by the court:

A. Plaintiff-Debtor owns real property commonly known as 525 Carousel Drive, Vallejo, California ("Property"). Plaintiff-Debtor resides there as a primary residence.

B. As of January 4, 2014, the date of the filing of the Chapter 13 bankruptcy case, the Property had a fair market value of approximately $260,000.00.

C. Plaintiff-Debtor's Chapter 13 Plan was confirmed on August 13, 2014; Plaintiff-Debtor completed the Plan, and an order of discharge was signed on May 22, 2017.

D. Plaintiff-Debtor owned the Property at the time of filing for bankruptcy, and the Property was secured by two loans: a primary mortgage in favor of Ocwen Loan Servicing and second mortgage in favor of, which was transferred to Defendant and secured by a second deed of trust.

E. Plaintiff-Debtor filed a Motion to Value Secured Claim regarding the Property, which was granted on July 29, 2014, and the secured claim was determined to be in the amount of $0.00 and wholly unsecured. Dckt. 49.

F. On May 22, 2017, "Defendant" (identified in the caption of the Complaint as "Dream Builders Investments, LLC," Dckt. 1 at 1, and identified in the

body of the Complaint as " Dreambuilders Investments, LLC") was served with the order of discharge.

G. Plaintiff-Debtor's counsel provided "Defendant" with the order of discharge, with the civil minute order signed by the court on July 29, 2014, granting Plaintiff-Debtor's Motion to Value Secured Claim, and with the second deed of trust.

H. "Defendant" was assigned its interest in the second deed of trust by Citigroup Global Realty Corp. Pursuant to bill of sale dated July 22, 2011. Exhibit. C. Dckt. 16. It is unclear when the original lienholder, Resmae Mortgage Corporation, assigned its interest because no transfer or assignment has been recorded.

J. On June 1, 2018, Plaintiff-Debtor mailed to "Defendant's" agent for service of process, Danel Singer, Esq., a letter informing Defendant of the status of the second deed of trust, of "Defendant's" improper transfer, and requesting Defendant immediately reconvey the second deed of trust.

K. "Defendant" failed and refused to reconvey the second deed of trust.

L. As a result of "Defendant's" and Assignee's conduct, Plaintiff-Debtor has been damaged by losing the opportunity to obtain refinancing on the Property, take advantage of favorable interest rates, and has suffered from confusion, worry, and fear.

Claim for Relief—Extinguishment of the Second Trust Deed Claim

Plaintiff-Debtor alleges the following for its cause of action:

A. Plaintiff-Debtor continued receiving collection notices from the original holder of the Second Deed of Trust up to the filing of his petition. Plaintiff-Debtor discovered Subsequent to filing a Motion to Value Second Deed of Trust that there had likely been an assignment or transfer to "Defendant."

B. Debtor completed his confirmed Chapter 13 Plan on January 14, 2017; included in the debts discharged is "Defendant's" claim.

C. Over thirty days have passed since the satisfaction of the mortgage and "Defendants" are required to reconvey the Second Deed of Trust.

D. "Defendants" have failed to reconvey or release its Deed.

Prayer

Plaintiff-Debtor requests the following relief in the Complaint's prayer:

A. Identify as an unsecured lien and treat as an unsecured claim the Second Deed of Trust held by "Defendant;"

B. Extinguish the Second Deed of Trust;

C. Execute and acknowledge a substitution of Trustee and issuance of a full reconveyance, authorizing a title insurance company to prepare and record a release of the deed of trust;

D. Award attorneys' fees and costs; and

E. For such other relief as the court deems just and proper.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

IDENTITY OF DEFENDANT

The court notes that "Defendant" has several names across the pleadings and evidence. Plaintiff-Debtor's Motion for Default Judgement identifies the defendant to be "Dream Builders Investments, LLC." Dckt. 12 at 1:28. Within the same Motion, Plaintiff-Debtor identifies the possible defendant as "Dreambuilders Investments, LLC." Dckt. 12 at 3:21. Plaintiff-Debtor's Motion depends on a Motion to Value which identified the possible defendant as " "Dreambuilders Investments, LLC." Case No. 14-20321, Dckt. 39. Plaintiff-Debtor's Notice of Hearing on Plaintiff-Debtor's Motion for Default Judgement purports to give notice to "Dream Builders Investments, LLC." Dckt. 13. The Proof of Service indicates that notice was provided to 6 different possible "Dreambuilders Investments, LLC" entities. Dckt. 17. The Declaration of Scott De Bie in support of the Motion identifies the possible defendant as both "Dream Builders Investments, LLC" and Dreambuilders Investments, LLC." Dckt. 15. The Declaration of Dwight Alan Brown also references both names. Dckt. 14. Plaintiff-Debtor's Summons and Notice of Status Conference and Entry of Default and Order RE: Default Judgement Procedures, Exhibits A and B respectively, were issued to "Dream Builders Investments, LLC." Dckt. 16.

The situation gets even more cloudy based on what Greg Palmer puts forward as his declaration under penalty of perjury. Exhibit C, Dckt. 16. Mr. Palmer states under penalty of perjury [FN.1.] that:

> 1. He is "Manager of Dreambuilders Investments, LLC" (not stating whether he is one manager of several or the sole manager, or if he is a managing member of the limited liability company). Exhibit C, first unnumbered paragraph, Dckt. 16 at 8.
>
> 2. Dreambuilders Investments, LLC acquired a significant number of mortgage loans from Citigroup Realty Corp. pursuant to a Bill of Sale dated July 22, 2011. The Bill of Sale is identified as Attachment 1 to the Declaration. *Id.*, second paragraph.
>
> 3. The Bill of Sale, *Id.* at 9, includes the following information:
>
> > a. On July 22, 2011, Citigroup Global Markets Realty Corp. sold to "Dreambuilder Investments, LLC" (the name of the buyer spelled different than as stated by Mr. Palmer in his declaration, leaving the "s" off of "Dreambuilder").
> >
> > b. The loans are set forth on Schedule I attached to the Bill of Sale. (No Schedule I is included with this Attachment to the Declaration.)
> >
> > c. The sale and transfer includes the mortgages and agreements providing security for the note.

d. The Bill of Sale is signed by Gregory Palmer as the Manager for Dreambuilder Investments, LLC; and by Peter D. Steinmetz as the authorized agent for Citigroup Global Markets Realty Corp.

4. The portfolio of loans purchase include that of the Plaintiff-Debtor. Mr. Palmer states that this is loan #3193 on the Bill of Sale, but no copy of the attachment is not provided for the court to review. *Id.*, Declaration third paragraph.

5. Mr. Palmer further states that on June 11, 2014 (three years later) Citigroup Global Markets Realty Corp. "process the transfer of the Loan via MERS." Mr. Palmer does not provide any testimony as to what is meant by the transfer not being processed for three years. *Id.*, fourth paragraph.

6. Mr. Palmer further testifies that the "transfer" that was "processed" by Citgroup Global Markets Realty Corp. was done so that it would be correctly reflected in the MERs system. *Id.* (Mr. Palmer does not provide any testimony as to the transfer of the note or deed of trust to accurately be reflected in the real property records by which the Plaintiff-Debtor can be determine to have clear title, or that the deed of trust continues to cloud Plaintiff-Debtor's title.

7. Mr. Palmer testifies that he is the agent for services of process for "Dreambuilder's" (having placed the apostrophe showing single possessive). *Id.*, fifth paragraph.

FN.1. The court notes two issues with Mr. Palmer's statement. First, this is a purported declaration submitted improperly as an exhibit. Second, 28 U.S. Code § 1746 requires an affirmation under penalty of perjury that the testimony provided is "true and correct." Mr. Palmer's "declaration" affirms that it is "true and correct to the best of [his] knowledge." What has been provided, therefore, does not appear to be testimony given under penalty of perjury, but statements made with "plausible deniability" for whatever it said - if it turns out not to be actually true. The court will give Mr. Palmer the benefit of the doubt and hold him to these statements as having been made pursuant to the requirements of Federal Rules of Evidence 601 and 602.

A review of the note and deed of trust for the secure claim that has been valued and provided for in Plaintiff-Debtor's Chapter 13 Plan discloses the following information:

A. Note Dated November 10, 2006, Exhibit D, Dckt. 20 at 3-4.

1. Payee if Resmae Mortgage Corporation, 8 Pointe Drive Brea, California. Note ¶ 1.

2. On page 2 of the Note is an endorsement by ResMAE Mortgage Corporation transferring the Note to Lehman Brothers Bank, FSB. *Id.* at 4. There also appears to be an endorsement in blank by Lehman Brothers Bank, FSB (which is undated and partially illegible). *Id.*

B. Deed of Trust Recording Date of November 18, 2006, Exhibit E, Dckt. 20 at 5-13.

1. Resmae Mortgage Corporation is identified as the lender, with MERS as the nominee named as the beneficiary. *Id.* at 5.

Exhibit F filed in support of the Motion is a printout from the New York Department of Corporations website showing information for "Dreambuilder (singular) Investments, LLC." Dckt. 20 at 14. This information for Dreambuilder Investments, LLC states that it has no registered agent and that its "DOS Process" address is:

Dreambuilder Investments, LLC
30 Wall Street
6th Floor
New York, New York 10005. FN.2.

FN.2. A review the New York State Department of State Division of Corporations is consistent with the address and information provided by the Plaintiff-Debtor.

https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=C85B1A53E8AA09D248C29C04594456797489EEDC1880A08FE73618EB16EADB94EED14286172D74B01D4AB7AD98002FDC&p_nameid=AC947C03A82CCA49&p_corpid=5ABFD5121B98B8D9&p_captcha=15177&p_captcha_check=C85B1A53E8AA09D248C29C04594456797489EEDC1880A08FE73618EB16EADB9408D697F953D9C5E281563866686ACA12&p_entity_name=%44%72%65%61%6D%62%75%69%6C%64%65%72%20%69%6E%76%65%73%74%6D%65%6E%74%73&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0

Nothing has been provided to the court showing that either "Dreambuilder Investment, LLC," "Dreambuilders Investments, LLC," or "Dream Builders Investments, LLC" are the creditor holding the secured claim that has been valued and the real party in interest for which the court may declare the deed of trust void and of no force and effect.

It appears that this shortcoming in the current Motion rests not at the feet of the Plaintiff-Debtor or his counsel, but at the feet of "Dreambuilder Investments, LLC" (if the court uses the name show on the Department of Corporation printout, Exhibit F, Dckt. 20), "Dreambuilders Investments, LLC" (as stated by Greg Palmer under penalty of perjury in his Declaration, Exhibit C, Dckt. 16), "Dreambuilder Investments, LLC (as stated in the bill of sale by Gregory Palmer signing for Dreambuilder Investments, LLC, and Peter Steinmetz for Citigroup Global Markets Realty Corp, *Id.*), and Citgroup Global Markets Realty Corp.

REVIEW OF CALIFORNIA SECRETARY OF STATE RECORDS

The court has reviewed the California Secretary of State's Official Website on which information is provided concerning corporations and limited liability companies authorized to do business in the state of California. For the name "Dreambuilders Investments, LLC,[FN.3.] the following information is provided:

200416710167 DREAMBUILDERS INVESTMENTS, LLC

Registration Date:	05/28/2004
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	CANCELED
Agent for Service of Process:	SYNTA HUMPHRIES 2209 E 29TH ST OAKLAND CA 94606
Entity Address:	4100 REDWOOD RD STE 387 OAKLAND CA 94619-2363
Entity Mailing Address:	*
LLC Management	Managers

and

200619310118 DREAMBUILDERS INVESTMENTS, LLC

Registration Date:	06/23/2006
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	FTB SUSPENDED
Agent for Service of Process:	MHARLA ORTEGA 5632 WEAVER PL OAKLAND CA 94619
Entity Address:	4100 REDWOOD RD #387 OAKLAND CA 94619
Entity Mailing Address:	*
LLC Management	Member Managed

FN.3.
https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=LPLLC&SearchCriteria=dreambuilders+Investments&SearchSubType=Keyword

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For "Dreambuilder Investments, LLC" there are no entities with that name reported by the California Secretary of State.

LEXISNEXIS Public Records

A review of LEXISNEXIS online records (which the court acknowledges are not evidence upon which a final ruling is to be made) discloses that "Dreambuilders Investments, LLC's" name (with an Oakland, California address) appears in connection with title to eight parcels of real property. [FN.4] The "Dreambuilder Investments, LLC" name (with a South Carolina address) appears with respect to one property. [FN.5.]

FN.4.
https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=675eb626-bf68-4d74-b005-d40305aadd88

FN.5.
https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=675eb626-bf68-4d74-b005-d40305aadd88

For Dreambuilders Investments, LLC, a nationwide search discloses twenty-seven entities, with addresses that include: New York, New York; Oakland, California; Ogden, Utah; St. Louis, Missouri; Puyallup, Washington; Fort Lauderdale, Florida; Saint Joseph, Missouri; Silverado, California; Detroit Lakes, Minnesota; Jersey City, New Jersey; Austin, Texas; Norman, Oklahoma; Los Angeles, California, Plantation, Florida; and Conshohocken, Pennsylvania. [FN. 6.]

For Dreambuilder Investments, LLC, a nationwide search discloses thirty-five entities, with addresses that include: Silverado County, California; Pittsburgh, Pennsylvania; New York, New York; Las Vegas Nevada; Henderson, Nevada; Princeton, New Jersey; Atlanta, Georgia; Orlando, Florida; Fort Mill, South Carolina; West Lake, Texas; Detroit Lakes, Minnesota; Tifton, Georgia; and Bettendorf, Iowa. [FN. 7.]

FN.6.
https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=675eb626-bf68-4d74-b005-d40305aadd88.

FN.7.
https://advance.lexis.com/publicrecordshome/?pdmfid=1000200&crid=675eb626-bf68-4d74-b005-d40305aadd88.

AT THE AUGUST 16, 2018, HEARING

At the August 16, 2018, hearing, the court continued the hearing on the Motion to September 18, 2018, at 1:30p.m. to afford parties in interest an opportunity for the presentation of evidence establishing the proper creditor in Plaintiff-Debtor's bankruptcy case responsible for reconveying the deed of trust securing its note. Dckts. 22 and 23.

SUPPLEMENTAL PLEADINGS - CITIGROUP GLOBAL MARKETS REALTY GROUP

Citigroup Global Markets Realty Corp. ("Citigroup") filed Notice of Service of Documents on counsel for the Plaintiff-Debtor to comply with the court's order continuing the hearing on the Motion for Entry of Default Judgement. Dckt. 33. Among the documents served includes:

1. the Note dated November 10, 2006, in the amount of $95,800.00, with the Lender/Payee identified as Resmae Mortgage Corporation and Borrower identified as Dwight Brown.

2. Deed of Trust dated November 10, 2006, and recorded November 16, 2006.

3. Asset Sale Agreement dated July 22, 2011.

4. Document generated from Citigroup's records, showing loan identification number - 123954174 - as being the subject loan of Dwight Brown.

ORDER EXCUSING
APPEARANCE OF CITIGROUP

The court issued an Order granting *Ex Parte* Application by Citigroup excusing Peter Steinmetz or other representative of Citigroup from appearing on the grounds that on Citigroup has provided the court with documents and testimony under penalty of perjury of its action, interest, and transfer of interests of the note and deed of trust at issue. Dckt. 35.

The *Ex Parte* Application filed by Citigroup on September 10, 2018 (Dckt. 27), states that Citigroup sold the note at issue to Dreambuilder Investments, LLC pursuant to an agreement dated July 22, 2011. It is stated that the Note is one of 3,777 notes sold to Dreambuilder Investments, LLC by Citigroup, with the court referenced to Exhibit C of the Affidavit of Peter D. Steinmetz. Citigroup has provided the court with the full thirteen-page Agreement for the sale of the notes. Exhibit 3, Dckt. 31. In his Affidavit, Mr. Steinmetz not only authenticates the Agreement and documentation of the note and deed of trust having been sold to Dreambuilder Investments, LLC (Affidavit ¶¶ 16, 17; Dckt. 30), he affirmatively testifies:

> 15. My review of Citigroup's records reveals that after it acquired the subject Note, and pursuant to the Asset Sale Agreement ("Agreement") between Citigroup Global Markets Realty Corp. as Seller and Dreambuilder Investments, LLC as Purchaser, dated July 22, 2011, Citigroup sold the Note to Dreambuilder Investments, LLC. The Note was one of 3,777 mortgage loans sold by Citigroup and acquired by Dreambuilder Investments, LLC, pursuant to that Agreement. And because this was a MERS loan, no Assignment of Deed of Trust was executed or recorded in connection with this transaction.

Affidavit ¶ 15. Further, that Citigroup was the only owner of the Note secured by the deed of trust at the time Citigroup sold it to Dreambuilder Investments, LLC, Id. ¶ 12, and he testifies:

> 18. I personally executed the Agreement on behalf of Citigroup Global Markets Realty Corp. as its Authorized Agent, and it is my signature that appears on its behalf throughout the Agreement.
>
> 19. The Agreement was fully-executed by all parties and implemented, thereby assigning Citigroup's interest in the Loan to Dreambuilder Investments, LLC. Pursuant to the Agreement and transfer of the Note, Citigroup no longer has the original collateral loan file in its possession, custody or control.
>
> 20. In further preparation of this Affidavit, I checked the MERS data base and the MERS system reflects Dreambuilder Investments, LLC, as the next owner of the Note after Citigroup.

Id. ¶¶ 18, 19, 20.

The court finds that the testimony of Peter D. Steinmetz under penalty of perjury and the documents provided by Citigroup is sufficient for the court to accept such as evidence that Citigroup owned the note and deed of trust and transferred all of the right, title, and interest therein to Dreambuilder Investments, LLC.

DISCUSSION

The Motion does not state with particularity the relief requested (Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007), but merely requests that the court enter a default judgment in Plaintiff-Debtor's favor. Dckt. 12 at 5. The Complaint requests that the court:

> a. Issue an Order (which term can include a judgment in an adversary proceeding) that the deed of trust be found to be an unsecured claim that was discharged in the Plaintiff-Debtor's bankruptcy case. Complaint, prayer ¶ a., Dckt. 1 at 4.
>
> b. The court issue an order that the deed of trust is of no force and effect. *Id.* at 5, ¶ b.
>
> c. Find that seventy-five days have passed since the mortgage (obligation secured by the deed of trust) was satisfied, a substitute trustee under the deed of trust may be appointed, the substitute trustee may issue a full reconveyance, and the title insurance company may prepare and record a release of the deed of trust. *Id.* ¶ c.
>
> d. Attorney's fees and costs be awarded Plaintiff-Debtor. *Id.* ¶ d.

Plaintiff-Debtor states that on January 14, 2014, they filed a Chapter 13 bankruptcy case. As of that date, the Property had two liens encumbering it: (1) First Deed of Trust in favor of Ocwen Loan

Servicing, and (2) Second Deed of Trust in favor of Dream Builders Investments, LLC, which it had been assigned.

Plaintiff-Debtor states that Chapter 13 plan payments were completed, which required Defendant to reconvey the Second Deed of Trust on the Property. Plaintiff-Debtor was discharged on May 22, 2017. Case No. 14-20321, Dckt. 86.

According to the Trustee's Final Report and Account in Plaintiff-Debtor's bankruptcy case, Case No. 14-20321, Debtor's Plan was confirmed on August 13, 2014, and completed on January 14, 2017. Bankr. E.D. Cal. No. 14-20321, Dckt. 77, March 24, 2017. The discharge of Plaintiff-Debtor was entered on May 22, 2017. Bankr. E.D. Cal. No. 14-20321, Dckt. 86. Plaintiff-Debtor states that more than thirty days have passed and that Defendant has not reconveyed, requiring Plaintiff-Debtor to file an adversary proceeding.

Here, it appears that Plaintiff-Debtor was entitled to full reconveyance of the Second Deed of Trust on the Property. This court has addressed—in detail—California state law, the standard note and deed of trust contractual basis, and possible 11 U.S.C. § 506(d) basis for a creditor being obligated to reconvey a deed of trust upon a debtor successfully completing a Chapter 13 plan that provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *Martin v. CitiFinancial Servs., Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012) (discussing "lien striping" in Chapter 13 case).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between Plaintiff-Debtor, "Defendant," and creditors, there remains no obligation that is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.8. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *In re Martin*, 491 B.R. at 127–30.

FN.8. 4 B.E. WITKIN ET AL., WITKIN SUMMARY OF CALIFORNIA LAW § 117 (10th ed. 2005) (citing CAL. CIV. CODE § 2939 et seq.; RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 6.4; 4 POWELL § 37.33; 2 C.E.B., MORTGAGE AND DEED OF TRUST PRACTICE § 8.84 (3d ed.); 13 AM.JUR. LEGAL FORMS § 179:511 (2d ed.)).

In addition, California Civil Code § 2941(b)(1) imposes a statutory obligation on the beneficiary under the deed of trust (defendant in this Adversary Proceeding) to reconvey the deed of trust when the obligation secured has been satisfied. The Chapter 13 Plan having been completed, and "Defendant" having been paid the full amount of the secured claim as finally determined pursuant to 11 U.S.C. § 506(a), and the confirmed plan having been completed, that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within thirty days of the obligation secured by a deed of trust having been satisfied, the beneficiary shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has twenty-one days from receipt of the request for reconveyance to reconvey the deed of trust. CAL. CIV. CODE

§ 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here, Plaintiff-Debtor. CAL. CIV. CODE § 2941(b)(1)(B)(ii).

Here, Plaintiff-Debtor completed the plan on January 14, 2017. To date, Defendant has not reconveyed the Second Deed of Trust as required by § 2941 within thirty days after the obligation has been satisfied (here being after the completion of the Plan).

PRESENTATION OF EVIDENCE BY DREAMBUILDERS INVESTMENTS, LLC, DREAMBUILDER INVESTMENTS, LLC, AND CITIGROUP GLOBAL MARKETS REALTY CORP.

While the court clearly has subject matter jurisdiction for this Adversary Proceeding and clearing title from the cloud created by the deed of trust, there is a question as to having the real party in interest creditor before the court for which an effective judgment can be entered. Just as the Plaintiff-Debtor and his counsel do not desire to have an ineffective judgment entered and Plaintiff-Debtor having to further litigation against a purported "bona fide purchaser" of the note and deed of trust, the court does not engage in entering "maybe effective - maybe not" orders and judgments.

At the hearing, **XXXXXXXXXXXXXXXX**.

GRANTING OF MOTION

The Complaint identifies the Defendant as "Dream Builders Investments, LLC." This in part appears to be based on the testimony under penalty of perjury by Greg Palmer, who identifies himself as the "manager" of "Dreambuilders Investments, LLC. Declaration, Dckt. 16 at 8. Mr. Palmer further testifies under penalty of perjury that "Dreambuilders Investments, LLC is the owner of the Note and Deed of Trust at issue, having purchased it from Citgroup Global Realty Corp. He also, under penalty of perjury authenticates the "Bill of Sale" by which the sale is documented.

The Bill of Sale identifies the buyer as Dreambuilder Investments, LLC. *Id.* at 9. This Bill of Sale is consistent with the testimony under penalty of perjury and authenticated documentary evidence provided by Citigroup Global Realty Corp. Dckts. 30, 31.

The court determines that the Defendant against whom the judgment is to be entered is Dreambuilder Investments, LLC, aka Dreambuilders Investments, LLC, aka Dream Builders Investments, LLC (as listed in the caption of the Complaint).

Citigroup Global Markets Realty Corp., as the seller of the Note and Deed of Trust at issue, has provided testimony under penalty of perjury and authenticated exhibits that Dreambuilder Investments, LLC is the purchaser of the Note and Deed of Trust. The court, based upon the evidence presented by Debtor and testimony under penalty of perjury and documentary evidence presented by Citigroup Global Markets Realty Corp., identifies Dreambuilder Investments, LLC as the owner of the Note and Deed of Trust. The court

determines further that Dreambuilder Investments, LLC is the real party in interest who has the duty to reconvey the deed of trust under the completed Chapter 13 Plan and applicable California law.

The Motion is granted and judgment shall be entered for Plaintiff determining that the Deed of Trust recorded on November 18, 2006, as Document No. 200600146562 in the records of the Solano County Recorder's office, with the original named Lender identified as Resmae Mortgage Corporation, encumbering the real property commonly known as 528 Carousel Drive, Vallejo, California, is void and of no legal effect. In addition, the judgment shall also authorize Plaintiff-Debtor pursuant to California Civil Code § 2941(b)(3) to execute and record the reconveyance of the deed of trust and any other document(s) necessary to effectuate such reconveyance. The judgment shall expressly state that the authorization does not limit the court's determination that the Deed of Trust is void and of no legal effect, for which no reconveyance is required to make such judgment effective.

The Judgment shall further provide that any award of attorney's fees and allowance of costs to Plaintiff as the prevailing party shall be requested and awarded as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

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 Entry of Default Judgment filed by Dwight Alan Brown ("Plaintiff-Debtor") 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 is granted and judgment shall be entered for Plaintiff Dwight Alan Brown and against Dreambuilder Investments, LLC, aka Dreambuilders Investments, LLC, (as stated by Greg Palmer, manager under penalty of perjury), aka Dream Builders Investments, LLC (as listed in the caption of the Complaint), determining that the Deed of Trust recorded on November 18, 2006, as Document No. 200600146562 in the records of the Solano County Recorder's office, with the original named Lender identified as Resmae Mortgage Corporation, encumbering the real property commonly known as 528 Carousel Drive, Vallejo, California, is void and of no legal effect. In addition, the judgment shall also authorize Plaintiff-Debtor pursuant to California Civil Code § 2941(b)(3) to execute and record the reconveyance of the deed of trust and any other document(s) necessary to effectuate such reconveyance. The judgment shall expressly state that the authorization does not limit the court's determination that the Deed of Trust is void and of no legal effect, for which no reconveyance is required to make such judgment effective.
>
> The Judgment shall further provide that any award of attorney's fees and allowance of costs to Plaintiff as the prevailing party shall be requested and awarded

as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

4.	**18-24094-E-13**	**THOMAS MEADOWS** **Pro Se**	**CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES** **8-3-18 [40]**

Related Item 7

Tentative Ruling: 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, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 5, 2018. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $79.00 due on July 30, 2018.

The Order to Show Cause is sustained, and the case is dismissed.

SEPTEMBER 5, 2018, HEARING

At the September 5, 2018, hearing, the court continued the hearing on the Motion to September 18, 2018, at 1:30 p.m. Dckt. 51.

DEBTOR'S REQUEST FOR ADDITIONAL TIME TO PAY FILING FEE

On September 4, 2018, Debtor filed a memorandum to the court requesting additional time to pay filing fees. Dckt. 49. Debtor explains he has a newborn child, and expenses for baby food has delayed payment of the required filing fees. Debtor promises to pay the first 2 installment fees in full and apologizes for the delay.

RULING

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The July 30, 2018, filing fee ($79.00) remains delinquent and unpaid by Debtor. Another payment due August 28, 2018, has not been received.

At the hearing, **XXXXXXXXXXXXXXXX**

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

5.	**18-24094-E-13** **DPC-1**	**THOMAS MEADOWS** **Pro Se**	**CONTINUED MOTION TO DISMISS CASE** **8-10-18 [44]**

Tentative Ruling: 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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor *Pro Se* and Office of the United States Trustee on August 10, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Thomas Ray Meadows, Debtor in *Pro Se* ("Debtor"), is $15.00 delinquent in plan payments, which represents one month of the $15.00 plan payment. Debtor has not yet commenced payments under the proposed plan, and another payment will become due by this hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts further that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed on July 30, 2018, after the notice of the Meeting of Creditors was issued. Dckt. 16. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

SEPTEMBER 5, 2018, HEARING

At the September 5, 2018, hearing on the Motion, the Trustee concurred in the request to continue the hearing given changed family matters (the birth of a child) and Debtor's apparent efforts to prosecute this case. Dckt. 52. The court continued the hearing to September 18, 2018, at 1:30 p.m.

DEBTOR'S REQUEST FOR ADDITIONAL TIME TO PAY FILING FEE

On September 4, 2018, Debtor filed a memorandum to the court requesting additional time to pay filing fees. Dckt. 49. Debtor explains he has a newborn child, and expenses for baby food has delayed payment of the required filing fees. Debtor promises to pay the first 2 installment fees in full and apologizes for the delay.

RULING

The court granted a continuance to afford Debtor additional time given changed family matters (the birth of a child) and new expenses. While Debtor promises to pay the filing fee installment payments (Dckt. 49) at issue in the Order to Show Cause set to be heard the same day, Debtor has not addresses the Trustee's grounds for dismissal herein. Furthermore, Debtor has to date not made those installment payments.

It seems likely the added expense of a newborn has swallowed Debtor's last remaining disposable income, which was estimated to be only $100.00. Schedule J, Dckt. 37. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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 Dismiss the Chapter 13 case filed by David Cusick ("the Chapter 13 Trustee") 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 Dismiss is granted, and the case is dismissed.

6. **18-24546-E-13 JHW-1** **SUSAN/KEITH MADSON** **Michael Hays** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **8-21-18 [21]**

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the September 18, 2018, 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 13 Trustee,, and Office of the United States Trustee on August 21, 2018. 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). 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.

TD AUTO FINANCE LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017Jeep Cherokee, VIN ending in 6191 ("Vehicle"). The moving party has provided the Declaration of Doris Pope-Reyes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Name of Susan and Keith Madson ("Debtor").

The Pope-Reyes Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $646.99 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of $2,714.20.

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 $38,469.07 (Proof of Claim, No. 2), while the value of the Vehicle is determined to be $13,627.00, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David cusick ("Trustee") filed a Response on August 27, 2018. Dckt. 28. Trustee requests the court consider Debtor has paid $933.00 into and is current under the proposed plan, Debtor's proposed plan includes Movant as a Class 3 claim, and Movant filed a Proof of Claim on August 9, 2018 for $38,291.37.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due, declining property value, and Debtor providing for Movant's claim as a Class 3 under the proposed plan. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Movant's contention that 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 a 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). *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *United Sav. Ass'n v. Suter (In re Suter)*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981).

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 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.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted. FN. 1.

FN.1. The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. Movant's Motion states under "GROUNDS FOR RELIEF" the Debtor's Chapter 13 Plan provides for surrender of the Vehicle to Movant. Dckt. 21. However, there is nothing connecting this stated ground to the relief from the fourteen-day stay.

Th supporting Memorandum of Points and Authorities states "Movant requests that the Court grant the waiver of the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3), since Debtor's Plan provides for surrender of the Vehicle, and the Vehicle is a depreciating asset." Dckt. 23 at 2:21-23. This simple statement would certainly have resulted in waiver of the fourteen-day stay had it been included within the Motion.

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 TD AUTO FINANCE LLC ("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 2017 Jeep Cherokee, VIN ending in 6191 ("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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

7. **18-21867-E-13** **AMY WOODS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JMP-1 **Michael Hays** **8-9-18 [33]**

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the September 18, 2018, 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 13 Trustee,and Office of the United States Trustee on August 9, 2018. By the court's calculation, 40 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.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Dodge Dart, VIN ending in 3332 ("Vehicle"). The moving party has provided the Declaration of Elaine Sanchez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Amy Woods ("Debtor").

The Sanchez Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of $2,351.08 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 $1,763.31.

Debtor has not listed the Vehicle on Schedules A/B. A review of Schedules E/F show that Debtor characterizes Movant's debt as unsecured, being for a "deficiency balance on voluntarily surrendered 2016 Dodge Dart." Schedule E/F, Dckt. 16 at 13.

Movant has provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Exhibit 4, Dckt 36. 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 $29,547.30, as stated in the Sanchez Declaration, while the value of the Vehicle is determined to be $14,904.00, as stated in the NADA Valuation Report (no value has been provided on Debtor's Schedules).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David cusick ("Trustee") filed a Response on August 27, 2018. Dckt. 45. Trustee requests the court consider Debtor has paid $2,453.00 into the proposed plan, Debtor is current under the proposed plan, and Debtor's proposed plan includes Movant as a Class 3 claim.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due, the nature of the secured property as a rapidly depreciating vehicle, Debtor's failure to provide adequate protection, and Debtor's own indication that he does not intend to keep the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 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.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is no 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 JPMorgan 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, 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 2016 Dodge Dart, VIN ending in 3332 ("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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.