

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MARJORIE A. CREAMER,)
)
 Plaintiff,)
)
 v.)
)
 GENERAL MOTORS CORPORATION,)
 et al.,)
)
 Defendants.)
 _____)

No. 11-4028-CM/DJW

ORDER

Plaintiff Marjorie A. Creamer brought this action *pro se* and *in forma pauperis* against defendants General Motors (“GM”) and Motors Liquidation Company (“MLC”), asserting product liability and personal injury claims, as well as claims under the Americans with Disabilities Act (“ADA”) and Kansas consumer protection laws. Although defendants failed to appear or otherwise defend and default was entered against them, this court denied plaintiff’s Pleading for Judgment Order and Dollar Amount Against Defendants (Doc. 10), and dismissed the action. The matter is now before the court on plaintiff’s Motion to Reconsider Dismissal (Doc. 15.) Also before the court is plaintiff’s Motion for Further Legal Matters as to the Ethical and Safety Factors of GM Motor Parts (General Motors Corporation) (Doc. 17.) This motion contains substantive arguments similar to those previously raised by plaintiff and dismissed by this court. To the extent possible, the court will treat it as an additional motion to reconsider.

The court construes plaintiff’s motion to reconsider as a motion to alter or amend judgment made pursuant to Fed. R. Civ. P. 59(e). *See Steele v. Ellis*, 961 F. Supp. 1458, 1467 (D. Kan. 1997)

(citation omitted). The grounds justifying an alteration, amendment, or reconsideration are essentially the same: (1) a change in law; (2) new evidence; and/or (3) the necessity of correcting clear error or preventing manifest injustice. See D. Kan. R. 7.3(b) (listing factors for reconsideration); *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (listing Rule 59(e) factors); *Priddy v. Massanari*, No. 99-4195-DES, 2001 WL 1155268, at *2 (D. Kan. Sept. 28, 2001) (observing that the factors for reconsideration and Rule 59(e) are the same).

“Appropriate circumstances for a motion to reconsider are where the court has obviously misapprehended a party’s position on the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination.” *Sithon Maritime Co. v. Holiday Mansion*, 177 F.R.D. 504, 505 (D. Kan. 1998) (citations omitted).

Although plaintiff does not specify, it appears her arguments arise under the third justification for alteration or amendment—to prevent manifest injustice. The court sympathizes with plaintiff’s frustration concerning defendants’ failure to respond to her complaint, and understands the difficulties that plaintiff experienced in regard to her vehicle and in her communication with defendants. These considerations, however, do not meet the standards for reconsideration. Plaintiff’s complaint contained no claimed amount of damages and a plaintiff may not receive a default judgment for more than the amount sought in the complaint. Fed. R. Civ. P. 54(c). Furthermore, defendants are protected by a stay in bankruptcy. 11 U.S.C. § 362(a)(1). Absent an order of the bankruptcy court lifting the stay, plaintiff’s present action in this court is in violation of the automatic stay. See, e.g., *In re Motors Liquid. Co.*, No. 10 Civ. 4322 (JGK), 2011 WL 2462773 (S.D.N.Y. June 20, 2011). The court therefore properly dismissed this action without prejudice. 28 U.S.C. § 1915(e)(2)(B)(1)-(iii).

IT IS THEREFORE ORDERED that plaintiff's Motion to Reconsider Dismissal (Doc. 15) is considered and denied.

IT IS FURTHER ORDERED that plaintiff's Motion for Further Legal Matters as to the Ethical and Safety Factors of GM Motor Parts (General Motors Corporation) (Doc. 17) is denied.

Dated this 20th day of September 2011, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge