

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 25, 2022 at 1:30 p.m.

1.	<u>21-23539</u> -E-13 <u>DPC-1</u>	DEREK WOLF Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 11-22-21 <u>[29]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 22, 2021. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is XXXXXXXXXX.
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Derek L Wolf ("Debtor"), failed to appear at the First Meeting of Creditors. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. Therefore, the meeting has been continued to January 13, 2022 at 1:00 p.m.

2. Plan has not been served on all interested parties and no Motion to Confirm Plan is pending. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors
3. No payment advices have been received from the sixty (60) days prior to filing.
4. No tax returns have been provided to the trustee for the most recent pre-petition tax year.
5. Debtor has failed to provide two (2) years of tax returns, six (6) months of profit and loss statements, six (6) months of bank statements, proof of license and insurance or written statements that no such documentation exists.

DISCUSSION

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Never Noticed Initial Plan

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

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

Status of Case

At the recent hearing on a Motion for Relief From the Stay in this Case (which Debtor appeared after the hearing had been concluded due to telecommunications suffered by Debtor that day), the court and Debtor discussed the need for Debtor to obtain counsel to effectively prosecute this case and any rights Debtor may have concerning his home mortgage. Debtor's pro se efforts in 2020 and 2021 have not been successful.

Trustee's Status Report

On December 29, 2021, Trustee filed a status report stating Debtor is still \$1,500.00 delinquent in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements. Dckt. 39. Trustee still requests the court grant the Motion.

January 5, 2022 Hearing

At the hearing, counsel for the Trustee reported that Debtor has made one of the two plan payments to date. A continued meeting is set for January 15, 2022, Debtor having not appeared at the prior 341 Meeting. Debtor has not filed a motion to confirm the plan.

Proposed counsel for Debtor was present at the hearing. The hearing is continued to be conducted in conjunction with a motion for relief from the stay and to afford Debtor the opportunity to get proposed counsel substituted into the case.

January 11, 2022 Hearing

At the hearing, Peter Macaluso, Esq., an experienced consumer attorney, appeared and confirmed that he has been engaged by the Debtor and that Mr. Macaluso would be substituting in as counsel for Debtor. Additionally, that he would work diligently with Debtor to prosecute this case and for Debtor to advance his economic interests as permitted under the Bankruptcy Code in this case. In light of Debtor's repeated failures in prosecuting prior Chapter 13 cases, such clear guidance and legal advice from counsel is necessary. Debtor is now facing the highly likely granting of relief pursuant to 11 U.S.C. § 362(d)(4) and the dismissal of this case if he cannot prosecute it.

The court notes that based on Debtor's Schedules and Movant's statement of the amount of debt secured by Debtor's residence, Debtor would have approximately \$116,000 in equity (after costs of sale) in the property. In looking at Zillow.com statement of value of the property, the equity would be approximately \$156,000.

This is a substantial asset which Debtor almost recently lost, having filed bankruptcy the day

of the foreclosure sale. Fortunately for Debtor, the buyer at the foreclosure sale backed out of the sale and Movant is no longer seeking an annulment of the stay, but prospective relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Debtor, in his *pro se* Opposition to the Motion for Relief, addresses some real life family events impacting his life. Dckt. 28. While retaining the home, if possible, would be a better result in Debtor's eyes, if that is financially impossible, losing \$150,000+ in equity and not having that in structuring his life for the benefit of himself and his family would be a disaster.

The court made it clear to Debtor's counsel that Debtor needs to prosecute this case and show due diligence if there would be further continuances of the hearing on this Motion for Relief and the Trustee's Motion to Dismiss.

January 19, 2022 Status Report

On January 19, 2022, Chapter 13 Trustee David P. Cusick filed a status report stating Debtor and Debtor's Counsel, Peter Macaluso, appeared at the Meeting of Creditors on January 13, 2022. Dckt. 54. Trustee reports Debtor is delinquent \$1,500.00 on plan payments. Additionally, Debtor has not provided the following:

1. Verification of income
2. Two years of tax returns (2019 and 2020)
3. Six months of profit and loss statements (May 2021 - October 2021)
4. Six months of bank statements (May 2021 - October 2021)

Trustee requests the court grant the Trustee's Motion to Dismiss.

January 25, 2022 Hearing

At the hearing **xxxxxxxxxxxxxx**

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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxx**.

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—**Final Hearing.**

Sufficient 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 October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the hearing, opposition and reply briefs were filed, and the final hearing set for December 14, 2021.

The Motion to Annul the Automatic Stay, Grant Relief From the Stay, and Impose Relief Pursuant to 11 U.S.C. § 362(d)(4) is XXXXXXXXXX.

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted its foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of \$25,150.25 in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order pursuant to

11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

Trustee's Non-Opposition

Trustee has filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee reaffirms that the Debtor has failed to file the following documents:

- a. Chapter 13 Plan
- b. Form 122C-1 Statement of Monthly Income
- c. Schedule A/B – Real and Personal Property
- d. Schedule C – Exempt Property
- e. Schedule D – Secured Creditors
- f. Schedule E/F – Unsecured Claims
- g. Schedule G – Executory Contracts
- h. Schedule H – Codebtors
- i. Schedule I – Current Income
- j. Schedule J – Current Expend.
- k. Statement of Financial Affairs
- l. Summary of Assets and Liabilities

Furthermore, Trustee notes the Creditor's Motion for Notice of Sale was recorded against said property on September 15, 2021 to schedule a foreclosure sale for October 12, 2021. This was the same time in which the bankruptcy was filed, and the Debtor was still delinquent for 25 months for no less than \$25,150.25 (Dckt. 11).

Review of File

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed. Dckt. 24. The Plan provides for monthly payments by Debtor of \$1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id.*

The only claim provided for in the Plan is Movants, for which Debtor is to pay \$500 a month toward the \$29,254.55 arrearage and \$1,016.32 for the post-petition monthly payment. These two payment total \$1,516.32, which is slightly more than the \$1,500 a month plan payment.

However, the Debtor has not accounted for the Chapter 13 Trustee fees paid out of the \$1,500 a month payment. The Trustee's fee is 10%, so from the \$1,500 payment, there is deducted \$150 for Trustee fees. This results in Debtor's monthly payment being \$166 short each month.

Debtor does not list any other creditors on Schedules D or E/F. Dckt. 23.

On Schedule I, Debtor states that he has \$1,650 a month in net income from his business, \$358 in CALPERS Death Benefit, and \$750 in rents, for total monthly income of \$2,758. *Id.* At the end of Schedule I Debtor states that a possible increase in income can occur "If I receive claim from Social Security." He also states, "X Wife + Daughter recently received 5.5 Mil Judgment From RUCCI."

For expenses, on Schedule J Debtor lists \$1,258 in total expenses, with nothing for self-employment or income taxes. For Expenses, Debtor states having:

- A. Food and housekeeping supplies.....(\$375)
 - 1. Assuming (\$50) for housekeeping supplies, that leaves (\$325) for food, which in a 30 day months equals \$3.61 cents per meal.
- B. Debtor has no medical or dental expenses.
- C. Debtor has no home repair or maintenance expenses.

Id.

At the end of Schedule J, in response to whether Debtor expects an increase or decrease in expenses, Debtor states:

If Rushmore will finally be fair and recognize my Mod Package that they have on file.

Schedule A - Value of Property

On Schedule A/B Debtor lists the property that is the subject of the foreclosure sale as having a value of \$310,000. *Id.* On Schedule D Debtor lists Creditor as having a claim of \$145,985. *Id.* In the Motion, Movant states that as of the time of the foreclosure sale, the balance owed was \$163,476.40, and that the buyer at the sale paid \$276,000.00. Motion, ¶¶ 7, 8; Dckt. 11. Presumably there will be almost \$100,000+/- in surplus sales proceeds to be disbursed to Debtor if the stay is annulled.

DISCUSSION

Annulment of Stay

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*), 954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

In re Fjeldsted, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annul the stay: the number of times a debtor has filed a petition;

the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

Nat'l Envtl. Waste Corp Factors

- (1) Whether the creditor was aware of the bankruptcy petition;

Based on the evidence presented, Movant was not aware of this bankruptcy filing and the existence of the automatic stay. The Movant conducted due diligence by running a PACER search prior to the foreclosure sale, and Movant received no notice of the filing as the day of the sale was also the date of filing. Dckt. 4.

- (2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The evidence as it stands shows Movant would be prejudiced if the stay is not annulled. Movant had already conducted a sale in good faith and with a bona-fide, third party purchaser, and Movant conducted the sale with their due diligence to ensure they were not impeding on the Debtor's rights. Debtor failed to file or notify the Movant at any time between the Notice of the Sale on September 15, 2021 and the date of the sale on October 12, 2021. Additionally, Debtor waited until the date of the sale to file this Chapter 13 case. This unreasonable delay in filing and proper notice directly prejudices the creditor by thwarting their good-faith foreclosure sale of the home for almost 2 years of delinquency. To not annul the stay would cause the bona fide purchaser to be harmed as they relied on the assumption the sale was legally binding and proper to purchase the property.

In Re Fjeldsted Factors

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

- A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. Additionally, the Bankruptcy was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

- B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

Again, the Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale.

- C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

- D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. However, at the hearing, Debtor argued that he wants to keep the house, wants Movant to modify the loan, and believes that Movant has not fulfilled its obligations relating to his right to modify the loan.

The court sets this Motion for a briefing schedule, this Motion having been filed using the time shortening Local Bankruptcy Rule 9014-1(f)(2) procedure for which no written opposition is required to be filed before the initial hearing.

The court addressed with the Debtor that in considering the Motion, the court would be considering Debtor's ability to prosecute this case, and that "merely" disputing Movant's claim or asserting that Debtor has a claim to be prosecuted against Movant would not necessarily be grounds to deny the Motion. The court addressed with Debtor his multiple prior failed attempts at prosecuting Chapter 13 cases.

Withdrawal of Request to Annul

At the hearing Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

Relief Pursuant to 11 U.S.C. § 362(d)(4)

Many of the factors identified above are asserted as grounds for relief pursuant to 11 U.S.C. § 362(d)(4), asserting that the multiple, ineffective bankruptcy filings demonstrate a scheme to hinder, delay, or defraud Movant with respect to its interests in the Property.

Relief Pursuant to 11 U.S.C. § 362(d)(1)

Movant also asserts that cause exists to modify the stay, whether or not it is annulled to allow Movant to enforce its rights in the Property

Debtor's Opposition

On November 19, 2021, Debtor filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for \$91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic

Stay on December 2, 2021. Dckt. 33. Movant states that Debtor fails to:

- a. Address Movant's request to annul the automatic stay; or
- b. Provide any evidence that the Debtor provided any notice to Movant or its agents or representatives of his Bankruptcy filing prior to the foreclosure sale, or any ability to be a successful Debtor in this recent Chapter 13 case.

Additionally, Movant states the Debtor has had the opportunity in his three bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so. Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only \$61,131.14, and NOT the entire \$91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of \$91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (i) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

CHANGE OF WHAT COURT STATED AT THE FIRST HEARING CONDUCTED ON DECEMBER 15, 2021

This matter was required to be reset from the regular December 14, 2021 hearing date to December 15, 2021. This was because of the explosion of the SMUD (Sacramento Municipal Utility District) electricity transformer which supplies power to the Federal Courthouse in Sacramento. This explosion resulted in a six block radius of power outages. The Federal Court could not operate.

The hearing was rescheduled on short notice to 2:00 p.m. on December 15, 2021. Movant's counsel appeared telephonically for the hearing, but Debtor, who was listed to telephonically appear, did not. At the hearing, the court announced that the relief requesting annulment of the stay was dismissed, but that the court would grant relief pursuant to 11 U.S.C. § 362(d)(1) and § 362(d)(4). In granting such relief, Debtor would still have approximately 40 days to try to prosecute this case.

Later during the court's calendar, CourtCall advised that the Debtor had connected to make an appearance. Debtor explained that difficulties had ensured that caused him being unable to connect timely. Debtor also stated that he appeared physically at the Courthouse for the December 14, 2021 hearing, but that the Courthouse was closed.

Debtor explained the various events and "real life" circumstances that derailed the prior cases. Debtor states that he is a former loan officer and that Movant's employees (not the attorneys) purport to be addressing the miscalculation issues Debtor identified.

Debtor has attempted since November 21, 2019, attempted four (including the current case),

which consist of one Chapter 7 case, in which Debtor was granted a discharge, two Chapter 13 cases in 2020, with the last one dismissed August 27, 2021 (case 20-22852). Debtor has attempted to prosecute the three Chapter 13 cases in *pro se*.

Debtor commenced the current case on October 12, 2021, which is within one year of case 20-22852 being dismissed on August 27, 2021. Debtor asserts in the Opposition (Dckt. 28) that there is unaccounted for monies not accounted for by Movant,, that he has demanded accountings, and that he disputes the amount stated as owed by Movant.

The Disputes over substantive rights between Debtor and Movant go well beyond the considerations of a motion for relief from the automatic stay.

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); see also *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim" *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Harms v. Bank of N.Y. Mellon (In re Harms), 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019).

The Chapter 13 Trustee has now filed a Motion to Dismiss this Chapter 13 Case. Dckt. 29. The grounds stated by the Trustee are: (1) Debtor has failed to attend the First Meeting of Creditors; (2) the Chapter 13 Plan has not been served and no motion to confirm a plan has been filed; (3) Debtor has not provided payment advices to verify income; (4) Debtor has not provided copies of required tax returns; and Debtor has not provided the Trustee with the required documents for Debtor's business.

While filing Chapter 13 cases, Debtor has been unable to prosecute, confirm, and perform a Chapter 13 Plan. From the Opposition, Debtor identifies substantive disputes with Movant that require adjudication, and not "merely" a monetary default to be cured. With respect to the substantive dispute, Debtor offers no evidence of his moving forward to diligently prosecute a Chapter 13 case (using the automatic stay in lieu of a preliminary injunction), but instead the record shows using the automatic stay to derail the foreclosure process, and such derailing the extent of Debtor's bankruptcy prosecution.

Santander Consumer USA, Inc. has filed Proof of Claim 1-1 asserting a claim which is partially secured, the collateral being a vehicle, a 2006 Honda Ridgeline. This claim states that there is an \$11,444.37 pre-petition arrearage on the claim. POC 1-1, § 9. The Vehicle is not listed on Schedule A/B and Santander (nor is any creditor having a lien against a vehicle) is listed on Schedule D. Dckt. 23. No vehicle payment is shown on Schedule J. *Id.*

In considering this Motion, the court concludes that Movant did not know of the filing of the bankruptcy and did not act in violation thereof. As discussed above, this Bankruptcy Case was filed on the exact date of the foreclosure sale, giving little time to receive notice even if it was properly sent. Movant has taken no further action since receiving notice, including issuing, executing, delivering, and/or recording the foreclosure deed.

The Bankruptcy was filed on the exact date of the foreclosure sale: October 12, 2021. This Motion was filed approximately seven (7) days after the petition was filed and the sale. Movant moved promptly seeking the present relief.

Having learned of the bankruptcy filing, Movant has taken no further action regarding the sale since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

While it not surprising, or shocking, for a consumer (or business) to file bankruptcy to stay/derail a pending foreclosure sale, when there are multiple unsuccessful attempts, it demonstrates that such is not reasonably possible. Annulling the stay does not create an irreparable harm for Debtor, as Debtor has demonstrated that the use of Chapter 13 to address the default and related asserted disputes is not feasible.

Additional Factors

The court must consider the disruption to the court's calendar and the access to the court. With Movant advising the court that annulment of the stay no longer being requested, the purchase having terminated the contract, what has happened in connection with the foreclosure sale takes of a modestly smaller significance.

At the hearing, Debtor demonstrated a real person (non-lawyer) misunderstanding of the federal judicial process. It is not one in which a person raises issues or disputes, and then the judge takes on a mediator type role to work through the issues for the parties.

Federal Court proceedings are litigation, even in the Bankruptcy Court where there is a significantly higher (in this judge's opinion) economic reality of litigation and settlement than some other courts. The court bluntly discussed with Debtor that he must prosecute his claims and disputes, and not merely raise them, drop documents on the court, and then have the court "get the parties together."

The court discussed the need for Debtor to have experienced counsel to prosecute the bankruptcy case and his dispute (if it is not resolvable upon an agreed "computation of the numbers"). While Debtor raises concerns of whether he can afford counsel, there are many attorneys who can and do represent consumers and debtors on a contingent fee or hybrid fee arrangement in these disputes where torts, contract, and statutory claims and theories for relief arise. Alternative, it could be as simple as a knowledgeable attorney being able to effectively communicate the alleged miscalculations by Movant.

With respect to the extraordinary circumstances of the Courthouse closing on the noticed Tuesday hearing date, the quick shuffle the next day to reschedule the hearings for that Wednesday afternoon, and Debtor having been at the Courthouse on the noticed hearing date to find the Courthouse doors barred due to the electrical failure, judicial/litigation discretion is the better part of valor.

The court continues the hearing to 1:30 p.m. on January 11, 2022. Though such might seem to be a significant delay in relief for Movant, as a practical matter it may not have. It may well have taken the court, with the closures and delays caused by the transformer explosion not to be the order issues for 10 days. Then, the order is not effective for fourteen days as provided in Federal Rule of Bankruptcy Procedure 4001(a)(3). That would put Movant into the middle of January 2022 before it could act.

However, because the court is further continuing the hearing to insure that Debtor has every opportunity to demonstrate an ability to and begin effectively prosecuting this case, if relief from the stay is warranted after the continued January 11, 2022 hearing, such weighs in favor of the court waiving the fourteen day stay.

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

**ORDER FOR FINAL CONTINUANCE OF HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

On December 15, 2021, the court conducted the expedited continued hearing on the Motion for Relief from the Automatic Stay filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust, (“Movant”) which was set for hearing on December 14, 2021. The expedited continuance (which was announced around noon on December 15, 2021, occurred because of the explosion of a SMUD electric transformer a block from the Federal Courthouse. The Federal Courthouse was without power before noon on December 14, 2021, and continues to be dark and closed. The December 15, 2021 expedited hearings were conducted telephonically, with the court and all persons participating from remote locations.

As addressed in the Civil Minutes for the December 15, 2021 expedited continued hearing, counsel for Movant appeared, but Debtor Derek Wolf did not, though he was listed as having arranged an appearance. As addressed in the Civil Minutes, after an exchange with Movant’s counsel, the court stated that the request to annul the stay was withdrawn by Movant, but that the court would based on what was presented and not having anything further at the hearing from the Debtor, grant relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4). The court did not waive the fourteen day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) and noted that they could be a delay in getting the order out due to the challenges facing the electricity starved Courthouse.

Later in the calendar on December 15, 2021, CourtCall announced that the Debtor had called it and attempted to put him through. Debtor’s call was then lost. More time passed, and Debtor reconnected and addressed the court. As discussed in the Civil Minutes, the court had a clear and frank discussion with Debtor concerning the proper prosecution of a bankruptcy case and that such a federal court proceeding was not in the nature of a mediation in which parties brought a dispute to a mediator and then the mediator structure the advance of the positions of the parties. Additionally, that Debtor demonstrated a need for counsel, and that if he had valid computational disputes and was stating in good faith his desire to pay his debt to Movant, getting counsel who could effectively communicate such matters appeared to be necessary. Further, that if Debtor had claims that he alluded to concerning the debt, such claims needed to be enforced by Debtor (which such claims being property of the bankruptcy estate) and not merely discussed.

The court concluded that a further continuance was warranted to insure that Debtor was not deprived access to the federal court due to the transformer explosion and a dark courthouse, but also as one last, final opportunity to obtain counsel and effectively communicate (or assert) the deficiencies in Movant’s

computations he identified. Also, the court having the ability to waive the fourteen day stay of enforcement arising under Federal Rule of Bankruptcy Procedure 4001(a)(3) if relief is to be granted at the continued hearing, the delay, if any, to Movant enforcing its rights after relief from the stay being effective would be minor.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent \$1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

5. Debtor states that he received a \$91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.

6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.

8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:

a. The sum of \$61,131.14 was received and applied to Debtor's loan in 2018.

b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the \$91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.

9a. In the Declaration the obligation under the loan and application of the \$91,700 is stated as follows:

Principal Balance 1 st Lien	(\$170,465.08)		(\$36,400.00)	Deferred Principal 2 nd Lien
Application of March 20, 2018 \$97,700				
Due Date June 2015	\$7,292.61			

Due Date March 2016	\$1,620.58		
Due Date May 2016	\$1,639.91		
Due Date July 2016	\$4,904.70		
Due Date January 2017	\$4,904.70		
Due Date July 2017	\$4,465.50		
Due Date December 2017	\$4,465.50		
Due Date May 2018	\$256.35		
Due Date May 2018	\$1,019.00		
Due Date May 2018	\$61,131.14		
Total Monies Applied	\$91,699.99		

11. The \$91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than \$25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11. Because the Motion was brought to annul the stay for a foreclosure sale that occurred, an analysis of how the arrearage is computed was not provided.

As of the court's January 10, 2022 review of the Docket, a substitution of attorney for the Debtor, giving Debtor counsel rather than attempting to prosecute this case in *pro se*, had not been filed.

Debtor's Prosecution of This Case Basis for Continuance

At the hearing, Peter Macaluso, Esq., an experienced consumer attorney, appeared and confirmed that he has been engaged by the Debtor and that Mr. Macaluso would be substituting in as counsel for Debtor. Additionally, that he would work diligently with Debtor to prosecute this case and for Debtor to advance his economic interests as permitted under the Bankruptcy Code in this case. In light of Debtor's repeated failures in prosecuting prior Chapter 13 cases, such clear guidance and legal advice from counsel is necessary. Debtor is now facing the highly likely granting of relief pursuant to 11 U.S.C. § 362(d)(4) and the dismissal of this case if he cannot prosecute it.

The court notes that based on Debtor's Schedules and Movant's statement of the amount of debt secured by Debtor's residence, Debtor would have approximately \$116,000 in equity (after costs of sale) in the property. In looking at Zillow.com statement of value of the property, the equity would be approximately \$156,000.

This is a substantial asset which Debtor almost recently lost, having filed bankruptcy the day of the foreclosure sale. Fortunately for Debtor, the buyer at the foreclosure sale backed out of the sale and Movant is no longer seeking an annulment of the stay, but prospective relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Debtor, in his *pro se* Opposition to the Motion for Relief, addresses some real life family events impacting his life. Dckt. 28. While retaining the home, if possible, would be a better result in Debtor's eyes, if that is financially impossible, losing \$150,000+ in equity and not having that in structuring his life for the benefit of himself and his family would be a disaster.

The court made it clear to Debtor's counsel that Debtor needs to prosecute this case and show due diligence if there would be further continuances of the hearing on this Motion for Relief and the Trustee's Motion to Dismiss.

January 25, 2022 Hearing

At the hearing xxxxxxxxxxxxxxxx

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.

IT IS ORDERED that the Motion to Annul the Automatic Stay, Grant Relief From the Stay, and Impose Relief Pursuant to 11 U.S.C. § 362(d)(4) is xxxxxxxxxxxx.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Movant filed the Motion and Proof of Service in this matter as one document. Dckt. 21. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

The Proof of Service, attached to the Motion, 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 13, 2021. By the court’s calculation, 29 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXX.

Javier Guillen (“Movant”) seeks relief from the automatic stay to allow the *Javier Guillen v. Megan Bastien and DOES 1 to 25* (the “State Court Litigation”) to be concluded. Movant has provided the Declaration of Joseph B. Weinberger to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Megan Elizabeth Silva (“Debtor”).

Movant argues that relief is needed to receive insurance automobile liability proceeds. Declaration, Dckt. 23.

Review of Minimum Pleading Requirements for a Motion

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

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

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

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

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

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

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

conclusory allegations or mechanical recitations of the elements).

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

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

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

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

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

- A. Creditor’s Motion for Relief will be based on 11 U.S.C. § 362(d)(1)(2), the Notice of Motion, Motion, Memorandum of Points and Authorities in Support of Motion, Declaration of Joseph B. Weinberger, Esq., and all Exhibits and Requests for Judicial Notice thereto.

Those “grounds” are merely statements of what the Motion will be based on, with no reference to how any legal authority applies to any facts at hand. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

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

The Motion states that grounds are found in:

- A. The Notice of Motion;
- B. Memorandum of Points and Authorities;
- C. Any pleadings of which the court takes judicial notice; and
- D. Whatever else is presented prior to or at the hearing.

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

Movant has also made a request for Judicial Notice to be made by the court for various documents and pleadings. These include: (1) Placer County Superior Court Complaint; (2) Substitution of Attorney in the Placer County Court Action; (3) Discovery conducted in the Placer County Court Action; and (4) copy of the Placer County Court Action Summary. Dckt. 25.

It is not clear to the court how these pleadings (which are not certified pleadings or authenticated as required by Federal Rules of Evidence 901 *et seq*) such are an adjudicative fact(s) that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201(b). Rather than “judicial notice,” these documents could be authenticated by Movant’s counsel, explaining where and how he got them, or if he is unable to do that, then certified by the court from which they were obtained. See Fed. R. Evid. 902(2) and (4) expressly providing for certification of public documents and records as an alternative to authentication by a witness.

Non-Opposition by the Chapter 13 Trustee

The Chapter 13 Trustee has filed a Statement of Non-Opposition, supplementing the “Motion” by stating that Movant is not included in Debtor’s Plan, though listed on Schedule F (unsecured claims). Dckt. 29.

Since Class 7 of the Plan includes all creditors with unsecured claims (for which a proof of claim has been filed), it is not clear to the court how Movant is not included in Debtor’s Plan. It may be that Movant has elected to forgo any claim Movant could assert in this case, but that does not equate to the Debtor “not including Movant’s claim” in the Plan.

Continuance for Filing of Supplemental Pleadings

At the hearing, Movant’s counsel constructively addressed the pleading requirements in

Federal Courts and the Eastern District of California. Under the facts and circumstances, the court continues the hearing to allow counsel for Movant to file a supplement to the Motion (not an amended motion) which states the grounds upon which the relief are stated with particularity (Fed. R. Bankr. P. 9013), and authentication of the documents which have been filed as exhibits.

January 25, 2022 Hearing

At the hearing xxxxxxxxxxxx

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 Javier Guillen (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is
xxxxxxxxx.

FINAL RULINGS

4. [19-23558](#)-E-13 KENNETH SCAMMON
[JCW-1](#) Mark Briden
NATIONSTAR MORTGAGE LLC VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-21-21 [\[37\]](#)

Final Ruling: No appearance at the January 25, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, on September 21, 2021. By the court’s calculation, 42 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on February 15, 2022 (Specially Set Time), to be heard in conjunction with Debtor’s Motion to Approve a Trial Loan Modification for the debt that is the subject of this Motion.

Nationstar Mortgage LLC (“Movant”) seeks relief from the automatic stay with respect to Kenneth Kip Scammon’s (“Debtor”) real property commonly known as 22484 Lake Helen Pl, Cottonwood, California (“Property”). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made nine post-petition payments, with a total of \$11,525.97 in post-petition payments past due and a total of \$12,763.97 in post-petition delinquencies. Declaration, Dckt. 39. The additional costs include attorneys fees and th bankruptcy filing fee. *Id.*

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed an Response on October 12, 2021. Dckt. 43.

Trustee asserts that Debtor is current under the confirmed plan. Movant is classified as a Class 1 creditor. Trustee has disbursed \$25,368.78 towards the Debtor's ongoing mortgage and \$8,181.38 in arrears. Additionally, Trustee confirms two payments of \$1,284.87 to Movant for July and August payments.

Trustee asserts this would put Debtor only six payments behind instead of nine. However, only two payments would put Debtor seven payments behind, not six.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 14, 2021. Dckt. 46. Debtor asserts they had a six month forbearance, of which Debtor was not notified of until March 2021. Debtor further asserts that a loan modification request to move three missed post-petition payments to the end of the loan period, and Debtor claims they will file a declaration itemizing payments made to date.

DEBTOR'S DECLARATION

Debtor filed a Declaration on October 26, 2021. Debtor states they have made every Chapter 13 Plan Payment from July 2021 through October 2021. Nationstar sent Debtor a loan modification to place arrears at the end of the loan. Exhibit 2, Dckt. 50. Debtor disagrees they are six months delinquent. Debtor requests the court continue the Motion for Relief for an appropriate date to obtain Court Approval for a loan modification.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$178,796.76 (Declaration, Dckt. 39), while the value of the Property is determined to be \$210,000.00 as stated in Schedules A/B and D filed by Debtor.

At the hearing, counsel for Debtor requested a 30 day continuance, with adequate protection payments made as a Class 1 Claim. Counsel for Movant concurred. This is to allow for the documentation of the loan modification.

DECEMBER 7, 2021 HEARING

At the hearing, counsel for the Debtor reported that the Loan Modification is in underwriting, but the terms have not been finalized. Movant agreed to a further continuance of about 45 days.

January 25, 2022 Hearing

On January 6, 2022, Debtor filed a Motion for Approval of a Trial Loan Modification (DCN: MWB-2, Dckt. 55). The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on February 15, 2022 (Specially Set Time), to be heard in conjunction with Debtor's Motion to Approve a Trial Loan Modification.

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 Nationstar Mortgage LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on February 15, 2022 (Specially Set Time), to be heard in conjunction with Debtor's Motion to Approve a Trial Loan Modification for the debt that is the subject of this Motion.

5. [17-26579-E-13](#) **DAVID/CONNIE KELLER**
[EAT-3](#) **Peter Macaluso**
NATIONSTAR MORTGAGE LLC VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-23-21 [\[160\]](#)**

DEBTOR DISMISSED: 1/10/2022
JOINT DEBTOR DISMISSED:
1/10/2022

Final Ruling: No appearance at the January 25, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 23, 2021. 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Nationstar Mortgage LLC D/B/A Mr. Cooper (“Movant”) seeks relief from the automatic stay with respect to David Leroy Keller and Connie Jane Keller’s (“Debtor”) real property commonly known as 8164 Otium Court, Antelope, California 95843 (“Property”). Movant has provided the Declaration of Holly Webb and Cassandra J. Richey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on January 10, 2022, for delinquent plan payments. Dckt. 168.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed;* or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of January 10, 2022, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 10, 2022.

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 Nationstar Mortgage LLC D/B/A Mr. Cooper (“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 as moot, this bankruptcy case having been dismissed on January 10, 2022 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to David Leroy Keller and Connie Jane Keller (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 8164 Otium Court, Antelope, California 95843, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 10, 2022 dismissal of this bankruptcy case.