

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

October 30, 2014 at 10:00 a.m.

1. [14-90914-E-7](#) JOSE MENDOZA AND LORENA MOTION FOR RELIEF FROM
DJD-1 PULIDO AUTOMATIC STAY
Thomas Gillis 9-23-14 [[16](#)]
SETERUS, INC. VS.
CASE DISMISSED 10/7/14

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion (for which relief was requested only pursuant to 11 U.S.C. § 362(d)(1) prospectively) is dismissed as moot, the case having been dismissed.

October 30, 2014 at 10:00 a.m.

- Page 1 of 28 -

2. [14-90931](#)-E-7 JEFFREY TRUESDAIL
BHR-1 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-14 [[32](#)]

TRANSPORTATION ALLIANCE
BANK, INC. VS.

Final Ruling: No appearance at the October 30, 2014 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 24, 2014. 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). 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.

Jeffrey Truesdail ("Debtor") commenced this bankruptcy case on June 26, 2014. Transportation Alliance Bank, Inc. ("Movant") seeks relief from the automatic stay with respect to assets identified as a four 2008 Volvo tractor trailers (serial numbers ending in 5225, 5240, 5247, and 5261) (the "Trucking Equipment"). The moving party has provided the Declaration of Eric Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration provides testimony that Debtor has not made any post-petition payments. The Declaration also provides evidence that there are 12 pre-petition payments in default, with a total pre- and post-petition arrearage of \$30,851.98.

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 \$193,797.18, as stated in the Williams Declaration, while the value of the Trucking Equipment is determined to be \$144,000.00, as stated in the Williams Declaration. FN.1.

October 30, 2014 at 10:00 a.m.

- Page 2 of 28 -

FN.1. The court notes that the Movant's Motion states that Debtor did not disclose the Trucking Equipment on Schedule B and Debtor failed to list Movant as a secured creditor on Schedule D. Dckt. 32. A review of Debtor's Schedules shows that this is indeed the case. Williams based his assertion of the Trucking Equipment's value on an NADA Valuation Report.

OPPOSITION TO MOTION

Debtor has not filed an opposition to this Motion.

RULING

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). Additionally, Debtor has admitted at his First Meeting of Creditors that he does not know where the Trucking Equipment is or in what condition it is. Declaration of Brett Ramsaur, Dckt. 35.

Further, 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Transportation Alliance Bank, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Trucking Equipment, 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.

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 Transportation Alliance Bank, 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 the automatic stay provisions of 11

October 30, 2014 at 10:00 a.m.

The Arredondo Declaration provides testimony that Debtor has not made two (2) post-petition payments, with a total of \$1,916.58 in post-petition payments past due. Before the hearing date, another payment of \$958.29 will come due. The Declaration also provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of \$1,958.16. The Arredondo Declaration further states that Movant has been unable to verify insurance on the Vehicle and believes that the Debtors are operating it without insurance coverage.

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 \$56,786.63, as stated in the Arredondo Declaration, while the value of the Vehicle is determined to be \$32,150.00, as stated in Movant's supporting NADA Valuation Report. Dckt. 14 Exh. C.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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).

OPPOSITION TO MOTION

Debtor has not filed opposition to this motion.

RULING

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 Debtors and the estate have not made post-petition payments and the Debtors have not maintained insurance coverage for the Vehicle. 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA, Inc., 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.

Movant has 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 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 Santander Consumer USA, 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 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 1999 Bounder M-39Z Motor Home ("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 waived for cause.

No other or additional relief is granted.

4. [14-91136-E-7](#) MARTHA JIMENEZ
VC-1 Pro se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-3-14 [[16](#)]

CALIFORNIA AUTO FINANCE VS.

Final Ruling: No appearance at the October 30, 2014 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 (pro se), Chapter 7 Trustee, and Office of the United States Trustee on September 3, 2014. By the court's calculation, 57 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.

Martha Jimenez ("Debtor") commenced this bankruptcy case on August 11, 2014. California Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Nissan 350Z, VIN ending in 0351 (the "Vehicle"). The moving party has provided the Declaration of Carlos Navas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Navas Declaration provides testimony that Debtor has not made 2 pre-petition payments in default, with a pre-petition arrearage of \$797.24.

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 \$13,155.79, as stated in the Navas Declaration, while the value of the Vehicle is determined to be \$7,159.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. 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). According to the Kelly Blue Book Valuation Report, the Vehicle's wholesale value is \$5,750.00 and retail value of \$6,300.00.

October 30, 2014 at 10:00 a.m.

- Page 7 of 28 -

OPPOSITION TO MOTION

Debtor has not filed any opposition.

RULING

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 pre-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow California Auto Finance, 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.

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 California Auto Finance ("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 2004 Nissan 350Z, VIN ending

October 30, 2014 at 10:00 a.m.

in 0351 ("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 for cause.

No other or additional relief is granted.

5. [14-91159-E-7](#) DAVID/REBECCA BARNES MOTION FOR RELIEF FROM
BBM-1 Michael T. McEnroe AUTOMATIC STAY
9-25-14 [[14](#)]
BANK OF AMERICA, N.A. VS.

Final Ruling: No appearance at the October 30, 2014 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 25, 2014. By the court's calculation, 35 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.

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 999 Highway 4, Murphys, California (the "Property"). Movant has provided the Declaration of Edmund Gilmartin III to introduce evidence to authenticate the documents upon which

it bases the claim and the obligation secured by the Property.

The Gilmartin Declaration states that there are 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,475.70 in post-petition payments past due. The Declaration also provides evidence that there are 11 pre-petition payments in default, with a pre-petition arrearage of \$27,232.70.

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 \$643,942.06 (including \$367,331.45 secured by Movant's first deed of trust), as stated in the Gilmartin Declaration and Schedule D filed by David and Rebecca Barnes ("Debtor"). The value of the Property is determined to be \$500,000.00, as stated in Schedules A and D filed by Debtor.

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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 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 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.

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 Bank of America, 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Bank of America, N.A., 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 999 highway 4, Murphys, California.

October 30, 2014 at 10:00 a.m.

No other or additional relief is granted.

6. [14-90679-E-7](#) JACQUELIN JANOPOULO MOTION FOR RELIEF FROM
TJS-1 Pro se AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-12-14 [[17](#)]

BELLCO CREDIT UNION VS.

Final Ruling: No appearance at the October 30, 2014 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 (pro se), Chapter 7 Trustee, and Office of the United States Trustee on September 12, 2014. By the court's calculation, 48 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.

Jacquelin Janopoulo ("Debtor") commenced this bankruptcy case on May 9, 2014. Bellco Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2003 Mitsubishi Montero V6, VIN ending in 0252 (the "Vehicle"). The moving party has provided the Declaration of Stephanie Martin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Stephanie Martin Declaration provides testimony that Debtor has not made five (5) post-petition payments, with a total of \$1,835.24 in post-petition payments past due.

October 30, 2014 at 10:00 a.m.

- Page 11 of 28 -

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 \$6,313.60, as stated in the Martin Declaration, while the value of the Vehicle is determined to be \$8,334.00, as stated in Schedules B and D filed by Debtor. FN.1.

FN.1. The court notes that the total debt secured listed in the Martin Declaration is different than that stated on the relief from Stay Summary Sheet which lists the total debt at \$7,039.60. Dckt. 20. The court will use the valuation of the Martin Declaration because it was given under the penalty of perjury.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle, which values the Vehicle at approximately \$5,325.00.

The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Martin to be that she obtained the *Kelley Blue Book* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

OPPOSITION TO MOTION

Debtor has not filed an opposition.

RULING

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).]

Debtor was granted a discharge in this case on September 15, 2014. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Bellco Credit Union, 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.

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 Bellco Credit Union ("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 2003 Mitsubishi Montero V6, VIN ending in 0252 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Jacquelin Janopoulo ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

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.

No other or additional relief is granted.

7. [14-91183-E-7](#) MARVIN/CECELIA WENNEKAMP MOTION FOR RELIEF FROM
APN-1 Christian J. Younger AUTOMATIC STAY
9-22-14 [[16](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the October 30, 2014 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 7 Trustee, and Office of the United States Trustee on September 22, 2014. By the court's calculation, 38 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.

Marvin and Cecelia Wennekamp ("Debtor") commenced this bankruptcy case on August 22, 2014. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Hummer H3, VIN ending in 6892 (the "Vehicle"). The moving party has provided the Declaration of Ian Clay to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Clay Declaration provides testimony that Debtor has not made one (1) post-petition payments, with a total of \$470.47 in post-petition payments past due. The Declaration also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$1,645.06.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,869.51, as stated in the Clay Declaration, while the value of the Vehicle is determined to be \$5,468.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the

October 30, 2014 at 10:00 a.m.

- Page 14 of 28 -

Vehicle. 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). The report values the Vehicle at \$15,650.00 retail.

OPPOSITION TO MOTION

Debtor has not filed an opposition.

RULING

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 existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Vehicle for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant, however, has sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1) in light of both the delinquent payments and lack of insurance on the Vehicle.

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., 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.

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 Santander Consumer USA 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives,

October 30, 2014 at 10:00 a.m.

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 2006 Hummer H3, VIN ending in 6892 ("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.

No other or additional relief is granted.

8. 14-91087-E-7 ISIDRO FRUTOS
PJR-1 Axel B. Gomez

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-14 [[15](#)]

TRI COUNTIES BANK VS.

Tentative Ruling: 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). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 2, 2014. By the court's calculation, 28 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

Tri Counties Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 570 Marisa Drive, Patterson, California (the "Property"). Movant has provided the Declaration of Jerry Johnson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Johnson Declaration states that there are two (2) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,566.48 in post-petition payments past due. The Declaration also provides evidence that there are five (5) pre-petition payments in default,

with a pre-petition arrearage of \$6,416.20.

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 \$309,985.74 (including \$211,991.96 secured by Movant's first deed of trust and \$97,663.78 in Movant's revolving credit agreement secured by the Property), as stated in the Johnson Declaration and Schedule D filed by Isidro Frutos ("Debtor"). The value of the Property is determined to be \$210,000.00, 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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 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 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.

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 Tri Counties Bank ("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 Tri Counties Bank, 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 570 Marisa Drive, Patterson, California.

No other or additional relief is granted.

9. [13-91994-E-7](#) THERESA FINLEY
MBB-1 Anthony T. Wilson

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-18-14 [[15](#)]

BANK OF AMERICA, N.A. VS.

**THE HEARING ON THE MOTION FOR RELIEF
WILL BE CONDUCTED ON THE COURTS
10:30 A.M. CALENDAR IN CONJUNCTION
WITH THE HEARING ON THE MOTION TO SELL**

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 7 Trustee, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 45 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 is continued to 10:00 a.m. on December 18, 2014.

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2300 Steinbeck Drive, Modesto, California (the "Property"). Movant has provided the Declaration of Irene Frenes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Frenes Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,263.12 in post-petition payments past due.

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 \$209,706.84, as stated in the Frenes Declaration and Schedule D filed by Theresa Marie Finley ("Debtor"). The value of the Property is determined to be \$200,000.00, 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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on February 24, 2014. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

OPPOSITION OF TRUSTEE

The Chapter 7 Trustee has filed an opposition, stating that the Trustee is in contract to sell the property. The Motion for an order to approve the sale shall be filed shortly. In light of that information, the parties agreed to continue the hearing to allow the Trustee to get the motion filed and set for hearing.

OCTOBER 2, 2014 HEARING

The court continued the hearing to 10:00 a.m. on October 30, 2014 to allow the Trustee to file the Motion to Sell. Dckt. 22

DISCUSSION

The court having granted the Motion to Sell the Property on October 30, 2014. The instant Motion for Relief is moot, so long as the Buyer completes the sale.

The court continues the hearing on the Motion for Relief out of an abundance of caution to 10:00 a.m. on December 18, 2014.

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

IT IS ORDERED that the hearing on the Motion is continued to 10:00 a.m. on December 18, 2014 (with the consent of Movant in light of the court having approved a sale of the Property securing Movant's Claim).

IT IS FURTHER ORDERED that upon completion of the sale and payment of Movant's claim, Movant may file a Notice of Dismissal of this Motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 7041 and 9014, no further order of the court required.

10. [13-91297](#)-E-7 ARIANA AVESTA, INC.
KMF-4

MOTION TO REOPEN CHAPTER 7
BANKRUPTCY CASE
9-25-14 [[90](#)]

CASE CLOSED 5/23/14

Tentative Ruling: The Motion to Reopen this Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 25, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Reopen this Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Reopen this Bankruptcy Case is denied without prejudice.

Payten Reed, a minor, by her Guardians ad Litem, Damon Reed and Audra Plowman, ("Movant") filed this petition for relief on September 25, 2014, and the Meeting of Creditors was concluded on March 20, 2014. The case was closed by the court on May 23, 2014.

Movant, however, has not filed a motion which complies with the basic pleading rules required by Federal Rule of Bankruptcy Procedure 9013 (which repeats the basic law and motion pleading rules of Fed. R. Civ. P. 7(b)). The Motion states the following grounds with particularity pursuant to Federal Rule

of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Movant "will move the Court on October 15, 2014 at 10:00 a.m. in Department E of the above-entitled Court for an Order allowing the reopening of the Chapter 7 discharge of Debtor, ARIANA AVESTA, INC."
- B. The motion will be based on the notice of Motion, Declaration of Kenneth M. Foley and Points and Authorities to reopen and on all evidence and argument to be presented at the time of the hearing of the motion.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the court **WILL** be moved. This is not sufficient and no such motion to reopen has been filed or made.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court* in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. 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 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 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.

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 stay (such as in

this case to allow a creditor to remove a significant asset from the bankruptcy estate), 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 on the other parties in the bankruptcy case and 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.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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 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."

This Motion to Reopen (which states that the grounds are pleaded in other documents) is filed as Docket Control No. KMF-4. No Declaration of Kenneth Foley and Points and Authorities on the "motion to reopen" have been filed. Even if the court were inclined to waive the requirements of Federal Rule of Bankruptcy Procedure 9013 (which it is not, especially in light of Movant's counsel having appeared in this court on a number of occasions in an unrelated case), it has no idea as to what basis exists for reopening the case. FN.1.

FN.1. Movant has also filed a Motion for Relief From the Automatic Stay. Dckt. 80. That motion states that Movant wants prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2). The Motion for Relief From the Automatic Stay was filed on September 17, 2014. This bankruptcy case was closed on May 23, 2014. Final Decree and Order closing case, Dckt. 78. The automatic stay was terminated by operation of law pursuant to 11 U.S.C. § 362(c)(1) and (2).

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 to Reopen the Bankruptcy Case filed by Payten Reed, a minor, by her Guardians ad Litem, Damon Reed and Audra Plowman ("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 is denied without prejudice.

11. [13-91297-E-7](#) ARIANA AVESTA, INC.
KMF-3

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-17-14 [[80](#)]

PAYTEN REED VS.
CASE CLOSED 5/23/14

Tentative Ruling: The Motion for Relief from Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 30 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief from the Automatic Stay is dismissed as moot, the stay having terminated by operation of law pursuant to 11 U.S.C. § 362(c)(1) and (2).

The case having previously been closed on May 23, 2014 (Dckt.78), the Motion is dismissed as moot, the stay having terminated by operation of law pursuant to 11 U.S.C. § 362(c)(1) and (2).

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

IT IS ORDERED that the Motion is dismissed as moot, the case having been closed and the stay having terminated by operation of law pursuant to 11 U.S.C. § 362(c)(1) and (2)..