UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 3, 2017, at 1:30 p.m.

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1. 17-24539-E-13 **BARBARA CORONADO**
Pro Se

MOTION TO RECONSIDER DISMISSAL OF CASE AND ORDER TO SHOW CAUSE 8-14-17 [25]

CASE DISMISSED: 08/09/2017

APPEARANCE OF BARBARA CORONADO AND ROBERT CORONADO, AND EACH OF THEM, REQUIRED AT THE OCTOBER 3, 2017 HEARING

NO TELEPHONIC APPEARANCES 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.

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)(3) Motion—Hearing Required.

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 September 3, 2017. By the court's calculation, 30 days' notice was provided. The court set the Motion for hearing at 1:30 p.m. on October 3, 2017. Dckt. 31.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Vacate is denied.

Barbara Coronado ("Debtor") filed the instant case on July 11, 2017. Dckt. 1. On July 13, the court issued a notice of incomplete filing and intent to dismiss the case if documents were not filed. Dckt. 10. On August 9, 2017, the case was dismissed after Debtor failed to timely file the required documents. Dckt. 22.

On August 14, 2017, Debtor filed this instant Motion to Vacate, claiming that she sent a Chapter 13 Plan on August 7, 2017, one day before it was due on August 8. Debtor states that she was told that the Plan was received on August 9, 2017.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b), although not stated explicitly.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 17, 2017. Dckt. 26. The Chapter 13 Trustee argues that the case was dismissed for a valid reason and should remain dismissed. He argues that Debtor filed the case without a plan, schedules, or statement of financial affairs. While a plan is due within fourteen days of filing a case, the Chapter 13 Trustee notes that the court granted Debtor's request to extend the filing deadlines to August 8, 2017, and the court also ordered Debtor file a motion to confirm and serve the motion and plan by that date. *See* Dckt. 18. The Chapter 13 Trustee argues that no motion to confirm was ever filed and that no proof of service for the Plan was filed.

Additionally, the Chapter 13 Trustee argues that Debtor should have been aware of the various filing deadlines because she had a prior case in 2017, and she has a co-debtor who has had multiple bankruptcy cases.

ORDER TO SHOW CAUSE

On August 31, 2017, the court issued an Order Setting Hearing and Order to Show Cause for this matter. Dckt. 31. The court summarized this case, noting that deadlines were missed in Debtor's second case this year and reviewing the information Debtor put in the Plan and swore under penalty of perjury on her schedules.

In the present case, Debtor requested and received an extension of time to file outstanding documents by August 8, 2017. The case was dismissed on August 9, 2017, for failure to file all documents on or before the deadline set by the court. Order, Dckt. 22 (the Chapter 13 Plan not having been filed by August 8, 2017).

Debtor did file a Plan on August 9, 2017, but Debtor did not use the plan form required by the Eastern District of California (Dckt 23). In reviewing the Plan further, the court notes that:

A. The Monthly Plan Payment is.....$1,000.00

B. Estimated Chapter 13 Trustee's Fees.....($ 70.00)

C. Required Current Secured Claim Payment.....($1,029.81)

D. Other Creditor Distributions.....None

In reviewing Debtor's Schedules Filed in this Case, Debtor states under penalty of perjury that:

A. She and another person have an interest in real property identified as 216 West Cedar Street, with the property having a total value of $25,000.00, of which Debtor's portion has a value of $7,500.00. Schedule A/B, Dckt. 15 at 3.

B. Debtor has no household goods or appliances. Schedule B, *id.* at 6.

C. Debtor has no jewelry. Schedule B, *id.*

D. Debtor has no bank or other deposit accounts. *Id.* at 7.

E. The claim of Bayview Loan Servicing, secured by Debtor's "House" having a value of $25,000.00 is ($100,000.00). Schedule D, *id.* at 14.

F. Debtor has no creditors with unsecured priority claims or unsecured general claims. Schedule E/F, *id.* at 15–16.

G. Robert Coronado is a co-debtor on the claim of Bayview Loan Servicing. Schedule H, *id.* at 19.

H. Debtor is unemployed and has no income. Schedule I, *id.* at 20–21.

I. Robert Coronado, Debtor's non-filing spouse has gross income of $1,500.00 per month, working for R&R Coronado Trucking. *Id.*

J. For expenses, Debtor states having only $1,412.00 of monthly expenses, of which $1,081.00 is for rental or mortgage payment. Schedule J, *id.* at 22.

K. For other Expenses, Debtor states that she pays $0.00 per month for: (1) Home Maintenance, (2) Water/Sewer, (3) Clothing/Laundry, (4) Personal Care Products, (5) Medical and Dental, (6) Entertainment/Recreation, (7) Transportation/Vehicle Maintenance/Registration, (8) Health Insurance, (9) Taxes, and (10) Vehicle Insurance. *Id.* at 23.

L. Debtor testifies that her monthly expense for food and house keeping supplies is $100.00. *Id.* Allowing $50.00 per month for housekeeping supplies, that leaves $1.66 per meal (assuming a thirty-day month) for food.

M. Though stating that her spouse has income on Schedule I, on the Statement of Financial Affairs, Debtor states under penalty of perjury that she is not married. Question 1, *id.* at 25.

N. In response to Question 4 of the Statement of Financial Affairs, Debtor states that she has had $10,500.00 in wage income in 2017. *Id.* at 26.

Filing of Bankruptcy Cases By Debtor's Spouse
That Have Been Dismissed

The Chapter 13 Trustee has filed an opposition to Debtor's motion. In the opposition, the Chapter 13 Trustee states that Debtor has filed a previous case and that the non-filing spouse has filed multiple bankruptcy cases. In reviewing the court files, the non-filing spouse, Robert Ramirez Coronado ("Spouse-Debtor"), has filed nine cases in this District since July of 2012. Mr. Coronado's cases are summarized as follows:

1. **Spouse-Debtor Chapter 13 Case No. 17-23525**

   a. Filed.....May 25, 2017

   b. Dismissed.....June 12, 2017

   c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

   d. Stated under penalty of perjury that he had filed only one prior bankruptcy case in the eight years preceding May 25, 2017. 17-23525; Petition, Dckt. 1 at 3.

2. **Spouse-Debtor Chapter 13 Case No. 17-21078** (Within Eight Years of Case 17-23525.)

   a. Filed.....February 22, 2017

   b. Dismissed.....March 13, 2017

   c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed no prior bankruptcy cases in the eight year period prior to February 22, 2017. 17-21078; Petition, Dckt. 1 at 3.

3. **Spouse-Debtor Chapter 13 Case No. 16-27427** (Within Eight Years of Case 17-23525 and Case 17-21078.)

a. Filed.....November 9, 2016

b. Dismissed.....November 28, 2016

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed one unidentified prior bankruptcy case in the eight-year period prior to November 9, 2016. 16-27427; Petition, Dckt. 1 at 3.

4. **Spouse-Debtor Chapter 13 Case No. 16-24491** (Within Eight Years of Case 17-23525, Case 17-21078, and Case 16-27427.)

a. Filed.....July 11, 2016

b. Dismissed.....July 29, 2016

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. Stated under penalty of perjury that he had filed one prior bankruptcy case in the eight-year period prior to July 11, 2016. 16-24491; Petition, Dckt. 1 at 3.

5. **Spouse-Debtor Chapter 13 Case No. 15-23427** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, and Case 16-24491.)

a. Filed.....April 28, 2015

b. Dismissed.....May 18, 2015

c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

d. No statement of prior bankruptcy cases was provided.

6. **Spouse-Debtor Chapter 13 Case No. 15-21501** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, and Case No. 15-23427.)

   a. Filed.....February 27, 2015

   b. Dismissed.....March 17, 2015

   c. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affair, and Statement of Monthly Income.

   d. No statement of prior bankruptcy cases was provided.

7. **Spouse-Debtor Chapter 13 Case No. 13-35585**[1] (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, and Case No. 15-21501.)

   a. Filed.....December 11, 2013

   b. Dismissed.....February 26, 2013

   c. Dismissed for failure to attend the First Meeting of Creditors and default in plan payments.

   d. Disclosed the filing of two prior bankruptcy cases, 12-33349 and 13-23632.

   e. On the Schedules and Statement of Financial Affairs (13-35585, Dckt. 1), Robert Coronado stated under penalty of perjury:

      i. Owning the 216 West Cedar Street Property, and it having a value of $90,000. Schedule A, *id.* at 3.

      ii. Having household goods, clothing, firearms, a Kenworth Truck, and a GMC Yukon. Schedule B, *id.* at 5–6.

      iii. Having monthly income of $2,619.00. Schedule I, *id.* at 16.

      iv. His non-filing spouse having unemployment compensation income of $800.00 per month. *Id.*

      v. Having expenses of $880.00 per month, exclusive of mortgage/rent. Schedule J, *id.* at 18–19. Robert Coronado stated under penalty of

[1] In cases 13-35585, 13-23632, and 12-33349, Robert Coronado (Spouse-Debtor) was represented by counsel, as opposed to his subsequent cases that he prosecuted in *pro se*.

perjury that his family had no monthly expenses for clothing, personal care products, entertainment, or recreation.

vi. For the $880.00 per month expenses, Robert Coronado stated that he has a family unit of five persons who are dependents: wife, six-year-old son, three-year-old son, and one-year-old son. *Id.* at 20.

8. **Spouse-Debtor Chapter 13 Case No. 13-23632** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, Case No. 15-21501, and Case 13-35585.)

a. Filed.....March 19, 2013

b. Dismissed.....September 23, 2013

c. Dismissed for default in plan payments.

d. Disclosed the filing of one prior bankruptcy cases 12-33349.

9. **Spouse-Debtor Chapter 13 Case 12-33349** (Within Eight Years of Case 17-23525, Case 17-21078, Case 16-27427, Case No. 15-23427, Case No. 15-21501, Case 13-35585, and case 13-23632.)

a. Filed.....July 19, 2012

b. Dismissed.....February 27, 2013

c. Dismissed for default in plan payments.

Bankruptcy Filings, Wasting of Rights by Debtor and Spouse-Debtor

Though filing Chapter 13 cases now spanning six years, Debtor and Spouse-Debtor have failed to prosecute any of the cases. In the couple of cases in which Spouse-Debtor confirmed a plan, defaults in plan payments followed shortly thereafter. In the filings since 2015, Spouse-Debtor has not even filed Schedules, Statement of Financial Affairs, or a proposed Chapter 13 Plan.

In the current case, though Debtor has filed Schedules, Statement of Financial Affairs, and a proposed Chapter 13 Plan, they appear incomplete, and the Plan appears to be unconfirmable. The proposed Chapter 13 Plan is under-funded, with not even enough to pay the one claim provided for in the Plan—the current monthly mortgage payment.

On Schedule I, Debtor states under penalty of perjury that their family has gross income (solely that of Spouse-Debtor) of $1,500.00 per month. Debtor further states that she and Spouse-Debtor have no dependents. Schedule J, Dckt. 15 at 22. This is in conflict with the statements of Spouse-Debtor under

penalty of perjury in his bankruptcy case 13-35585 in which he states under penalty of perjury that the family unit includes three dependents—Debtor, Spouse-Debtor, and three children ages six years old, three years old, and one year old (as of 2013). 13-35585; Schedule J, Dckt. 1 at 20.

Even if there are only the adult Debtor and Spouse-Debtor, the $1,500.00 in gross income cannot be sufficient to fund a plan. On Schedule J in this case, after paying the insufficient proposed $1,000.00 into the Plan, that would leave only $500.00 for all other expenses. On Schedule J, Debtor states under penalty of perjury that she and Spouse-Debtor have no monthly expense for home repairs, no expense for water or sewage (either for district service or maintaining a well and septic system), $0.83 per meal per person for food, no clothing or laundry expense, no personal care expense, no transportation expense, no medical expense, no entertainment expense, and no car insurance expense without providing the court with any basis for concluding that such statements are reasonable and truthful, rather than just made up expenses. Schedule J, Dckt. 15 at 23–24.

It appears from reviewing the pleadings filed in this case and the pleadings filed in Spouse-Debtor's cases since 2015 (which were filed in *pro se*) the documents have been completed in a "check the box" manner without regard for the accuracy or truth of the information stated therein.

In reviewing the Statement of Financial Affairs the court notes that they have also been signed, under penalty of perjury, by Robert Coronado—Spouse-Debtor. Why Mr. Coronado would sign the Statement of Financial Affairs, other than as part of a "check the box and make it look complete" litigation strategy is not apparent.

Prefiling Review Authority of the Court

The bankruptcy courts are established by an act of Congress, and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. §105 provide the bankruptcy courts with the inherent power to enter prefiling orders against vexatious litigants. *See Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007); *see also Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999); *Gooding v. Reid, Murdock & Co.*, 177 F. 684 (7th Cir. 1910); *Harsh Inv. Corp. v. Bialac (In re Bialac)*, 15 B.R. 901 (B.A.P. 9th Cir 1981), *aff'd*, 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. §105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. §105 or the inherent power of the court. *See In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997); *Peugeot v. U.S. Trustee* (*In re Crayton*), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for prefiling review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *See Molski*, 500 F.3d 1047, *en banc* hearing denied, 521 F.3d 1215 (9th Cir. 2008); *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions,

motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a prefiling review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process right of access to the courts. As discussed by the Supreme Court in *Logan v. Zimmerman Brush Co.*, the right to seek redress from the court is a protected right of civil litigants. 455 U.S. 422, 429 (1982). The issuing of a prefiling order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others:

> "Nevertheless, '[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.'"

Molski, 500 F.3d at 1057 (citing *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990)). In the Ninth Circuit, the trial courts apply a four factor analysis in determining if and what type of prefiling or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered.

2. Second, the district court must compile "an adequate record for review."

3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation.

4. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered."

Id.

Debtor's filing of the current bankruptcy case and the prior case demonstrate an inability to knowingly prosecute a bankruptcy case and assert Debtor's rights. Rather, they appear to be done in a manner to waste her rights. These bankruptcy filings are now piled on the multiple, unsuccessful, dismissed bankruptcy cases filed by Spouse-Debtor. The two cases filed by Debtor and the nine prior cases filed by Spouse-Debtor do not demonstrate an attempt to prosecute in any good faith, meaningful way, and demonstrate an inability or unwillingness to prosecute such cases.

The court is cognizant of the significant impact the filing of a bankruptcy case has not only on Debtor, but also on creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in a subparagraph of a subsection of the Bankruptcy Code, the automatic stay does not go into effect, the presentation of a filed bankruptcy petition and the significant sanctions imposed on

someone violating the stay can work to improperly prevent creditors from legitimately enforcing their rights. In these cases, Debtor has filed a series of non-productive Chapter 13 cases, which do not appear to have been filed for any *bona fide* purpose. Debtor and Spouse-Debtor have been afforded multiple opportunities to advance a Chapter 13 plan to cure defaults on the obligation owing to the creditor and restructure the debt through the Chapter 13 plan. While obtaining the benefit of the automatic stay, whether actually or improperly represented to exist, Debtor and Spouse-Debtor have been unable or have refused to properly prosecute a Chapter 13 Plan.

The court has weighed the options, ranging from just dismissing the current case, as it has done for the various other cases, to imposing an outright bar on Debtor filing another bankruptcy case. Clearly, some limits need to be placed on Debtor to prevent the abuse and attempted abuse of the bankruptcy court, bankruptcy laws, state court judgments, and third-parties.

Even if Debtor is "innocently" being led into a bankruptcy scheme by Spouse-Debtor, she is demonstrating that she is not able to prosecute a bankruptcy case, or even to accurately complete the bankruptcy schedules and statement of financial affairs. That has led to Debtor squandering her valuable bankruptcy rights,[2] as well as potentially committing a fraud on the court and creditors. In addition, the making of false statements under penalty of perjury could subject Debtor to both civil and criminal sanctions, penalties, and prosecutions.

At this point, the court will not ban Debtor from ever filing bankruptcy, but the court will impose the much more moderate requirement that Debtor first obtain prefiling authorization from the chief judge in the bankruptcy district before commencing another bankruptcy case during the four-year period following the dismissal of this case. The court selects a four-year period after considering the eight-year period that Congress has determined to be appropriate for obtaining discharges in Chapter 7 cases and the four-year period in Chapter 13 cases.

A prefiling review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require Debtor (whether represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and, on their face, appear to be completed consistent with the requirements of the Bankruptcy Code and Chapter under which Debtor seeks to file bankruptcy. Authorization imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings need to be prepared at the time of filing regardless of whether a prefiling review exists. The ability to file rests solely with Debtor, requiring Debtor to do and comply with only what the Bankruptcy Code requires.

Authorization also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continue to flounder and squander rights under the Bankruptcy Code. By the

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[2] The dismissal of this second bankruptcy case results in Debtor having made the provisions of 11 U.S.C. § 362(c)(4) effective in any other bankruptcy case filed by Debtor through and including June 18, 2018, which prevent the "automatic stay" from going into effect to protect Debtor and property of the bankruptcy estate. (Though Debtor could seek the court to impose such a stay pursuant to 11 U.S.C. § 362(c)(4)(B), it is questionable if Debtor and Spouse-Debtor appreciate the significance of such an obligation on them to act affirmatively.)

prior conduct, Debtor has lost the ability to receive the automatic stay. To the extent that she has or had the ability to cure any defaults and restructure any debts allowed in the Chapter 13 case, those appear to have been squandered as well. To the extent that Debtor is attempting to modify a claim secured by a lien only on her home, such modification is barred by the Bankruptcy Code without the consent of the creditor. 11 U.S.C. § 1322(b)(2).

The court ordered Debtor and her spouse to appear personally at the hearing and show cause why the court should not issue an order:

A. Barring the filing of further bankruptcy cases for four years unless prior authorization is obtained by Debtor from the Chief Judge of the Bankruptcy Court in the District in which she seeks to file bankruptcy;

B. Requiring that Debtor pay all filing fees at the time a new case is commenced, and prohibiting her from obtaining a fee waiver or authorization to pay filing fees in installments; and

C. Authorizing and ordering the Office of the Clerk not to file any bankruptcy petition filed by Barbara Coronado that is not approved for filing by the Chief Judge of the Bankruptcy Court for the District in which Debtor attempts to file a bankruptcy case.

The court ordered further that if Debtor or her spouse fail to appear at the October 3, 2017, then the court may continue the hearing, order corrective monetary sanctions of $500.00 for the failure to appear, and issue a writ for the U.S. Marshal to take the non-appearing person into custody and present them in open court at a continued hearing.

APPLICABLE LAW RE VACATING ORDER

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

Denial of Motion to Vacate

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor's case was dismissed because she failed to file all of the required documents to prosecute a Chapter 13 case. Upon further review of this Motion, the court has detailed the numerous problems in Debtor and Debtor's spouse's cases with the cases being dismissed for missing documents or missing payments, and the court has documented how Debtor and her spouse appear to be abusing the Bankruptcy Code by checking boxes in documents for the sake of making the documents appear complete, without regard for the truthfulness of what is presented to the court under penalty of perjury.

Debtor has not filed any supplemental pleading for the October 3, 2017 hearing on this Motion, and the court does not see any reason to vacate dismissal.

Debtor has not shown grounds for vacating the prior dismissal order.

Issuance of Prefiling Review Order

Upon review of the Motion for Reconsideration of Order Dismissing Case, the files in this case and Debtor's prior Chapter 13 case, the files in the nine bankruptcy cases filed by Robert Coronado, identified as Debtor's Spouse and who has signed the Statement of Financial Affairs in this case, and good cause appearing, the court determines that the issuance of a prefiling review order is necessary and appropriate with respect to Barbara Coronado, Debtor in this case. While it appears equally proper for issuance of such an order with respect to Mr. Coronado, the court did not issue the Order to Show Cause for the issuance of such an order as to him—though he has been ordered to appear at the October 3, 2017 hearing.

As discussed above, taken most benignly, Debtor is being induced to commence bankruptcy cases in which she is wasting, squandering, and losing her valuable rights. Moving down the spectrum of conduct, she may be acting in concert with Spouse-Debtor to willfully and intentional abuse federal law and the jurisdiction of this court.

This court determines that issuing a prefiling review order is proper, and necessary, which:

A. Bars the filing of further bankruptcy cases for four years, unless prior authorization is obtained by Debtor from the Chief Bankruptcy Judge in the District in which she seeks to file bankruptcy;

B. Requires that Debtor pay all filing fees at the time a new case is commenced, and prohibits her from obtaining a fee waiver or authorization to pay filing fees in installments; and

C. Authorizes and orders the Office of the Clerk not to file any bankruptcy petition filed by Barbara Coronado that is not approved for filing by the Chief Judge for the Bankruptcy District in which Barbara Coronado attempts to file a bankruptcy case.

The court shall issue a Chamber Order (not a minute order) substantially in the following form holding that:

ORDER DENYING MOTION TO VACATE ORDER DISMISSING CASE

AND

ORDER SUSTAINING ORDER TO SHOW CAUSE AND PROHIBITING FILING OF CASE UNDER TITLE 11 OF THE UNITED STATES CODE WITHOUT OBTAINING PRIOR AUTHORIZATION

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

The Motion to Vacate filed by 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 to Vacate the Order dismissing this case is denied.

IT IS FURTHER ORDERED that Barbara Sandy Coronado, is enjoined from filing any bankruptcy cases, in any Bankruptcy Court in any District, for the period of four years, commencing October 3, 2017, and continuing through and including October 2, 2021, unless prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

In seeking leave to file a bankruptcy case in this or any other District, the motion for leave to file shall be supported by drafts of the petition, schedules, statement of financial affairs, and all other documents required for the complete filing of a bankruptcy case. Additionally, a copy of this order and the Civil Minutes for the October 3, 2017 hearing on the order to show cause (which Minutes constitute the court's findings of fact and conclusions of law) shall also be included as exhibits provided to the Chief Bankruptcy Judge from whom leave to file a bankruptcy case is requested.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court, and deputy clerks operating under the direction and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Barbara Sandy Coronado during the four-year period of the injunction issued in this order, if there is not prior authorization from the Chief Bankruptcy Judge for the District.

2. **16-27420-E-13** **JUDITH DARNOLD** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
RDW-1 **Steele Lanphier** **9-8-17 [72]**

HERITAGE CREDIT UNION VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 7, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Heritage Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Chrysler 200LX, VIN ending in 8372 ("Vehicle"). The moving party has provided the Declaration of Destiny Davis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Judith Darnold ("Debtor").

The Destiny Davis Declaration provides testimony that Debtor allowed insurance coverage for the Vehicle to lapse and has not obtained new insurance. The Declaration also states that a Kelley Blue Book Valuation Report is attached to the Declaration of Movant's counsel. Though there is an exhibit attached to such Declaration, it is a letter and not a properly authenticated Kelly Blue Book Valuation Report. FN.1.

FN.1. Attaching exhibits to declarations, a motion, or other responsive pleading is not proper in this District. Local Bankruptcy Rule 9004-2(c) requires that the exhibits, which may be combined in one set of exhibits for the contested matter, be filed as a separate document from the other pleadings.

The Declaration of Movant's counsel provides testimony that Movant's counsel heard an unidentified representative of Movant say that the insurance on the Vehicle has lapsed. (Improperly) Attached as Exhibit 1to counsel's declaration is an authenticated letter sent to counsel for Debtor asserting that the insurance has lapsed and requesting that evidence of such insurance be provided by August 3, 2017. Dckt. 75. Counsel testifies that he has not received a response from Debtor's counsel or evidence that there is vehicle insurance in place to protect Movant's interest in the Vehicle.

With respect to the value of the Vehicle, there is not sufficient evidence presented to the court. While Ms. Davis testifies that there is a Kelley Blue Book Value, no such Report has been filed with the court. Even if the court were to accept the lay opinion of Ms. Davis, it appears to show that the amount of the debt and value of the secured claim (11 U.S.C. § 506(a)) are about the same.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on September 19, 2017. Dckt. 80. The Chapter 13 Trustee responds that Debtor is now current under the Plan.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including Debtor defaulting by allowing insurance coverage to lapse. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, while it may that the value appears to be about equal to the debt, Movant has provided evidence of there being a default caused by Debtor's failure to maintain insurance on the Vehicle that secures Movant's claim. The lack of insurance is cause to terminate the automatic stay.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Improper Request for Mandatory Injunction

On page 2 of the Motion, Movant requests that the court issue a mandatory injunction, ordering Debtor to "cooperate and turn over the Vehicle to Lender. . . ." Motion, p. 2:15–16. No points and authorities has been filed in support of the Motion. The Motion does not state any legal basis for the court issuing a mandatory injunction in this Contested Matter. The Motion does not state any legal basis for the court to issue a mandatory injunction based on two or three lines buried near the end of a motion. *See* FED. R. BANKR. P. 7001 (requiring that an adversary proceeding be commenced for injunctive relief).

The court denies the request for injunctive relief.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Buried at the end of prayer for relief is the request "For an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3)." Nowhere in the Motion does Movant state what grounds relate to this prayed-for 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.

While the court can conceive of possible grounds that could be asserted, none have been. It would be highly inappropriate to draft such a pleading and advocate for Movant and against Debtor. FN.2.

FN.2. The court notes that in the Declaration of Ms. Davis reference is made to Movant having expended monies to obtain forced place insurance to protect its interests. Thus, even though relief is not granted to make this order effective immediately, Movant has protected itself during any delay.

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.

The court denies such prayer for such relief.

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 Heritage Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Chrysler 200LX ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

3. **13-29064-E-13** **TERRY/REBECA BRISTER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
TGM-1 **Mary Ellen Terranella** **8-25-17 [108]**

HARLEY-DAVIDSON CREDIT CORP.
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.

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, and Office of the United States Trustee on August 24, 2017. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

Harley-Davidson Credit Corp., as servicer for Eaglemark Savings Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Harley-Davidson FLHTK, VIN ending in 3779 ("Vehicle"). The moving party has provided the Declaration of Marietta Suoboda to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Terry Brister and Rebeca Brister ("Debtor").

Review of Motion

The grounds stated with particularity, as required by Federal Rule of Bankruptcy Procedure 9013, in the Motion consist of:

> "Harley-Davidson Credit Corp., as servicer for Eaglemark Savings Bank, ("Movant")1 will and hereby does move, pursuant to 11 U.S.C. § 362(d) (1) for an order terminating the automatic stay of 11 U.S.C. § 362(a) as it applies to Movant and the personal property commonly described as a 2010 HARLEY-DAVIDSON FLHTK VIN 1HD1KEM37AB623779.

> This Motion is based on the Notice of Motion for Relief from Automatic Stay, Memorandum of Points and Authorities in Support of Motion for Relief from Automatic Stay, and Declaration in Support of Motion for Relief from Automatic Stay, Exhibits, Relief from Stay Summary Sheet, filed concurrently herewith, the pleadings and papers on file herein, an upon such oral and documentary evidence as may be presented by the parties at the hearing."

Motion, Dckt. 108. In substance, no grounds are stated, and Movant instructs the court to canvas all of the documents filed by Movant, everything else in the court's file, whatever Movant may attempt to sneak in at the hearing, and then for the court to assemble the grounds and advocate for Movant.

The Marietta Suoboda Declaration provides no testimony that Debtor has missed pre-petition or post-petition payments to Movant. Rather, the Declaration states that the last payment from David Cusick ("the Chapter 13 Trustee") was received on January 31, 2017, and the next one will be due on July 25, 2017—a full month before the Declaration was filed. From this the court could infer that payment has not been received, but the witness has not testified to such. The Declaration argues that Debtor is delinquent by 3.66 plan payments to the Chapter 13 Trustee in the amount of $3,257.00. FN.1.

FN.1. The court, having dug up a copy of the confirmed Chapter 13 Plan in the court's file notes that it does provide for the payment to Movant be made through the Plan as a Class 2 Claim, rather than there being a payment made directly by Debtor outside the Plan. Even if the court were to ignore the basic pleading rules and consider all of the citations, quotations, arguments, speculation, and conjecture as part of a huge "Mothorities" in which various grounds are sprinkled among various documents, Movant never actually alleges that there is a default in payments to Movant—only the larger social default in payments to the Chapter 13 Trustee.

The Marietta Suoboda Declaration also seeks to introduce evidence establishing the value of the asset. Though the NADA Valuation Report is attached as an Exhibit, it is not properly authenticated. FED. R. EVID. 901, 902.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 18, 2017. Dckt. 115. Debtor admits to being behind in plan payments and states that they are working with their attorney to propose a modified plan, which they propose to have filed and served before the hearing on this Motion.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on September 19, 2017. Dckt. 117. The Chapter 13 Trustee states Debtor is delinquent $1,500.00 under the confirmed plan and became delinquent by two or more payments on August 25, 2017. The Chapter 13 Trustee expects to move for dismissal of this case on November 1, 2017.

CHAPTER 13 TRUSTEE'S AMENDED RESPONSE

The Chapter 13 Trustee filed an Amended Response on September 26, 2017. Dckt 120. He states that Debtor is now delinquent $850.00, having paid $1,300.00 on September 22, 2017. The Chapter 13 Trustee's records show that he will issue a check to Movant for $1,124.64 principal and $94.76 interest based on a trial disbursement on September 29, 2017.

With Debtor remaining delinquent, the Chapter 13 Trustee expects that he may file a motion to dismiss this case unless Debtor provides reasonable explanation about the delinquency and how it will be cured.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

The concept of the minimum requirements for a movant to actually state with particularity the grounds upon which the relief is based is not unique to the Bankruptcy Rues of Procedure. Federal Rule of Civil Procedure 7(b) states:

> "(b) Motions and Other Papers
>
> (1) In General. A request for a court order must be made by motion. The motion must:
>
> (A) be in writing unless made during a hearing or trial;
>
> (B) **state with particularity the grounds for seeking the order**; and
>
> (C) state the relief sought."

FED. R. CIV. P. 7(b) (emphasis added). The same "state with particularity" requirement is included in Federal Rule of Bankruptcy Procedure 9013 for all motions in the bankruptcy case itself.

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).

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."

Here, Movant has not provided the court with any grounds upon which to grant relief from the automatic stay. All Movant has stated is that it moves for relief under 11 U.S.C. § 362(d)(1) and that its Motion is based upon the other pleadings filed with the Motion—"the Notice of Motion for Relief from Automatic Stay, Memorandum of Points and Authorities in Support of Motion for Relief from Automatic Stay, and Declaration in Support of Motion for Relief from Automatic Stay, Exhibits, Relief from Stay Summary Sheet, filed concurrently herewith, the pleadings and papers on file herein, an [*sic*] upon such oral and documentary evidence as may be presented by the parties at the hearing." Dckt. 108 at 2:2.5–6. What Movant has provided is not a motion pleaded with particularity. The Motion is denied without prejudice.

Denial Without Prejudice

While failing to state grounds upon which the relief is requested, the Motion states that relief is sought pursuant to 11 U.S.C. § 362(d)(1), the "for cause" grounds under the Bankruptcy Code section. To the extent that the "cause" is based on Debtor being grossly in default in payments and the Chapter 13 Trustee not having the money to make the plan disbursements to Movant, the Chapter 13 Trustee has provided evidence that he has the monies to disburse all but the most recent month's payment. No grounds are stated that a one-month arrearage is "cause" to terminate the stay.

Further, thrown into the "prayer" for "relief" in the points and authorities (such "prayers" are to be placed in complaints, motions, and applications, not in a points and authorities), Movant demands that the court also grant relief of the "co-debtor stay" arising under 11 U.S.C. § 1301(a). There are no allegations in the "Mothorities" of there being any "co-debtor," why the rights of such "co-debtor" should be terminated, and that such termination of rights is proper.

Reviewing the Certificate of Service, the court cannot identify any possible "co-debtor" who was served, unless Movant is asserting that Debtor's counsel, the Chapter 13 Trustee, or the judge in this case is a "co-debtor." This unfortunate use of a stock pleading further indicates that actual grounds for relief do not exist.

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 Harley-Davidson Credit Corp., as servicer for Eaglemark Savings Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the Motion is denied without prejudice.

4. **13-25989-E-13** **KELLY/CYNTHIA NAIR** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
MSK-1 **Scott Coben** **8-31-17 [60]**

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the October 3, 2017 hearing is required.

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

The Bank of New York fka The Bank of New York, As Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-HY7, Mortgage Pass Through Certificates, Series 2007-HY7having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte Motion* to Dismiss the pending Motion on September 12, 2017, Dckt. 70; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Kelly Nair and Cynthia Nair ("Debtor"); the Ex Parte Motion is granted, Creditor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by The Bank of New York fka The Bank of New York, As Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-HY7, Mortgage Pass Through Certificates, Series 2007-HY7 ("Creditor") having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 70, 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 dismissed without prejudice.