

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

December 15, 2015 at 1:30 p.m.

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1. [14-30925](#)-E-13 JAMES KENNEDY MOTION FOR RELIEF FROM  
BHT-1 Thomas L. Amberg AUTOMATIC STAY  
11-12-15 [[76](#)]  
FREEDOM HOME MORTGAGE  
CORPORATION VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on November 12, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Freedom Home Mortgage, its assignees and/or successors in interest, as serviced by LoanCare ("Movant") seeks relief from the automatic stay with

December 15, 2015 at 1:30 p.m.

respect to the real property commonly known as 2133 Saddlebreed Dr., Fairfield, California (the "Property"). Movant has provided the Declaration of Anthony O'Connor to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The O'Connor Declaration states that there are 7 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$11,475.93 in post-petition payments past due.

#### **TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response on November 30, 2015. Dckt. 94. Trustee clarifies that Debtor is delinquent \$1,651.00 under the plan, and has paid \$13,176.00 total. Of the amount paid, \$8,750.00 was disbursed as mortgage payments to Creditor. Dckt. 95.

#### **DEBTOR'S REPLY**

Debtor filed a reply on November 30, 2015. Dckt. 97. In sum, Debtor does not oppose the motion.

#### **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$357,571.39 (including \$335,791.39 secured by Movant's deed of trust), as stated in the O'Connor Declaration and Schedule D filed by James Kennedy ("Debtor"). The value of the Property is determined to be \$310,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue 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 Freedom Home Mortgage Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Freedom Home Mortgage Corporation, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2133 Saddlebreed Dr., Fairfield, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Charlton Curry ("Debtor"), Trustee, and the Office of the United States Trustee on November 20, 2015. The court computes that 25 days' notice has been provided.

**The court's decision is to sustain the Order to Show Cause and issue a pre-filing review requirement for any further cases filed in the next four years.**

On November 20, 2015, the court issued an Order to Show Cause, ordering the following:

**IT IS ORDERED** that the Debtor shall appear before the court on December 15, 2015, at 1:30 p.m. to show why the court should not issue an order dismissing the case, and why said dismissal should not include the following provisions pursuant to 11 U.S.C. §105, §349, §362(d)(4), and the inherent power of the federal court,

1. Issuance of an injunction or bar on the filing of further bankruptcy cases by Charlton Lee Curry for a period of eight (8) years unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.
2. Imposition of sanctions pursuant to the statutory and inherent powers of this court to control the proceedings and parties seeking relief from the court.
3. Imposition of sanctions as provided by Rule 9011, Federal Rules of Bankruptcy Procedure.
4. Requiring that the Debtor pay all filing fees at the time a new case is commenced, and prohibiting him from obtaining a fee waiver or authorization to pay filing fees in installments.
5. Authorizing and ordering the Office of the Clerk to not

file any bankruptcy petition filed by Charles Lee Curry which is not approved for filing by the Chief Judge for the Bankruptcy District in which Charles Lee Curry attempts to file a bankruptcy case.

**IT IS FURTHER ORDERED** that any response or opposition to the Order to Show Cause shall be in writing and filed with the court in compliance with Local Rule 9014-1, and must be filed at least seven (7) days before the date of the hearing set forth in this order.

Dckt. 22.

#### **RESPONSES**

To date, there have been no responses or oppositions filed in connection with the instant Order to Show Cause.

#### **DISCUSSION**

The court has reviewed the files in this case filed by Charlton Lee Curry, the Debtor, Bankr. E.D. Cal. no. 15-28539, on October 22, 2015.

The court has identified prior bankruptcy cases having been filed by the Debtor and dismissed for the Debtor's failure to comply with the basic obligations arising under the Bankruptcy Code:

Chapter 13 Case No. 15-25602, filed by Charlton L. Curry July 14, 2015, which was dismissed by order entered on August 12, 2015, by request of the Debtor. The following documents not being filed,

- A. Chapter 13 Plan,
- B. Means Test - Form 22C,
- C. Schedule B - Personal Property,
- D. Schedule C - Exempt Property,
- E. Schedule F - General Unsecured Claims,
- F. Schedule G - Executory Contracts,
- G. Schedule I - Current Income,
- H. Schedule J - Current Expenses,
- I. Statement of Financial Affairs,
- J. Statistical Summary, and
- K. Summary of Schedules.

Chapter 7 Case No. 14-23519, filed by Charlton Lee Curry on April 4, 2014, which was dismissed by order entered on May 18, 2014, for the failure to pay fees.

The Debtor also filed a Chapter 7 Case No. 10-49590 on November 9, 2010, and receiving a discharge on February 23, 2011.

The Debtor requested and obtained authorization to pay the filing fees in installments in two of the above cases and failing to make any installments.

In the current case, Debtor failed to file the following documents,

- A. Chapter 13 Plan,
- B. Means Test - Form 22C,
- C. Schedule A - Real Property,
- D. Schedule B - Personal Property,
- E. Schedule C - Exempt Property,
- F. Schedule D - Secured Claims,
- G. Schedule E - Unsecured Priority Claims,
- H. Schedule F - General Unsecured Claims,
- I. Schedule G - Executory Contracts,
- J. Schedule H - Co-Debtor(s),
- K. Schedule I - Current Income,
- L. Schedule J - Current Expenses,
- M. Statement of Financial Affairs,
- N. Statistical Summary, and
- O. Summary of Schedules.

Notice of Incomplete Filing. Dckt. 3.

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 pre-filing orders against vexatious litigants. . Molski v. Evergreen Dynasty Corp, et al, 500 F.3d 1047 (9th Cir. 2007); Gooding v Reid, Murdock & Co., 177 F 684, (7th Cir 1910), Weissman v. Quail Lodge Inc., 179 F.3d 1194, 1197 (9th Cir. 1999), and In re Bialac 15 B.R. 901, 9th Cir. B.A.P. 1981), affd 694 F2d 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 authorize 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. In re Volpert, 110 F.3d 494, 500 (7th Cir. 2007); and 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 pre-filing review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. Molski v. Evergreen Dynasty Corp, et al, 500 F.3d 1047 (9th Cir. 2007), en banc hearing denied, 521 F.3d 1215 (9th Cir. 2008); and In re Fillbach, 223 F.3d 1089 (9th Cir. 2000). While maintaining the 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.

However, the Ninth Circuit 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." *De Long [v. Henneessey]*, 912 F.2d [1144,] 1148 [(9th Cir. 1990)]; see *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

*Molski*, 500 F.3d at 1057. In the Ninth Circuit the trial courts apply a four-factor analysis in determining if and what type of pre-filing 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.

*Molski*, 500 F.3d at 1057-1058.

The Debtor's repetitive filing of bankruptcy cases without the basic documents and otherwise failing to meet her basic duties as a debtor under the Bankruptcy Code demonstrates abusive conduct and misuse of the bankruptcy laws. Though the bankruptcy court is open to all and a person's financial, personal, or other missteps are not a bar to seeking the extraordinary relief available, debtors must seek the relief and prosecute the cases in good faith. In this case the Debtor has chosen to repeatedly file a series of Chapter 13 cases in which he has failed to file necessary documents or pay the filing fees imposed by federal law. The Debtor has demonstrated, through the repeated Chapter 13 cases which have not been prosecuted, that this and the prior Chapter 13 cases do not have merit as a reorganization.

Even more insidious is that the repeat filing of bankruptcy cases by a debtor wastes that debtor's legal rights; such as the termination or suspension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3) and (4), and the prospective suspension of the automatic stay pursuant to 11 U.S.C. § 362(d)(4). Additional, the debtors wastes time, money, and emotional capital riding the roller coaster of multiple filings and dismissals.

The Debtor's failure to prosecute this case is further highlighted by the Debtor's failure to file any responsive pleadings to the instant Order to Show Cause. Once again, the Debtor is not prosecuting this case in good faith, as in his previous cases, and has allowed his duties as a debtor to lapse.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained.

**IT IS FURTHER ORDERED** that Charlton Curry is barred from filing any further bankruptcy cases for a period of four (4) years from the date of this order, unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

**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, are authorized to reject any petition attempted to be filed by Charlton Curry, the Debtor in this case, during the four (4) year period of the above injunction issued in this order, if there is not the prior authorization from the Chief Bankruptcy Judge for the District.

**IT IS FURTHER ORDERED** that the Debtor shall pay all filing fees at the time a new case is commenced, and Debtor is prohibited from obtaining a fee waiver or authorization to pay filing fees in installments during the four (4) period.



3. [13-35536](#)-E-13 GARY/AIMEE HOURCAILLOU  
RTD-1 Peter G. Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-1-15 [[32](#)]

SCHOOLS FINANCIAL CREDIT  
UNION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Gary and Aimee ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Jeep Wrangler, VIN ending in 1391 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted in post-petition payments totaling \$1,091.21 through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$6,981.12, as stated in the Spitzer Declaration, while the value of the Vehicle is determined to be \$11,610.00, as stated in Schedules B and D filed by Debtor.

#### **TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 48. Trustee clarifies that Debtor has paid a total of \$51,920.15 to date and is delinquent \$8,304.70 under the confirmed plan. \$2,899.22 has been disbursed regarding the 2004 Jeep Wrangler, with a remaining principal of \$6,894.93. Dckt. 49.

#### **RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments and there is no insurance to protect Creditor's interest. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Schools Financial 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 2004 Jeep Wrangler ("Vehicle"), and applicable

nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

4. 13-35536-E-13 GARY/AIMEE HOURCAILLOU MOTION FOR RELIEF FROM  
RTD-2 Peter G. Macaluso AUTOMATIC STAY  
12-1-15 [[40](#)]  
SCHOOLS FINANCIAL CREDIT  
UNION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion for Relief From the Automatic Stay is granted.**

Gary and Aimee ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Chevrolet Tahoe, VIN ending in 1399 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted in \$2,186.72 of post-petition payments past due Movant through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$6,981.12, as stated in the Spitzer Declaration, while the value of the Vehicle is determined to be \$11,610.00, as stated in Schedules B and D filed by Debtor.

**TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 51. Trustee clarifies that Debtor has paid a total of \$51,920.15 to date and is delinquent \$8,304.70 under the confirmed plan. \$5,813.58 has been disbursed regarding the 2007 Chevrolet Tahoe, with a remaining principal of \$13,877.09. Dckt. 52.

**RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments and there is no insurance to protect Creditor's interest. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Schools Financial 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 2007 Chevrolet Tahoe ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

5. [15-28539](#)-E-13 ADDISU GIRMA  
RHS-1 Pro Se  
DEBTOR DISMISSED: 11/20/2015

ORDER TO SHOW CAUSE  
11-20-15 [[16](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Addisu Girma ("Debtor"), Trustee, parties in interest, and the Office of the United States Trustee on November 22, 2015. The court computes that 23 days' notice has been provided.

**The court's decision is to sustain the Order to Show Cause and issue a pre-filing review requirement for any further cases filed in the next four years.**

On November 20, 2015, the court issued an Order to Show Cause, ordering the following:

**IT IS ORDERED** that the Debtor shall appear before the court on December 15, 2015, at 1:30 p.m. to show why the court should not issue an order dismissing the case, and why said dismissal should not include the following provisions pursuant to 11 U.S.C. §105, §349, §362(d)(4), and the inherent power of the federal court,

1. Issuance of an injunction or bar on the filing of further bankruptcy cases by Addisu Girma for a period of eight (8) years unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.
2. Imposition of sanctions pursuant to the statutory and inherent powers of this court to control the proceedings and parties seeking relief from the court.
3. Imposition of sanctions as provided by Rule 9011, Federal Rules of Bankruptcy Procedure.
4. Requiring that the Debtor pay all filing fees at the time a new case is commenced, and prohibiting him from obtaining a fee waiver or authorization to pay filing fees in installments.

5. Authorizing and ordering the Office of the Clerk to not file any bankruptcy petition filed by Addisu Girma which is not approved for filing by the Chief Judge for the Bankruptcy District in which Charles Lee Curry attempts to file a bankruptcy case.

**IT IS FURTHER ORDERED** that any response or opposition to the Order to Show Cause shall be in writing and filed with the court in compliance with Local Rule 9014-1, and must be filed at least seven (7) days before the date of the hearing set forth in this order.

Dckt. 22.

#### **RESPONSES**

To date, there have been no responses or oppositions filed in connection with the instant Order to Show Cause.

#### **DISCUSSION**

The court has reviewed the files in this case, commenced by Addisu Girma, the Debtor, Bankr. E.D. Cal. no. 15-28539, on November 2, 2015. Debtor filed a Motion to Dismiss the bankruptcy case on November 13, 2015. Dckt. 12. Debtor states in the Motion that the filing of the case was a "Mistake."

The court has identified a prior bankruptcy case having been filed by the Debtor and dismissed for the Debtor's failure to comply with the basic obligations arising under the Bankruptcy Code:

Chapter 13 Case No. 15-26390, filed by Addisu Girma on August 12, 2015, which was dismissed by order entered on September 29, 2015, for failure to file the following documents,

- a. Chapter 13 Plan,
- b. Means Test - Form 22C,
- c. Schedule A - Real Property,
- d. Schedule B - Personal Property,
- e. Schedule C - Exempt Property,
- f. Schedule D - Secured Claims,
- g. Schedule E - Unsecured Priority Claims,
- h. Schedule F - General Unsecured Claims,
- i. Schedule G - Executory Contracts,
- j. Schedule H - Co-Debtor(s),
- k. Schedule I - Current Income,
- l. Schedule J - Current Expenses,
- m. Statement of Financial Affairs,
- n. Statistical Summary, and
- o. Summary of Schedules.

The Debtor requested and obtained authorization to pay the filing fees in installments in the prior case and the current case, but failed to make any installment payments.

In the current case, Debtor failed to file the following documents,

- a. Chapter 13 Plan,
- b. Means Test - Form 22C,
- c. Schedule A - Real Property,
- d. Schedule B - Personal Property,
- e. Schedule C - Exempt Property,
- f. Schedule D - Secured Claims,
- g. Schedule E - Unsecured Priority Claims,
- h. Schedule F - General Unsecured Claims,
- i. Schedule G - Executory Contracts,
- j. Schedule H - Co-Debtor(s),
- k. Schedule I - Current Income,
- l. Schedule J - Current Expenses,
- m. Statement of Financial Affairs,
- n. Statistical Summary, and
- o. Summary of Schedules.

Notice of Incomplete Filing. Dckt. 9.

Debtor offers no explanation how the filing of the present case, in light of the multiple bankruptcy filings, was caused by a "mistake."

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 pre-filing orders against vexatious litigants. . *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v Reid, Murdock & Co.*, 177 F 684, (7th Cir 1910), *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999), and *In re Bialac* 15 B.R. 901, 9th Cir. B.A.P. 1981), *affd* 694 F2d 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 authorize 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. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 2007); and *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 pre-filing review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007), en banc hearing denied, 521 F.3d 1215 (9th Cir. 2008); and *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the 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.

However, the Ninth Circuit 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." *De Long [v. Henneessey]*, 912 F.2d [1144,] 1148 [(9th Cir. 1990)]; see *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

*Molski*, 500 F.3d at 1057. In the Ninth Circuit the trial courts apply a four-factor analysis in determining if and what type of pre-filing 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.

*Molski*, 500 F.3d at 1057-1058.

The Debtor's repetitive filing of bankruptcy cases without the basic documents and otherwise failing to meet her basic duties as a debtor under the Bankruptcy Code demonstrates abusive conduct and misuse of the bankruptcy laws. Though the bankruptcy court is open to all and a person's financial, personal, or other missteps are not a bar to seeking the extraordinary relief available, debtors must seek the relief and prosecute the cases in good faith. In this case the Debtor has chosen to repeatedly file a series of Chapter 13 cases in which he has failed to file necessary documents or pay the filing fees imposed by federal law. The Debtor has demonstrated, through the repeated Chapter 13 cases which have not been prosecuted, that this and the prior Chapter 13 cases do not have merit as a reorganization.

Even more insidious is that the repeat filing of bankruptcy cases by a debtor wastes that debtor's legal rights; such as the termination or suspension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3) and (4), and the prospective suspension of the automatic stay pursuant to 11 U.S.C. § 362(d)(4). Additional, the debtors wastes time, money, and emotional capital riding the roller coaster of multiple filings and dismissals.

The Debtor's failure to prosecute this case is further highlighted by the Debtor's failure to file any responsive pleadings to the instant Order to Show Cause. Once again, the Debtor is not prosecuting this case in good faith, as in his previous cases, and has allowed his duties as a debtor to lapse.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained.

**IT IS FURTHER ORDERED** that Addisu Girma is barred from filing any further bankruptcy cases for a period of four (4) years from the date of this order, unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

**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, are authorized to reject any petition attempted to be filed by Addisu Girma, the Debtor in this case, during the four (4) year period of the injunction issued in this order, if there is not the prior authorization from the Chief Bankruptcy Judge for the District.

**IT IS FURTHER ORDERED** that the Debtor shall pay all filing fees at the time a new case is commenced, and Debtor is prohibited from obtaining a fee waiver or authorization to pay filing fees in installments.

**Final Ruling:** No appearance at the December 15, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 19, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Contempt is continued to 1:30 p.m. on January 28, 2016, no telephonic appearances permitted.</b>
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Robert and Kathleen Ash ("Debtor") filed the instant Motion for Civil Contempt as to Ocwen Loan Servicing, LLC on August 20, 2015. Dckt. 130. The Debtor requests to the court to find Ocwen Loan Servicing, LLC ("Creditor") in civil contempt under 11 U.S.C. § 105 and Fed. R. Bankr. P. 3002.1, 9014 and 9020 for violations of the discharge injunction.

The Debtor filed the instant bankruptcy case on June 13, 2009. On April 12, 2010, the Debtor's plan was confirmed. On July 15, 2015, the Chapter 13 Trustee filed a Notice of final Cure Payment. Dckt. 109.

On August 4, 2014, Creditor filed a Response to Notice of Final Cure indicating that the arrears were paid and the next payment dues was for July 1, 2014. Dckt. 112.

The Debtor states that since the final payment made by the Trustee, the Debtor has made all payments to Creditor, as required by the loan, except for one due to the confusion caused by the demands of Creditor and payments were made, but Creditor has returned them demanding back payments that were cured in the Chapter 13 plan.

The Debtor states that they made a Qualified Written Request and was provided a full accounting was provided on July 13, 2015. Dckt. 133, Exhibit 14. The Debtor alleges that the accounting reveals that post-petition payments were applied to amounts claimed during the cure of the bankruptcy case.

The Debtor argues that attempts to collect payments cured by the Chapter 13 Plan, as found to have been paid in full as of August 4, 2014 based on the Creditor's response to the Trustee's Notice of Final Cure Mortgage

Payment are in violation of the discharge.

Debtor asserts that he made all necessary payment to Creditor and any delinquency is based on the return of payments . Dckt. 133, Exhibit 16.

The Debtor alleges is that since the response to the Notice of Final Cure of Mortgage Payment, Creditor has told Debtor that they are more than \$15,000.00 in arrears and that they must pay the entire amount. The Debtor further alleges that the Creditor threatened to filed foreclosure on August 20, 2015 and the Debtor has received phone calls to collect the arrears.

The Debtor argues that they have also suffered emotional stress.

Additionally, the Debtor argues that the Creditor violated Fed. R. Bankr. P. 3002.1 because Creditor did not file any notice of post petition fees and, therefore, should not be charging Debtor for Bankruptcy related fees.

The Debtor notes that the breach of the contract between Debtor and Creditor post petition is a matter for the state courts to resolve but the Debtor is seeking resolution as to the alleged violation of the discharge injunction and violation of Fed. R. Bankr. P. 3002.1 for the res judicata effect it may have on state court.

The Debtor is requesting that:

1. Creditor be found in civil contempt for violating the "automatic stay" and Rule 3002.1 and sanctioned
2. A further hearing to determine emotional damages
3. Pay the Debtor's reasonable attorneys' fees

#### **APPLICABLE LAW**

##### Civil Contempt

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R.

970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

#### Federal Rule of Bankruptcy Procedure 3002.1

Pursuant to Fed. R. Bankr. P. 3002.1(c), a creditor holding a claim must do the following:

##### (c) Notice of fees, expenses, and charges

The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

Furthermore, if the holder of a claim fails to properly notice, the Rule provides the following:

##### (I) Failure to notify

If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

#### **VIOLATION OF ORDER CONFIRMING PLAN**

As Debtor addresses in the Points and Authorities, 11 U.S.C. § 524(I) provides that the failure of a creditor to properly apply payments received through a bankruptcy plan shall also constitute a violation of the discharge injunction. Such a violation is addressed by holding the violating party in

contempt, subjecting the violator to civil sanctions. *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205 (9th Cir. 2008); *affrm.* 440 U.S. 260 (2010). The Ninth Circuit cases addressing the bankruptcy court imposing the civil sanctions for violating the discharge injunction include: *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 10-52 (9th Cir. 2009); *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, (9th Cir. 2002). In *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006), the Ninth Circuit Court of Appeals states,

"Section 524 of the bankruptcy code provides that discharge "operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any [discharged] debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). A party who knowingly violates the discharge injunction can be held in contempt under section 105(a) of the bankruptcy code. See *In re Bennett*, 298 F.3d at 1069; *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002) (holding that civil contempt is an appropriate remedy for a willful violation of section 524's discharge injunction). In *Bennett*, we noted that the party seeking contempt sanctions has the burden of proving, by clear and convincing evidence, that the sanctions are justified. We cited with approval the standard adopted by the Eleventh Circuit for violation of the discharge injunction: "[T]he movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction." *Bennett*, 298 F.3d at 1069 (citing *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996)).

As the Ninth Circuit Court of Appeals noted in Footnote 11 in *ZiLog*, "Of course, where the facts are not in dispute, no hearing need be held. See, e.g., *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir.2003) (contempt sanctions upheld where creditor admitted having notice of the automatic bankruptcy stay, yet took no steps to remedy his violation of the stay)." *Id.* at 1008, FN.11.

#### **SEPTEMBER 22, 2015 HEARING**

At the hearing, based on the stipulation filed by the parties the day of the hearing, the court continued the hearing to 1:30 p.m. on October 29, 2015. Dckt. 146. The court ordered that any opposition shall be filed and served on or before October 22, 2015. The court also ordered that no telephonic appearances would be permitted. Lastly, the court required that Bryan Cave LLP, attorneys for Ocwen Loan Servicing LLC, shall file and serve on the U.S. Trustee and the Chapter 13 Trustee copies of the engagement letter (redacted as appropriate) by which said law firm was engaged as counsel for Ocwen Loan Servicing LLC in this contested matter.

#### **OCTOBER 20, 2015 ORDER**

On October 21, 2015, the court issued an order continuing the hearing to 1:30 p.m. on November 19, 2015 based on the stipulation of the parties. Dckt. 148. The court ordered that Ocwen Loan Servicing LLC shall file any opposition by November 5, 2015 and any responses shall be filed by November 12,

**December 15, 2015 at 1:30 p.m.**

2015.

#### **DECLARATION OF CHRISTOPHER SCHMIDT**

Christopher Schmidt, a partner at Bryan Cave LLP, filed a declaration on October 22, 2015. Dckt. 149. Mr. Schmidt states that in his capacity as the relationship partner for Ocwen Loan Servicing, LLC, he has "access to [his] law firm's business records, including the business records for and relating to Ocwen's retention of Bryan Cave in this contested matter."

Mr. Schmidt states that Ocwen Loan Servicing, LLC is the servicer of the loan, without providing the basis for such knowledge. Mr. Schmidt continues and states that "Ocwen" utilizes a "certain group of law firms to handle litigated matter throughout the country" and that Bryan Cave is one of those firms. Mr. Schmidt states that when Ocwen retains the firm, the matter is opened on CounselLink, in which Bryan Cave is sent an email notifying the firm that a case has been referred. Upon notification, Bryan Cave accepts the referral via the CounselLink website.

Mr. Schmidt states that on September 1, 2015, the firm was retained as counsel for Ocwen to defend the instant Motion. On September 2, 2015, Mr. Schmidt states that the firm received an email notice indicating the instant matter had been opened and referred to Bryan Cave in CounselLink. Once accepted, the matter is referred to the office closest geographically to the court where the matter is being heard, here the Bryan Cave San Francisco Office.

Mr. Schmidt attached the redacted email that notified the firm of the referral. Dckt. 149, Exhibit A. The email indicates that "Ocwen Financial" referred "In Re: Robert C. Ash" on September 1, 2015.

The court notes that the "Email" provided is so redacted that it fails to provide any useful information for the court. The best the court can tell from it is:

- A. It was sent from someone at [ask@lexisnexis.com](mailto:ask@lexisnexis.com).
- B. It was sent to some unidentified person at an unidentified email address. (That information having been redacted.)
- C. It relates to a matter relating to "Ocwen Financial," not Ocwen Loan Servicing, LLC.
- D. Under matter title it states "In Re: Robert C. Ash."

Exhibit A. Everything else is redacted out. From this, it appears that some entity named "Ocwen Financial" was involved, not Ocwen Loan Servicing, LLC. It appears to be evidence that either no counsel was retained for Ocwen Loan Servicing, LLC or that Ocwen Loan Servicing, LLC is part of and the alter-ego of "Ocwen Financial." This email conflicts with the testimony under penalty of perjury provided by Christopher Schmidt, who states that his law firm was retained to represent "Ocwen Loan Servicing, LLC." Declaration, p. 2:2-3, 22-23.

The court is concerned that this highly redacted document has not been provided in good faith or to substantiate the contention that the law firm has actually be engaged to represent Ocwen Loan Servicing, LLC. The court has, and is, addressing the "Ocwen Entities" and other counsel they have hired filing redacted documents which fail to provide any meaningful information in support of what an attorney tells the court the document would say if it was not redacted.

#### **NOVEMBER 5, 2015 ORDER**

On November 5, 2015, the court issued an order pursuant to the stipulation of the parties to continue the instant hearing to 1:30 p.m. on December 15, 2015, with opposition due on December 1, 2015 and response by December 8, 2015. Dckt. 157.

#### **NOTICE OF SETTLEMENT**

On December 1, 2015, Debtor's counsel filed a Notice of Settlement which stated that the parties have resolved their disputes and are in the process of preparing an agreement. Dckt. 159. The Notice states that it is anticipated that the Motion for Contempt will be withdrawn by December 20, 2015.

#### **DISCUSSION**

In light of the Notice of Settlement, which indicates that the parties are currently drafting a settlement agreement, the hearing on the instant Motion is continued to 1:30 p.m. on January 28, 2016, no telephonic appearances permitted.

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 Contempt filed by Robert C. Ash and Kathleen H. Ash, Debtors, the court having continued the hearing pursuant to the stipulation of the parties, the court having reviewed the highly redacted exhibits filed by the Bryan Cave, LLP law firm, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is continued to 1:30 p.m. on January 28, 2016. No telephonic appearances are permitted for the continued hearing.



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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing  
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<b>The Motion for Contempt is <del>xxxxx</del>.</b>
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Kimberly J. Husted ("Trustee") moves for an order holding Walter H. Schaefer ("Debtor") in contempt for violating court orders, Dckt. 101 and 135. Trustee seeks (1) compulsory sanctions in an amount no less than \$5,000.00 per day; or (2) ordering that the Debtor be imprisoned until such time as the Debtor complies with the court's orders.

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FN.1. The court notes that the Motion contains a typographical error, misidentifying the trustee as J. Michael Hopper moving for an order of contempt. The court recognizes Kimberly J. Husted as the duly-appointed Trustee of the above-captioned bankruptcy estate.

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**ALLEGED CONDUCT OF DEBTOR IN VIOLATION OF PRIOR COURT ORDERS**

Trustee alleges that Debtor violated court orders directing the Debtor to turn over certain real properties located in Costa Rica, corporations organized under the laws of Costa Rica which hold interests in the real properties, and ordering the Debtor to direct the Debtor's agents, attorneys, and brokers to comply with the Trustee's and her attorneys' instructions. Trustee provides the court with an exhaustive factual background, to contextualize the issue at hand, urging the court to grant the instant Motion. Trustee alleges the following:

Among the assets of the Debtor's bankruptcy estates is the Debtor's interest in:

- A. Certain real property commonly known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica ("First Condominium");
- B. Certain real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Undisclosed Condominium");
- C. Certain unimproved lots in Costa Rica identified as Guanacaste Nos. 37920-000 and 37922-000 ("Lots"); and
- D. Corporations organized under the laws of Costa Rica which hold title to the aforementioned real properties and identified as Morena Velar S.A. ("Velar"), Free Solutions Imperial S.A. ("Free Solutions"), Bayside Tambor JVM Dos S.A. ("Bayside"), and 3101495080 S.A. ("Lot Corporations").

Debtor's original schedules only disclosed the Debtor's interest in the First Condominium, valued at \$300,000 and not subject to liens or a claim of exemptions. However, Debtor failed to disclose the other Costa Rican properties and the entities holding title to those properties. The Trustee alleges that this thus impaired her ability to protect the estate's rights.

Debtor and Priscilla Camperud-Schaefer have been parties to a marital dissolution proceeding that has been pending in the Orange County Superior Court since May 11, 2010. Prior to a Federal Rule of Bankruptcy Procedure 2004 examination, the Trustee caused the documents filed in the marital case to be reviewed. Through such review, the Trustee discovered that the Debtor had investment accounts with RBC Capital Markets, LLC and Edward D. Jones & Co., L.P., escrow for the First Condominium through Breedy Abogados S.A., and interest in Velar.

On April 9, 2015, the Trustee caused the Motion for Turnover of the First Condominium, documents related to the First Condominium's control and transfer, including the shares and books for Velar, and the investment accounts. Trustee alleges that at the time the Motion for Turnover was filed, Trustee uncovered that the Debtor had stolen assets of the bankruptcy estate, and was not responding to turnover demands for adequate assurance that the First Condominium would not be placed out of reach of the Bankruptcy Court. An order granting the Motion for Turnover was entered on May 22, 2015. Dkct. 135.

On April 13, 2015, at the 2004 examination, the Debtor testified:

- A. That Velar held title to the First Condominium;
- B. Identified a previously undisclosed interest in a deposit account in the name of Velar at a San Jose, Costa Rica branch of Banco Nacional;
- C. Identified a Tambor, Costa Rica branch of Century 21 as real estate professionals with whom the First Condominium was listed for sale in 2014;
- D. Disclosed that the funds on deposit with the investment accounts were transferred for the operation of the Debtor's sheet metal fabricating business in Chester, California; and
- E. Stated there was no other real property in the world that he owned other than those disclosed in his original schedules.

During the 2004 examination, but not on the record, the Debtor confirmed that Breedy handled the Debtor's purchase of the First Condominium, incorporated Velar, and continues to serve as counsel for the Debtor and Velar.

Debtor disclosed, for the first time, his interest in the Undisclosed Condominium on April 17, 2015.

Luis Carballo, the estate's special counsel in Costa Rica, performed a public record search on April 23, 2015. Carballo advised the Trustee that Velar was not holding the condominium and had no assets. Rather, the Debtor was using two undisclosed corporations to hold the First and Undisclosed Condominium.

Adolfo Breedy, an attorney with Breedy, informed the Trustee for the first time that the Debtor had no interest in the Lots, on April 27, 2015. Additionally, Trustee learned that Bayside held title to the First Condominium, Free Solutions held title to the Undisclosed Condominium, and the Lot Corporations held title to the Lots.

Trustee therefore requested that the Debtor stipulate for turnover, the Debtor amend his schedules and SOFA, and that the Debtor execute in the presence of a notary a consent authorizing Breedy to deliver the contents of all files in its possession to assist with the estate's liquidation of the assets in Costa Rica.

#### **Court Orders For Turnover of Assets**

##### **May 5, 2015 Order For Turnover**

On May 5, 2015, the court entered an order granting the stipulation that provided for Debtor to:

- A. Account for and turnover the legal and equitable interest of Velar, Free Solutions, Bayside, and the Lot Corporations;
- B. Account for and turnover the legal and equitable interests in

the First Condominium, the Undisclosed Condominium, and the Lots;

- C. Account for and turnover the legal and equitable interest of the Debtor and the Costa Rican corporations in funds held by Banco Nacional, Breedy, and Century 21; and
- D. Direct all agents, including BN, Breedy, and Century 21, to comply with instructions of the Trustee and her attorneys with respect to the Costa Rican corporations and properties.

Order, Dckt. 122.

On May 6, 2015, Debtor's counsel e-mailed a copy of the Debtor's signed and notarized consent authorizing Breedy to deliver the contents of all files in its possession to Luis Carballo. However, Trustee asserts that the original was never provided to the Trustee.

On August 26, 2015, the Trustee requested that the Debtor provide the original notarized consent. The Trustee asserts that four other requests were made. Trustee was unable to proceed without the original notarized consent form. On September 14, 2015, the Debtor's counsel indicated that the Debtor was out of the country, and would return September 27, 2015, at which time he would provide an original signature.

Trustee has attempted to contact the Debtor, via text messages, to request the original notarized consent. The Trustee asserts that the Debtor has not responded to the Trustee's request nor has the Trustee received the necessary documentation to obtain the legal and equitable interests in the First Condominium, the Undisclosed Condominium, the Lots, and the related Costa Rican entities.

Trustee, by way of the aforementioned exhaustive factual background, asserts that Debtor has repeatedly failed to take reasonable steps to comply with the court's orders.

#### **May 22, 2015 Order for Turnover**

On May 22, 2015, the court filed the order granted the Trustee's Motion for Turnover of the following property: (1) The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor Costa Rica; (2) Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.; and (3) Account of RBC Capital Markets, LLC and Edward D. Jones & Co. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

Order, Dckt. 135.

In the civil minutes, the court noted the following:

The factual circumstances surrounding this case are unique. The Debtor has allegedly relocated to Costa Rica and has failed to respond to any of the Movant's request for

turnover. The assets requested by the Movant all fall within Property of the estate, pursuant to 11 U.S.C. § 541 and the documentation requested is necessary to determine the extent of the estate's interest as well as necessary for the Movant to perfect any interest the estate may have in the assets. As pointed out by the Movant, the documentation requested is necessary for the Movant, as the fiduciary of the estate, to claim an interest in the Property.

The court ordered the following:

**IT IS ORDERED** that the Motion for Turnover of Property is granted.

**IT IS FURTHER ORDERED** that Debtor shall deliver on or before **May 22, 2015**, possession of:

1. The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor, Costa Rica ("Property")
2. Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.
3. Accounts of RBC Capital Markets, LLC and Edward D. Jones and CO. L.P. previously disclosed by the Debtor in a pending martial dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

#### **APPLICABLE LAW**

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions,

whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

Once an alleged contemnor's noncompliance with a court order is established, the burden shifts to the alleged contemnor to produce sufficient evidence of its inability to comply to raise a question of fact. *In re Icenhower*, 755 F.3d 1130, 1139 (9th Circuit 2014)(internal citations and quotations omitted)

## **DISCUSSION**

The court first notes that the Debtor, Debtor's counsel, and Debtor's Costa Rican counsel has failed to file a response to the instant Motion. The actions of Debtor in the instant case are troubling. On two separate occasions, the court has ordered that the Debtor turnover not only accounting but actual possession of certain assets located in Costa Rica.

Rather than complying with the court's April 23rd turnover order or the May 5th stipulated order, the Debtor has actively, consciously, and purposefully avoided providing the necessary documentation and turnover to the Trustee. The plain language of both orders show that the Debtor is in direct violation of two separate court orders. As stated by the Trustee, the Debtor has failed to turnover the ordered assets to the Trustee and appears to be actively "hiding" behind alleged jurisdictional barricades to hinder the Trustee from performing her fiduciary duties.

Attached to the Trustee's Motion are various correspondences between Trustee's counsel, Debtor's counsel, and Debtor's Costa Rican counsel. From these correspondences, the court can discern that the Debtor has avoided performing the court-ordered turnover through not providing the original notarized consent for the Trustee's counsel to effectuate the ownership of the estate's assets and not responding to Trustee's messages. This is only further emphasized by the Debtor being "out of the country" for a period of time. The Debtor nor Debtor's counsel has provided any information, evidence, or explanation why, after seven months from the court's first order for turnover, why the Debtor has consciously failed to comply with such.

Here, it is clear that the Debtor has failed to comply with two

separate, yet interrelated, orders. The court has the authority to "enforce compliance with its lawful judicial orders." *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009). The Debtor's willful violation at turning over the assets and attempts to avoid such through travel and jurisdictional barriers has wasted judicial resources, the Trustee's resources, and the estate's resources.

### **Rights of the Estate and Actions of the Trustee**

At this juncture, while the Debtor has sought the extraordinary relief of the Bankruptcy Code but has chosen to flaunt the orders of this court and improperly retain, control, and use property of the bankruptcy Estate, the court is unsure of what the Trustee is doing as the sole person authorized to use, control, possess and dispose of this property of the estate.

The Trustee states that Breedy Abogados S.A. is a law firm based in San Jose, Costa Rica which has files and records relating to the pre-petition financial transactions of the Debtor, and possibly post-petition activities with respect of the estate. The Trustee asserts that these records, and the right to the records are property of the Bankruptcy Estate for which she has the sole right to possession, control, and use. But the law firm is refusing to provide the estate's records because the Debtor is refusing to authorize the law firm to provide the estate's records to the Trustee.

Additional records and property of the estate is sought from Century 21 Realty and Banco Nacional. The Trustee states that the Debtor is refusing to authorize Century 21 Realty and Banco Nacional to turn over the property of the estate to the Trustee.

The jurisdiction of this court with respect to property of the bankruptcy estate is worldwide. As discussed in 1-3 Collier on Bankruptcy, ¶ 3.01;

"The section [28 U.S.C. § 1334e)] applies to property "wherever located." This provision gives a United States court exclusive jurisdiction over property located, not only in the United States, but in other countries as well. 122 Nevertheless, a court in another country is not precluded from exercising jurisdiction over property that is part of a title 11 estate located in that country. Whether the exercise of that jurisdiction is appropriate involves such things as the extraterritorial effect of the automatic stay and the in personam jurisdiction of the United States courts over the entity at whose behest the foreign court is acting. That is to say, the extraterritorial jurisdiction of the United States courts for these purposes is in personam rather than in rem. If a creditor causes property of a title 11 estate to be seized in a foreign country, that creditor has violated the automatic stay. Whether that creditor can be sanctioned, however, is a function of that creditor's amenability to United States process. 123 By the same token, a United States court cannot control the action of the foreign court irrespective of section 1334(e). As one court put it, "the bankruptcy court is precluded from exercising control over property of the estate located in a foreign country without

the assistance of the foreign courts."

Footnote 122. *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).

Footnote 123. *Id.*; *Atteberry v. Barclay's Bank plc (In re Atteberry)*, 159 B.R. 1 (D. Kan. 1993) ; *Levey v. Hamilton (In re Teknek, LLC)*, 354 B.R. 181 (Bankr. N.D. Ill. 2006) ; *In re Chiles Power Supply Co., Inc.*, 46 C.B.C.2d 1109, 264 B.R. 533 (Bankr. W.D. Mo. 2001); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763 (Bankr. S.D.N.Y. 1996); *In re Lykes Bros. S.S. Co.*, 191 B.R. 935 (Bankr. M.D. Fla. 1995)."

The Ninth Circuit Court of Appeal has been clear and unqualified in determining that all property, wherever located in the world, of the Debtor is property of the bankruptcy estate and the bankruptcy court has jurisdiction over all of that property.

"The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). With certain exceptions, the estate is comprised of the debtor's legal or equitable interests in property "wherever located and by whomever held." *Id.* (emphasis supplied). The district court in which the bankruptcy case is commenced obtains exclusive in rem jurisdiction over all of the property in the estate. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983)(interpreting 11 U.S.C. § 1471, the statutory precursor to 11 U.S.C. § 1334(e)). The court's exercise of "custody" over the debtor's property, via its exercise of in rem jurisdiction, essentially creates a fiction that the property - regardless of actual location - is legally located within the jurisdictional boundaries of the district in which the court sits. See *Katchen v. Landy*, 382 U.S. 323, 327, 15 L. Ed. 2d 391, 86 S. Ct. 467 (1966) (noting that bankruptcy courts have "constructive possession" over estate property) (internal quotation marks and citations omitted); *Commodity Futures*, 700 F.2d at 1282 (noting that under the bankruptcy code, "all property of the debtor, wherever located, is in custodia legis of the bankruptcy court."). This includes property outside the territorial jurisdiction of the United States. See *Stegeman*, 425 F.2d at 986 (construing extraterritorial jurisdictional reach of prior Bankruptcy Act); see also *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996).

Given this clear expression of intent by Congress in the express language of the Bankruptcy Code, we conclude that Congress intended extraterritorial application of the Bankruptcy Code as it applies to property of the estate.

*Hong Kong and Shanghai Banking Corporation Limited v. William Neil Simon (In re William Neil Simon)*, 153 F.3d 991, 996 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).



The Trustee, as the "owner" of this property (the real and personal property, including records) can act as the owner. If there is a question for the bank and other parties, the court can issue the appropriate orders providing such assurances to third parties who are dealing with the Trustee in good faith. If the third parties are not dealing in good faith, the Trustee can proceed in this court, to the extent that in personam jurisdiction exists or enforce the Trustee's rights in the Costa Rican courts as appropriate.

The court determines that in addition to, and in support of, the corrective sanctions ordered, the court shall also address the statutory rights of the Trustee and provide a clear order to third parties as to property of the estate and powers of the Trustee.

### **Continuing Failure to Comply with Orders of the Court**

The time for the Debtor to comply with the orders cooperatively and fully has come and gone. The Debtor has now shown through his inaction over the past seven months, whether through the failure to disclose the assets, failure to provide accounting of such assets, or the failure to actually provide the turnover, that he is unwilling and unable to comply with simplest of orders.

The Debtor has not provided any evidence as to why the Debtor cannot comply with the court's orders or how compliance with such is impossible. Instead, the Debtor stays mute, apparently ignoring these proceedings in the same manner as he is ignoring the court's orders.

In seeking to find a person in contempt for failure to comply with a court's prior order, the moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party successfully makes the showing of violation of an order, the burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* (citing *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.1999)).

A bankruptcy court's inherent power allows it to sanction "bad faith" or "willful misconduct," even in the absence of express statutory authority to do so. *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003). It also "allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics." *Id.* (citing *Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir.2001)).

The inherent sanction authority differs from the statutory civil contempt authority in at least two ways. First, under the inherent power of a bankruptcy court, the court may sanction a "broad range" of conduct, unlike the "[c]ivil contempt authority[, which only] allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction)." *In re Lehtinen*, 564 F.3d 1052, 1058 (9th Cir. 2009) (quoting *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)). Second, unlike the civil contempt authority, "[b]efore imposing sanctions under its inherent sanctioning authority, a court must make an explicit finding of bad faith or willful misconduct." *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)(internal citation omitted).

"Civil penalties must either be compensatory or designed to coerce compliance." *Dyer*, 322 F.3d at 1192(citing *Hanshaw*, 244 F.3d at 1137-38).

Here, the court has been presented with clear and convincing evidence that Debtor is willfully and intentionally failing to comply with the orders of this court. Debtor is interfering with the Trustee rights, interests, and control of the personal and real property of the bankruptcy case. By his wrongful conduct, Debtor is depriving the estate and the Trustee of the property of the estate, including all of the records and information in the hands of third parties.

Debtor filed this bankruptcy case on September 18, 2014. Under penalty of perjury on Schedule A he listed the Unit #2 property in Tambor, Costa Rica. Dckt. 12 at 10. He did not list interests in any other property in Costa Rica.

On Schedule B, Debtor did not list any interests in any companies, businesses, or entities other than AMI Precision, Inc. Schedule B, *Id.* at 11-13.

This case was converted to one under Chapter 7 on January 31, 2015. Order, Dckt. 48. The grounds for the conversion included Debtor (which serving as the Chapter 13 Debtor, who is a fiduciary of the bankruptcy estate) failing to comply with the Bankruptcy Code with respect to his stated attempts to sell property of the bankruptcy estate, defaulting in payments due under the Chapter 13 Plan, and the misuse of property of the estate by the corporation owned by the estate. Civil Minutes, Dckt. 46.

After the conversion of this case, Debtor proceeded to attempt to sell property of the estate to Ashman Auctions for \$220,000.00. Civil Minutes, Dckt. 164. After the conversion of the case, the Chapter 7 Trustee was the only person authorized to use, sell, lease, possess, or exercise any interest in or right to any property of the bankruptcy estate. 11 U.S.C. § 704. Debtor has been represented by knowledgeable, experienced, professionally regarded bankruptcy counsel. There has been no showing that Debtor had any belief that he could sell property of the bankruptcy estate after the conversion of the case to one under Chapter 7.

The assets in Costa Rica and the monies improperly obtained from the unauthorized attempt to sell the property of the estate may well exceed \$1,000,000.00 in value. Clearly, any corrective sanction issued by the court must be significantly large enough so that Debtor understands the serious consequences of failure to comply. For the first attempt at a corrective sanction, the court orders that if the Debtor fails to deliver the property, all documents and information, and provide the authorizations (though not required since the Trustee is the "owner" and sole person entitled to possession, control, and use of property of the estate, including records and information) by December 14, 2015, the court shall issue an order requiring the Debtor to pay a \$100,000.00 civil sanction to the court. Debtor can avoid the payment of the \$100,000.00 by merely complying with the prior orders of this court.

#### **NOVEMBER 23, 2015 ORDER**

Following the hearing on November 17, 2015, the court issued the following order, in relevant part:

**IT IS ORDERED** that a further hearing on this Motion is continued to 1:30 p.m. on December 15, 2015, for the court to

ascertain the compliance of Walter Helge Schaefer, the Debtor, with this Order, issuance of further civil corrective sanctions if this Order has not been complied with, and consideration of referring this failure to comply with the orders of this court to the United States District Court for the Eastern District of California for proceedings pursuant to that court's criminal contempt power.

**IT IS FURTHER ORDERED** that if Walter Helge Schaefer, the Debtor, fails on or before **December 14, 2015**, to:

1. Account for and turnover to the Trustee the legal and equitable interests of the Debtor in the following corporations organized under the laws of Costa Rica (hereinafter collectively "Corporations"):

- (a) MORENA VELAR S.A., #3-101-498655
- (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100,
- (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279,
- (d) 3101495080 S.A., #3-101-495080;

2. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the following Costa Rica real property (hereinafter collectively "Subject Properties"):

- (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00,
- (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00,
- (c) LOT, Guanacaste, #37920-000,
- (d) LOT, Guanacaste, #37922-000;

3. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the funds held for their benefit by (hereinafter collectively "Funds"):

- (a) BANCO NCIONAL DE COSTA RICA ("Banco"),
- (b) BREEDY ABOGADOS S.A. ("Abogados"),
- (c) CENTURY 21 GLOBAL ("Brokers");

the court shall issue an order imposing and requiring Walter Helge Schaefer, the Debtor, pay \$100,000.00 in Civil Sanctions to the Clerk of the United States Bankruptcy Court, for said monies to be deposited in the U.S. Treasury. Walter Helge Schaefer, the Debtor, may avoid the imposition of the \$100,000.00 in Civil Sanctions by timely complying with this order which only requires what was the Debtor was ordered to

do in prior orders.

**IT IS FURTHER ORDERED** that all persons, including all agents, expressly including, without limitation,

- A. Banco Nacional De Costa Rica,
- B. Breedy Abogados S.A., and
- C. Century 21 Global,

and their respective agents, employees, officers, representatives, and attorneys, are authorized to and shall comply with instructions of the Trustee and his attorneys with respect to the Costa Rica Assets, including disclosure of information, production of documents, remittance of funds, delivery of possession of the properties and businesses described in this Order and deliver possession of the of the shares and books for the Corporations and business enterprises listed in Paragraph 1 in the forgoing section of this Order.

Kimberly J. Husted, the Chapter 7 Trustee is the sole person authorized to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate of Walter Helge Schaefer, the Debtor. 11 U.S.C. § 704. "Property of the bankruptcy estate," wherever located in the world, is defined in 11 U.S.C. § 541 to include: legal; equitable; community property; and inherited, through dissolution of marriage, or life insurance obtained within 180-days after the commencement of the bankruptcy case property, rights, and interests, and all Proceeds, product, offspring, rents, or profits of or from such property.

**IT IS FURTHER ORDERED** that in addition to Kimberly J. Husted, the Chapter 7 Trustee, having the right to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate, including the records and information relating thereto, Walter Helge Schaefer, the Debtor has irrevocably authorized and directed in the Stipulation filed with this Court (copy attached as Addendum A to this Order) all and each agent, including those specifically stated above, to comply with the instructions of Kimberly J. Husted, the Chapter 7 Trustee, for the turnover of assets, information, and documents.

All persons may rely upon the irrevocable authorization provided in the Stipulation attached hereto as Addendum A and in this Order upon receipt of a copy of this Order which has been certified by the Clerk or a Deputy Clerks of the United States Bankruptcy Court for the Eastern District of California.

**IT IS FURTHER ORDERED** that Walter Helge Schaefer, the Debtor, and his counsel shall appear at the United States Bankruptcy Court, 501 I Street, Courtroom 33 (Sixth Floor),

November 19, 2015 at 10:30 a.m.

Sacramento, California at 1:30 p.m. on December 15, 2015, for the continued hearing on this Motion.

Dckt. 271.

#### **DEBTOR'S STATUS REPORT**

On December 8, 2015, the Debtor filed a Status Statement. Dckt. 273. The Debtor reports that he has directed his attorneys and agents to sign over any and all interest in the ordered properties or corporations immediately to the Trustee's Costa Rican attorney, Luis Carballo. The Debtor states that all papers necessary to effect such transfer have been signed and delivered and the Debtor, should further papers be necessary, shall immediately execute them as soon as received. The Debtor states that he has directed his attorney and agents in Costa Rica to cooperate fully with the Trustee's agents and attorneys. The Debtor has signed an appropriate power of attorney directing such attorneys and agents to cooperate fully with the Chapter 7 Trustee and her attorneys. Lastly, the Debtor states that all keys in his possession have been turned over to the Trustee's attorney.

#### **TRUSTEE'S STATUS REPORT**

The Trustee filed a Status Report on December 9, 2015. Dckt. 276. The Trustee provides the following chart as to the status of various parts of the court's prior order:

<u>Order</u>	<u>Status</u>	<u>Compliance</u>
Account for and turnover of the legal and equitable interest of the Debtor in Morena Velar S.A., #3-101-498655	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.
Account for and turnover of the legal and equitable interest of the Debtor in Free Solutions Imperial S.A., 3-101-423100	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.

Account for and turnover of the legal and equitable interest of the Debtor in Bayside Tambor J V M Dos S.A., #3-101-426279	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.
Account for and turnover of the legal and equitable interest of the Debtor in 3101495080 S.A., #3-101-495080	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.
Account for Bayside unit #2, Tambor, Puntarenas, #57104-F-00	The Debtor has apparently occupied this unit recently, but has not disclosed whether any tenants have occupied the property post-petition. No rental agreement, bookings, itemization of rents collected, or deposits accounts related to the property have been provided.	No compliance
Turnover of Bayside, Unit #2, Tambor, Puntarenas, #57104-F-00	The Debtor has turned over the keys and the shares of stock for this property. The shares have yet to be signed over to the Trustee	Complied in part
Account for 184 Los Delfines, Tambor, Puntarenas, #27402-F-00	The Debtor has disclosed that there have been tenants post-petition but no other information or documentation has been provided	No compliance

Turnover of 184 Los Delfines, Tambor, Puntarenas, #27402-F-00	The Debtor has turned over the shares of stock, but has not provided the keys	No compliance
Account for and turnover of Lot, Guanacaste, #37920-000	Vacant lot. The shares of stock have been turned over but the Debtor has yet to sign the shares over to the Trustee	Complied in part
Account for and turnover of Lot, Guanacaste, #37922-000	Vacant lot. The shares of stock have been turned over but the Debtor has yet to sign the shares over to the Trustee	Complied in part
Account for and turnover of the legal and equitable interest of the funds held by Banco Nacional De Costa Rica	Information has yet to be provided.	No compliance
Account for and turnover of the legal and equitable interests of the funds held by Breedy Abogados S.A.	The Trustee has been informed that there are no funds held by Breedy Abogados S.A.	Complied
Account for and turnover of the legal and equitable interests of the funds held by Century 21 Global	The Trustee has been informed that there are no funds held by Century 21 Global. In addition, the Trustee has been informed that Century 21 Global only assisted with the Debtor's purchase of the condos	Complied
Directing Banco Nacional de Costa Rica, Breedy Abogados S.A., and Century 21 Global and their agents, employees, officers, representatives, and attorneys to comply with the instructions of the Trustee and her attorneys.	With the exception of Banco Nacional de Costa Rica, the Debtor has directed Breedy Abogados, S.A. and Century 21 Global to comply with the Trustee's instructions	Complied in part

The Trustee reports that the Debtor has been staying in Costa Rica at

November 19, 2015 at 10:30 a.m.

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Bayside Unit #2, Tambor, Puntarenas, #57104-F-00, one of the properties that is to be turned over. This condo is approximately two hours from the Trustee's counsel in Costa Rica. However, the Debtor has advised that he is unable to travel to the Trustee's counsel's office to effectuate the transfer and turn over keys because he does not have transportation.

**DECEMBER 15, 2015 HEARING**

At the hearing, **xxxxxx**

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.

Therefore, upon review of the Motion, supporting pleadings, the files in this case; the failure of Walter Helge Schaefer, the Debtor, to comply with prior orders of the court; the reported attempted unauthorized sales of property of the bankruptcy estate by Walter Helge Schaefer, the Debtor, after this case was converted to one under Chapter 7; and good cause appearing;

**IT IS ORDERED** that **xxxxxx**



8. [15-22957](#)-E-13 ROBERT BOUGHTON  
AP-1 Thomas L. Amberg

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
11-12-15 [[51](#)]

WILSHIRE CONSUMER CREDIT VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 12, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. 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.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
--

Robert Boughton ("Debtor") commenced this bankruptcy case on April 11, 2015. Wilshire Consumer Credit ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Dodge Charger SXT, VIN ending in 2835 (the "Vehicle"). The moving party has provided the Declaration of Jose Flores to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Flores Declaration provides testimony that Debtor has not made 6 post-petition payments, with a total of \$1,433.52 in post-petition payments past due.

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 \$3,992.02, as stated in the Flores Declaration, while the value of the Vehicle is determined to be \$3,807.00, as stated in Schedules B and D filed by Debtor.

Movant is seeking relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (2) and to terminate the co-debtor stay of 11 U.S.C. § 1301(a).

#### **TRUSTEE'S NON-OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 1, 2015. Dckt. 61. The Trustee states that the Creditor's claim, Proof of Claim No. 9, is not provided for in the Debtor's plan. The Debtor listed the Vehicle on Schedule B, acknowledging the loan is in non-filing spouse's name only. The Creditor filed an amended Proof of Claim No. 9-1 on August 10, 2015 with loan documents listing Debtor as co-borrower. The Debtor has paid the Trustee a total of \$1,377.00 to date, where the Trustee has disbursed \$1,303.38 to Debtor's attorney with the remaining funds to date being paid towards Trustee's compensation and expense.

#### **DEBTOR'S RESPONSE**

The Debtor filed a response on December 1, 2015. Dckt. 64. The Debtor states he has no basis to oppose the instant Motion.

#### **DISCUSSION**

##### Relief Requested Pursuant to § 362(d)

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

##### Relief Requested Pursuant to § 1301(a)

The court grants relief pursuant to 11 U.S.C. § 1301. The "grounds stated with particularity" in the Motion consist of,

(3) Movant is entitled to relief from the co-debtor stay of 11 U.S.C. § 1301(a) because:

(a) The continuation of the co-debtor stay would irreparably

harm Movant's interest in the Vehicle.

(b) Debtor's Chapter 13 Plan does not provide for the payment of Movant's secured claim. Moreover, Movant is unable to proceed with its state law remedies regarding the Vehicle due to the co-debtor stay.

Motion, Dckt. 51.

The Motion does not state the name of the "co-debtor." On the face of the Motion, the Movant provides no identification of the co-debtor. At best, it is an invitation for the court to peruse the other pleadings filed by Movant, all of the pleadings filed in this case, canvas the court's files to identify other cases filed by the Debtor, and then assemble those grounds for Movant (rather than Movant's attorney stating such grounds with particularity in the Motion). The court does not, and it would be improper for the court to, assemble pleadings and advocate for one party over the other. FN.1.

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FN.1. The court has previously addressed Movant's counsel and firm about such "minimalist pleadings" and expecting the court to do counsel's work. See Case No. 14-29448, DCN: PD-1. However, as it seems that enough time has not passed from the last time the court say such inadequate pleading for Movant's counsel to make the necessary institutional changes to prevent such inept pleadings, the court will not reiterate the requirements of Fed. R. Civ. P. 9013 or deem this to be an appropriate situation for sanctions.  
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Therefore, the request for relief under 11 U.S.C. § 1301 as to the co-debtor is granted, but not with respect to any specific person.

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

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 Wilshire Consumer Credit ("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 2006 Dodge Charger SXT, VIN ending in 2835 ("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 request to terminate the co-debtor stay of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.