UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 10, 2017, at 1:30 p.m.

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1. **16-27308-E-13** **ROBERT PORTER** **ORDER TO SHOW CAUSE**
Pro Se **12-12-16 [14]**

APPEARANCE OF ROBERT PORTER REQUIRED FOR THE JANUARY 10, 2016 HEARING

NO TELEPHONIC APPEARANCE PERMITTED

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.

The Order to Show Cause was served by the Clerk of the Court on Robert Porter ("Debtor") (*pro se*), Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Notice on December 15, 2016. The court computes that 26 days' notice has been provided.

The Order to Show Cause was issued due to Debtor's inability to prosecute this case, evidenced by failing to file all missing documents timely.

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

The court issued an Order to Show Cause in this case on December 12, 2016. Dckt. 14. Robert Porter ("Debtor") has been ordered to:

A. File the following required documents by January 4, 2017:

1. Schedules A–J,

2. Form 122C-1,

3. Statement of Financial Affairs, and

4. Summary of Assets and Liabilities;

B. File and serve the following required documents on or before January 4, 2017:

1. Chapter 13 Plan,

2. Motion to Confirm Chapter 13 Plan,

3. Notice of Hearing on Motion to Confirm Chapter 13 Plan, and

4. Evidence in support of Motion to Confirm Chapter 13 Plan;

C. Appear personally at the January 10, 2017 hearing to explain to the court how he is and will prosecute this bankruptcy case in good faith and to show why:

1. This bankruptcy case should not be dismissed without further notice or hearing if:

a. Debtor has not timely:

(1) filed fully completed Schedules A–J, Form 122C-1, Statement of Financial Affairs, and Summary of Assets and Liabilities, or

(2) filed and served a proposed Chapter 13 Plan, Motion to Confirm Chapter 13 Plan, Notice of Hearing on Motion to Confirm Chapter 13 Plan, and evidence in support of Motion to Confirm Chapter 13 Plan;

b. The bankruptcy Schedules and Statement of Financial Affairs are not completed or do not appear to be completed with accurate information;

c. The proposed Chapter 13 Plan is not competed or does not appear to be feasible in light of the Schedules and Statement of Financial Affairs; or

d. Debtor fails to appear at the January 10, 2017 hearing as ordered;

2. If the court orders the dismissal of this case for the failure of the Debtor to comply with the requirements as provided in the foregoing paragraph, why the court should not annul any automatic stay, as to all persons and property, which arose after the issuance of the court's order vacating the prior order dismissing this case, without further notice or hearing.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 20, 2016. Dckt. 20. The Trustee states that no meeting of creditors was scheduled for the case because it was dismissed for being an incomplete filing, and the Debtor did not timely file documents. There has been no Chapter 13 or Motion to Confirm filed or served, and no plan payments have been made to the Trustee.

Governmental units have been given a deadline to file claims on the case, even though they have not received any notice and no Plan, Schedules, or Statement of Financial Affairs have been filed. The Trustee reminds the court that Debtor had a prior case in the last year that was dismissed for failing to file documents. The Trustee supports this case remaining dismissed.

DISCUSSION

A review of the docket shows that Debtor has not filed a single pleading in response to the court's Order to Show Cause. There is no plan in this case, no motion to confirm a plan, no schedules, no Form 122C-1, no Statement of Financial Affairs, and no Summary of Assets and Liabilities. Debtor has completely failed to prosecute this case in good faith. Accordingly, the Order to Show Cause is sustained, and the case is dismissed.

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, and the case is dismissed.

2. **16-28314-E-13** **RICHARD/SALLY BROWN** **MOTION TO EXTEND AUTOMATIC STAY**
DBL-1 **Bruce Dwiggins** **12-21-16 [10]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 21, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Extend 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. 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 Extend the Automatic Stay is granted.

Richard Brown and Sally Brown ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-24528) was dismissed on December 6, 2016, after Debtor failed to seek confirmation of an amended plan. *See* Order, Bankr. E.D. Cal. No. 16-24528, Dckt. 26, December 6, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor Sally Brown became ill and required surgery, which incurred more medical bills than Debtor could afford to pay while continuing with payments in the previous case. Dckt. 12. Now, Debtor has "given up" a trailer in an effort to generate more funds to pay the medical bills.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 27, 2016. Dckt. 15. The Trustee does not believe that Debtor has addressed that the prior case was dismissed based upon the Trustee's Objection to Confirmation and a Conditional Motion to Dismiss Case if Debtor was unable to confirm an amended plan within seventy-five days. The Trustee states that he does not have a basis to oppose the Motion.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

The Debtor has provided the court with testimony that intervening medical bills from an unexpected surgery caused the prior case to fail. Now, the Debtor has sold a trailer to generate more funds and appears to prosecuting this case. The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this 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 to Extend the Automatic Stay filed by the 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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3. 16-27723-E-13 SNM-1 | **DARRYL/BRIDGETTE MERRITT** | **MOTION FOR RELIEF FROM AUTOMATIC STAY**
Pro Se | **12-19-16 [19]**

ANGELOS GIANNAKIS 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 22 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. 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.

Angelos Giannakis ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 419 Regency Circle, Vacaville, California ("Property"). The moving party has provided the Declaration of Zenia Dixon to introduce evidence as a basis for Movant's contention that Darryl Merritt and Bridgette Merritt ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 21, 2016. Dckt. 25. The Trustee notes that Debtor had a twelve-month lease that ended on July 31, 2015, and Debtor listed Movant in Class 1, but the obligation appears to be for rent payments. The Trustee does not oppose the Motion.

DISCUSSION

Movant has provided a properly authenticated copy of the Property lease with Debtor to substantiate its claim of ownership. 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).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Angelos Giannakis, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 419 Regency Circle, Vacaville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from 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.

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority),

> "request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law

> recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is."

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Angelos Giannakis and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Angelos Giannakis and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a per se violation of the automatic stay.

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 Angelos Giannakis ("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 vacated to allow Angelos Giannakis and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 419 Regency Circle, Vacaville, California.
>
> **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.

4. **11-48832-E-13** **MIKE/JAMIE MCGUIRE** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY**
NLG-1 **Mohammad Mokarram** **11-30-16 [81]**

SETERUS, INC. VS.

APPEARANCE OF NICOLE L. GLOWIN, ESQ., COUNSEL FOR MOVANT, REQUIRED FOR HEARING (Telephonic Appearance Permitted)

Tentative Ruling: The Motion for Relief From the Automatic 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—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 30, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is denied without prejudice.

Mike McGuire and Jamie McGuire ("Debtor") commenced this bankruptcy case on December 13, 2011. Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association, ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 9691 Ruff Trail, Brownsville, California ("Property"). Movant has provided the Declaration of Daniel Cranston to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 21, 2016. Dckt. 88. The Trustee does not oppose the Motion and notes that Debtor's plan lists Movant under Class 4.

DISCUSSION

Applicable Law

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).

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. 11 U.S.C. § 362(g)(2); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375–76 (1988).

Grounds Stated in Motion

The Motion states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds upon which relief is based:

A. " Movant, SETERUS, INC. as the authorized subservicer for FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), Creditor c/o Seterus, Inc., its successors and/or assigns ("Movant"), hereby moves ("Motion") this Court, pursuant to 11 U.S.C. § 362(d)(1), 11 U.S.C. § 362(d)(2)."

B. "This Motion is made pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) on the grounds that no equity exists in the Property, that the Property is not necessary for Debtors' reorganization due to Debtors' material default under their confirmed Plan, that Movant is not adequately protected via an equity cushion and/or regular post-petition payments by Debtors and that Debtors have violated their Chapter 13 duties by failing to make the regular monthly post-petition mortgage payments due to Movant."

C. "This Motion is based on this Motion for Relief from Stay, the Notice of Motion for Relief from the Automatic Stay, the Memorandum of Points and Authorities in Support

> of the Motion for Relief from the Automatic Stay and the Declaration in Support of the Motion for Relief from the Automatic Stay filed concurrently herewith, the complete files and records in this action, the oral argument of counsel, if any, and such other and further evidenced as the Court might deem proper."

Dckt. 81.

These "grounds stated with particularity" consists of nothing more than citing a statute, dictating several legal conclusions to the court, and then instructing (ordering) the court to canvas: (1) the Motion (which says nothing), (2) Notice of Motion, (3) Points and Authorities, (4) Declaration, (5) the complete file in this bankruptcy case, (6) all of the records in this bankruptcy case, (7) whatever oral arguments counsel may make at the hearing, and (8) whatever else the court thinks it might deem proper (to make Movant's case for it).

This "pleading in absentia" is inappropriate and quite shocking to see in this court. FN.1

FN.1. The court notes that Movant has filed a ten-page "Points and Authorities" in which possible grounds are woven between extensive citations, quotations, arguments, speculation, and conjecture. As discussed below, this type of pleading may well be done to try and avoid the strictures of Federal Rule of Bankruptcy Procedure 9011, which counsel and Movant making unwarranted statements as "grounds," but then trying to deny such by blaming the court for misconstruing mere argument as "grounds."

Most attorneys find that a "points and authorities" is not necessary for a routine motion for relief from the stay, or if one is required, it only takes a page or two. Little reason exists to drop a ten page "points and authorities" on the court for such a simple motion.

The court also notes that Movant has instructed (ordered) the court to wade through forty-eight pages of exhibits to extract whatever the court may think is appropriate to state as grounds for Movant. Dckt. 84.

Review of Motion Minimum Pleading Requirements

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.

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 plan 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 649–50; *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 that 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, 819–20 (7th Cir. 1977).

Not stating 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 Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try to 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."

That the Motion lacks stating grounds with particularity is highlighted by the instruction from Movant for the court to go and canvas: (1) this Motion; (2) the Points and Authorities in Support of the Motion; (3) the Declaration; (4) the Notice of Hearing; (5) every other pleadings and papers filed with the court; and (6) whatever further evidence Movant chooses to present at some later date through the hearing on the Motion (with there being no right of the Movant to submit untimely pleadings and evidence without court authorization). Then, implicit in the instruction is that the court is to assemble all of what the court believes to be the Movant's best evidence and arguments, organize them for Movant, state the grounds in a "motion" for Movant that the court believes Movant would state if Movant had complied with Rule 9013, and then rule on the court's "motion" for Movant.

The court declines the opportunity to do the associate attorney work and assemble motions for the parties. It may be that Movant believes that the seven page Points and Authorities (Dckt. 85) is "really" the motion and should be substituted by the court for the motion. This fails for several grounds. One is that under Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents, the motion and points and authorities are separate documents. The court has not waived that Local Rule for Movant.

Second, while Movant may feel this is a "simple motion," the court does not allow a different application of the rules between attorneys or from "simple" to "complex" motions. The Rules are equally and fairly applied, without attorneys having to guess when they "really" have to follow the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, and the Local Bankruptcy Rules. The simpler the motion, the easier it is for the moving party and counsel to state the grounds with particularity in the motion. The points and authorities are left for just that, the legal authorities, statutes, cases, and argument thereon.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states legal conclusions and instructs the court and parties in interest to mine other pleadings and assemble for Movant the required grounds. That is not sufficient or proper under the Federal Rules of Bankruptcy Procedure.

Request for Relief from Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from 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.

Request for Relief upon Conversion

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority),

> "request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is."

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Seterus, Inc., Federal National Mortgage Association, and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Seterus, Inc. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a per se violation of the automatic stay.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Seterus, Inc. ("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.

5. **14-30033-E-13 AP-1** **ERIK/TRACY YOUDAL**
Gerald Glazer

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-16 [32]

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the January 10, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 8, 2016. By the court's calculation, 33 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.

Erik Youdal and Tracy Youdal ("Debtor") commenced this bankruptcy case on October 7, 2014. JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3031 Mabry Drive, Sacramento, California ("Property"). Movant has provided the Declaration of Amanda Schleich to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Amanda Schleich Declaration states that there are nineteen post-petition defaults in the payments on the obligation secured by the Property, with a total of $32,551.43 in post-petition payments past due.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 27, 2016. Dckt. 41. The Trustee states that Debtor is delinquent under the confirmed plan by $95.00. Debtor has paid $13,755.00 so far, $1,518.24 of which as been paid to Movant. The Trustee has no basis to oppose the Motion.

DISCUSSION

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 $195,793.71 (including $193,865.91 secured by Movant's first deed of trust), as stated on Schedule D. The value of the Property is determined to be $285,330.00, as stated in Schedules A and D.

In this case, Debtor created a unique plan in which Movant was to be paid on its arrearage through the Plan, but paid its current monthly post-petition payments directly from the Keep Your Home California Program. Normally, with a pre-petition arrearage both the current payment and the arrearage payment would have to be made through the plan. Keep Your Home California was to make the payments for one year, through July 2015, and after that time Debtor would make the current monthly payments.

The Plan did not require the payments to then be made through the Plan, but allowed Debtor to make them directly. From the evidence presented, the currently monthly payments to Movant went into default in May 2015 and have continued for all the months thereafter.

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 that have come due (whether from Keep Your Home California or from Debtor beginning in August 2015). 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 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 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow JPMorgan Chase Bank, 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 that 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 to obtain possession of the real property commonly known as 3031 Mabry Drive, Sacramento, California, California.

No other or additional relief is granted.

6. **16-27179-E-13** **DAVID GONZALES** **MOTION FOR RELIEF FROM**
JHW-1 **Ashley Amerio** **AUTOMATIC STAY**
11-23-16 [13]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

Final Ruling: No appearance at the January 10, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 23, 2016. 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). 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.

David Gonzales ("Debtor") commenced this bankruptcy case on October 27, 2016. Americredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Toyota Camry, VIN ending in 3545 ("Vehicle"). The moving party has provided the Declaration of Angelo Aguilar to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Motion states with particularity the following grounds (Fed. R. Bankr. P. 9013) upon which the requested relief is based:

A. Debtor claims an interest in a 2009 Toyota Camry ("Vehicle");

B. Movant is a lienholder on the Vehicle;

C. The Chapter 13 Plan does not list the Vehicle;

D. Debtor is in default in payments to Movant on the debt secured by the Vehicle in the monthly payments of $373.10 for each of the months of July through October 2016.

E. Movant obtained possession of the vehicle on October 4, 2016, prior to the commencement of this bankruptcy case.

F. Movant needs relief from the automatic stay so that it may proceed to exercise its rights in the collateral.

The Angelo Aguilar Declaration provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of $1,174.40. The Declarant also testifies as to Movant obtaining possession of the vehicle on October 4, 2016. This bankruptcy case was filed on October 27, 2016.

Relief is sought for cause, 11 U.S.C. § 362(d)(1).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 27, 2016. Dckt. 24. The Trustee states that Debtor is current under the proposed plan and has not provided for payments to Movant. The Trustee notes that Debtor accounted for Movant's claim on Schedule E/F as unsecured in the amount of $12,174.00. The Trustee does not oppose the Motion.

DISCUSSION

The Motion states grounds for relief from the automatic stay based on the pre-petition repossession of the Vehicle and the Debtor not providing for the payment of the secured claim in the Chapter 13 Plan. A review of the Chapter 13 Plan confirms that no provision is made for this secured claim therein. Dckt. 5; Exhibit 4, Dckt. 16.

The Trustee notes that Debtor has listed Movant as having an unsecured claim on Schedule E/F, citing the court to page 28 of the Schedules. On that page the creditor is listed as "GM Financial," and the claim stated to be "deficiency balance - 2009 Toyota Camry Sedan 4D 1430,000 miles, repossessed in 10/5/16)." Dckt. 1 at 28. It appears that Debtor is treating the repossession as the "sale," having made the decision to surrender the collateral to the creditor (normally provided as Class 3 treatment in a Chapter 13 Plan).

Though a mere default in payments does not necessitate a finding of "cause," that has been coupled with the failure to provide for the claim in the proposed Chapter 13 Plan. Further, it appears that Debtor may mistakenly believe that a lien sale by the creditor occurred pre-petition, listing the claim on Schedule E/F for any deficiency balance (existing after the sale of the collateral).

The court shall issue an order terminating and vacating the automatic stay to allow Americredit Financial Services, dba GM Financial, 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 stated what facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted. This additional relief is merely stated in the prayer to 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 Americredit Financial Services, Inc. dba GM Financial ("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 2009 Toyota Camry, VIN ending in 3545 ("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.
>
> No other or additional relief is granted.