THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: January 31, 2019

G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Denise Valent,	Case No. 17-21634-GMH
Debtor.	Chapter 13

ORDER

I

On January 8, 2019, the court issued an order setting a February 6, 2019 evidentiary hearing. ECF No. 77. The order observed that an April 13, 2018 order afforded U.S. Bank National Association the right to obtain relief from stay upon filing an affidavit stating that the debtor had failed to timely make subsequent monthly post-petition mortgage payments. The April 13 order authorized relief upon default as a condition to denying U.S. Bank's March 8, 2018 request for relief from stay to pursue its state-law rights against the debtor's residence after the debtor failed to make post-petition mortgage payments. See ECF Nos. 44 & 60.

On December 20, 2018, U.S. Bank submitted an affidavit through its servicer swearing that the debtor "failed to comply with the court's [April 13] order by failing to make the payments beginning with the payment due on September 16, 2018." ECF No. 74, at 3. On December 27, 2018, before the court acted on U.S. Bank's affidavit, the debtor, through her counsel, filed a "response" to it. ECF No. 76. The response "denies that [the debtor] has missed mortgage payments." *Id.* at 1.

The sworn statement of the bank's representative and the representations of debtor's counsel cannot both be true: It cannot be the case that the debtor failed to make the required payments and that she did make them. Yet, by submitting these papers, counsel and their clients have represented to the court that they are both true, or at least that they have evidentiary support, and that they were not submitted for an improper purpose, such as delay. See Fed. R. Bankr. P. 9011(a) & (b).

II

The January 8 order commands the parties' participation in a February 6, 2019 evidentiary hearing to resolve the discordance and determine whether U.S. Bank was entitled to relief under the April 13 order. The January 8 order specifies:

> unless the debtor can provide proof that U.S. Bank filed a false affidavit and that she was current on payments *at the time U.S. Bank filed the affidavit of default*, then U.S. Bank will be granted immediate relief from the automatic stay[;]
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> . . . if U.S. Bank's affidavit proves accurate, [the court] will consider whether the debtor has made a false representation to the court, and, whether sanctions should issue. See Fed. R. Bankr. P. 9011(b)(3), (4) and (c)[; and]
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> . . . if U.S. Bank's affidavit is not correct, [the court] will consider whether U.S. Bank has made a false representation to the court, and, whether sanctions should issue. See Fed. R. Bankr. P. 9011(b)(3), (4) and (c).

ECF No. 77, at 2. The January 8 order also required the parties to file by January 30 exhibits and lists of witnesses on which they would rely in presenting evidence on these issues. *Id.* at 2–3.

The parties did not make the filings commanded by the January 8 order. Instead, their counsel filed a joint letter on January 29 requesting that the court cancel the evidentiary hearing because the "parties have come to a verbal agreement and are formalizing a stipulation and order to resolve the matter." ECF No. 79. The court appreciates the parties' attempt to find common ground, and if the court had noticed a hearing on a motion for relief from the stay, the letter might have provided a basis on which the court would have canceled the hearing. But parties cannot agree to "resolve" the following issue for which the court in part ordered an evidentiary hearing: Did one of the parties submit a false representation that lacked the evidentiary support required by Federal Rule of Bankruptcy Procedure 9011?

This court's long-standing practice of resolving motions for relief from stay and for dismissal with "doomsday" orders—that is, orders denying the moving party immediate relief but affording them future relief upon the submission of an affidavit if the non-moving party fails to live up to her promise to toe the line for several subsequent months—depends mightily on parties making accurate representations about compliance. If the doomsday order's beneficiary represents that the debtor defaulted, that party is entitled to relief without further ado. See *In re Gouthro*, No. 12-35699 (Bankr. E.D. Wis. June 29, 2016), ECF No. 47. Only if the debtor seeks, and the court grants, a modification of the doomsday order's conditions may a non-complying debtor avoid the relief afforded to the order's beneficiary upon the presentation of a proper affidavit of default. And, because an accurate affidavit of default necessarily triggers relief, the party filing the affidavit must ensure that the affidavit has evidentiary support. The filing of an affidavit of default and any response contesting its veracity are serious matters that should not be set aside lightly.

III

For these reasons, the parties' joint request to cancel the February 6, 2019 evidentiary hearing is denied.

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