

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 14, 2009 at 9:30 A.M.

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1. [09-21901](#)-B-7 KLAUS/PATRICIA SKELLY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-13-09 [[14](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors paid the entire filing fee of \$299.00 on April 8, 2009. No monetary sanctions are imposed.

The court will issue a minute order.

2. [08-33103](#)-B-7 MICHELLE POE HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-12-09 [[35](#)]

Tentative Ruling: None.

3. [09-23212](#)-B-7 JUAN/SILVIA PEREZ HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-17-09 [[8](#)]

Tentative Ruling: None.

4. [08-26159](#)-B-7 MELODIE BENTON HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-20-09 [[33](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor filed the missing document on April 8, 2009. No monetary sanctions are imposed.

The court will issue a minute order.

5. [08-38069](#)-B-7 JASWINDER TAMBER HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-18-09 [[47](#)]

Tentative Ruling: None.

6. [09-23470](#)-B-7 KENT/JENNIFER SHOBER HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-19-09 [[9](#)]

Tentative Ruling: The Order Approving Payment of Filing Fee In Installments (Dkt. 6) is modified. The entire unpaid balance (\$149.00) of the filing fee shall be paid on or before April 24, 2009, failure of which will result in dismissal of the case without further notice or hearing.

The court will issue a minute order.

7. [08-35382](#)-B-7 JACQUELINE JANSSEN HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-17-09 [[62](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor filed the missing document on April 8, 2009. No monetary sanctions are imposed.

The court will issue a minute order.

8. [09-21402](#)-B-7 ROBERT/DIANA COX CONT. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-2-09 [[10](#)]
SYSTEMS, INC., VS.

CONT. FROM 3-17-09

Disposition Without Oral Argument: This matter continued from March 17, 2009 with a briefing schedule. Opposition was due by March 31, 2009. Replies, if any, were due by April 7, 2009. Movant was ordered to give written notice of continuance. Movant timely complied by filing a notice of continued hearing on March 18, 2009. Nothing further has been filed in this matter. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52,

53 (9th Cir. 1995). Therefore, the matter is now resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 10653 Campana Way, Rancho Cordova, CA 95670 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$200,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$351,608.24. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The lack of opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

9. [08-38504](#)-B-7 LYDIA LEON AND JOSE GUZMAN HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 3-17-09 [16]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Because the debtors are in pro se, the court issues the following tentative ruling.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on March 31, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2006 San Salvador Street, Fairfield, CA 94533 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$200,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$321,541.27. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or

rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

10. [08-37506](#)-B-7 OSCAR/JEANETTE BOADO HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-17-09 [[23](#)]
SYSTEMS, INC., VS.

DISCHARGED 3-11-09

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on March 11, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 9399 Boulder River Way, Elk Grove, CA 95624 (APN 127-0610-035-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$288,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$409,465.83. Considering the junior lien of \$46,714.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make five (5) mortgage payments. The lack of written opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

11. [08-39206](#)-B-7 JOHN/FORENCE NATIVIDAD HEARING - MOTION FOR
SKI #1 RELIEF FROM AUTOMATIC STAY
DAIMLER TRUST, VS. 3-12-09 [[32](#)]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is denied as moot. The automatic stay terminated as to the subject vehicle, a leased 2005 Mercedes Benz CLK500 (VIN WDBTJ76HX5F131018) (the "Vehicle") at 12:01 a.m. on February 28, 2009 by operation of 11 U.S.C. § 365(p)(1), and the debtors' possessory interest in the Vehicle has from that date no longer been property of the estate.

Debtors' petition was filed under chapter 7 on December 29, 2008. Pursuant to the applicable terms of 11 U.S.C. § 365(d)(1), the trustee may assume or reject an unexpired lease of personal property of the debtor within 60 days after the order for relief. In this case, as of February 27, 2009, sixty days after the filing of debtors' petition, the chapter 7 trustee had not assumed or rejected the lease of the Vehicle. Pursuant to 11 U.S.C. § 365(p)(1), where a lease of personal property is rejected or not timely assumed by the trustee under section 362(d), the debtor's interest in the leased property is no longer property of the estate and the automatic stay under section 362(a) is automatically terminated. Thus, the automatic stay terminated with respect to the Vehicle at 12:01 a.m. on February 28, 2009 by operation of 11 U.S.C. § 365(p)(1), and the debtors' possessory interest in the Vehicle has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

12. [09-20306](#)-B-7 JOSEPH/MONICA DOTSON HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 3-17-09 [[21](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part and denied as moot in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on April 8, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at

1485 Gateway Drive, Vallejo, CA 94589 (APN 0068-503-270) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$239,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$427,775.57. Considering the senior lien of \$1,095.71 and the junior lien of \$50,591.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make eleven (11) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

13. [08-37407](#)-B-7 MARY PEPPER HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-17-09 [[14](#)]
SYSTEMS, INC., VS.

DISCHARGE 3-10-09

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtor, the motion is denied as moot. The debtor received her discharge on March 10, 2009, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5805 Terosti Place, Valley Springs, CA 95252 (APN 070-008-024-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$350,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$296,921.83.

Considering the junior lien of \$218,251.92, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make eight (8) mortgage payments. The lack of written opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property.

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

14. [09-22009](#)-B-7 JAMES KAPICKA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 3-5-09 [[20](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 19 Icarus Court, Sacramento, CA 95823 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$132,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$302,024.18. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make thirteen (13) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that is consistent with the

foregoing ruling.

15. [05-31217](#)-B-7 ATTILA BUILDING CONTRACTING, HEARING - MOTION TO
BVR #1 INC. REOPEN CASE AND (1) GRANT RELIEF
J.M. HERSHEY, INC., VS. FROM AUTOMATIC STAY OR, IN THE
 ALTERNATIVE, (2) FOR MODIFICA-
 TION OF THE PERMANENT INJUNC-
 TION OR IN THE ALTERNATIVE, (3)
 FOR THE COURT'S DECLARATION
 THAT JM HERSEY INC. IS
 ENTITLED, ET AL.
 3-11-09 [[16](#)]

Tentative Ruling: This motion was filed under LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is granted in part and denied in part. Pursuant to 11 U.S.C. § 350(b) and Fed. R. Bankr. P. 5010, the case is reopened. A chapter 7 trustee shall not be reappointed. Except so ordered, the motion is denied.

Although movant's request to reopen the instant bankruptcy case is granted, the balance of movant's requests are denied on several independent grounds. First, the motion suffers from procedural defects. The motion was not served on the debtor, debtor's attorney, and the chapter 7 trustee, in derogation of Fed. R. Bankr. P. 9014. In addition, the motion improperly seeks reopening of the instant case along with other relief, in derogation of LBR 5010-1(a). Further, the notice of motion, motion, and proof of service were filed as one document, in derogation of LBR 9014-1(d)(1), (d)(2), and (e)(3). A failure to comply with the Local Bankruptcy Rules is grounds for denial of the motion. LBR 1001-1(g).

Second, because debtor is a corporation, debtor did not receive a discharge in this case. 11 U.S.C. § 727(a)(1). 11 U.S.C. § 524(a) only describes the effect of a discharge.

Third, movant's request for a declaration of what movant may do is denied because it either seeks an impermissible advisory opinion or requires an adversary proceeding. Fed. R. Bankr. P. 7001(9).

The court will issue a minute order.

16. [09-21823](#)-B-7 JOHN/ANDRASTE PULLEN HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
PHH MORTGAGE CORP., VS. ON REAL PROPERTY
 3-17-09 [[15](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

17. [09-20429](#)-B-7 ROBERT/JENNIFER HERNANDEZ HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 3-17-09 [[14](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2433 Oak Hill Street, Stockton, California (APN 163-560-43) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$179,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$343,099.63. Considering the junior lien of \$36,499.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make seventeen (17) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

18. [09-23533](#)-B-7 TEVITA/SELINA TUPOU HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE LLC, VS. 3-18-09 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

19. [08-29834](#)-B-7 MICHEL/PAMELA MARSHALL CONT. HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS 2-10-09 [[28](#)]
SERVICING, L.P., VS.

CONT. FROM 3-10-09

Tentative Ruling: This matter continued from March 10, 2009 without a briefing schedule. The court ordered movant to give written notice of the continued hearing, which written notice was required to comply with LBR 9014-1(f)(1). On March 13, 2009, movant filed the notice of continued hearing, but the notice of hearing fails to advise potential respondents of the proper requirements for opposition. LBR 9014-1(d)(3). Accordingly, the court treats this motion as one proceeding under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

20. [09-22034](#)-B-7 WARREN/KATHLEEN MOYER HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN MORTGAGE 3-16-09 [[10](#)]
CORPORATION, VS.

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to foreclose on the real property located at 15039 Pammy Way, Grass Valley, CA 95949 (APN 23-330-23) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make eleven (11) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The debtors' opposition is not persuasive. While the court agrees that no showing of relief under 11 U.S.C. § 362(d)(2) has been made, the court nevertheless finds that relief under 11 U.S.C. § 362(d)(1) is appropriate. Equity alone can provide adequate protection in appropriate circumstances; however, it does not necessarily follow that a debtor is always entitled to forestall collection of a secured debt for an

indefinite period ending when the equity has been completely consumed. The standard for relief from the automatic stay under 11 U.S.C. § 362(d)(1) is "for cause." One form of "cause" is the lack of adequate protection of an interest in property. Lack of adequate protection is not the only form of cause. Here, where the movant alleges without dispute that the debtors are at least eleven payments in default and the debtors have filed a statement of intent to surrender the Property. The debtors' opposition states that they are cooperating with the trustee, who is "actively involved in the sale of this property," but the trustee has filed nothing in response to this motion and the debtors have filed no evidence to support their contention.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property.

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

21. [09-21136](#)-B-7 ROSALINA VITUG
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-17-09 [[14](#)]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, because the debtor is in pro se, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 7 Toscana Drive, American Canyon, CA 94503 (APN 059-314-015) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$501,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$619,127.49. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make eleven (11) mortgage payments. The lack of opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. §

506(b).

The court will issue a minute order.

22. [09-22136](#)-B-7 GARY/DIANE ALLENSWORTH HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MORTGAGE 3-6-09 [[10](#)]
SERVICING, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 25850 Graham Road, Galt, CA 95632 (APN 007-230-43) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$360,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$727,582.30. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make ten (10) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

23. [09-21941](#)-B-7 ALFREDO DELGADO HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE 3-5-09 [[9](#)]
CORPORATION, VS.

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2006 Dodge Ram (VIN 1D7HU18N66J130323) (the "Collateral"), at 12:01 a.m. on March 7, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1019(1)(B). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtor had until Friday, March 6, 2009 to file a statement of intention that stated with respect to the Collateral one of the intentions specified in the statute. Because he did not file a compliant statement of intention timely and because the collateral at issue here is personal property, the automatic stay terminated as to the Collateral at 12:01 a.m. on March 7, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

24. 09-21941-B-7 ALFREDO DELGADO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 3-9-09 [15]
MORTGAGE, INC, VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 756 Syracuse Drive, Vacaville, CA 95687 (APN 0135-783-030) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$311,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$427,721.05. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make seven (7) mortgage payments.

The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

25. [09-23342](#)-B-7 MARIO GONZALEZ AND HEARING - MOTION FOR
MDE #1 ROSALBA VILLANUEVA RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, LP, VS. 3-13-09 [8]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 309 Dahlia Street, Fairfield, CA 94533 (APN 0162-176-090) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$233,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$479,515.40. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

26. [09-21743](#)-B-7 ESTHER AVILES HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-19-09 [[10](#)]
SYSTEMS, INC., VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

27. [08-36650](#)-B-7 JUAN/MARIA PALOMARES HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-19-09 [[50](#)]
SYSTEMS, INC., VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

28. [09-21553](#)-B-7 JASON CLERMONT HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 3-13-09 [[13](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 1318 Hidalgo Circle, Roseville, CA 95747 (APN 473-123-040-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$220,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$308,930.33. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make six (6) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of

creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

29. [0920257](#)-B-7 JESS LATTIN HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-12-09 [[13](#)]
SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 645 Juniper Street, Susanville, CA 96130 (APN 107-122-13-11) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$155,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$137,204.02. Considering the junior lien of \$32,149.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make two (2) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

30. [08-36862](#)-B-7 ANDREW BERRY/AMELIA WILDER HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE FSB, VS. 3-10-09 [[28](#)]

DISCHARGED 2-23-09

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties

in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on February 23, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 6761 Linda Sue Way, Fair Oaks, CA 95628 (APN 232-0102-003-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$170,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$71,729.48. Considering the senior lien of \$255,718.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make five (5) mortgage payments. The lack of written opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

31.	08-39365 -B-7	JOSE/ABBY LOPEZ	HEARING - MOTION FOR
	RCO #1		RELIEF FROM AUTOMATIC STAY
	MORTGAGE ELECTRONIC REGISTRATION		3-17-09 [17]
	SYSTEMS, INC., VS.		

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 286 River Oaks Drive, Yuba City, CA 95991 (APN 54-070-045) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$225,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$277,461.72. Considering the junior lien of \$32,800.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make seven (7) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

32. [08-37566](#)-B-7 KENNETH/BOLA ODOKO
KAT #1
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-19-09 [[17](#)]

DISCHARGED 3-16-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtors have filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on March 16, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 94 Magnetite Avenue, Lathrop, CA 95330 (APN 196-720-14) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$258,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$506,251.54. Considering the senior lien of \$2,367.98 and the junior lien of \$54,889.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make six (6) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

33. [08-26468](#)-B-11 EL DORADO HILLS SELF- CONT. HEARING - MOTION FOR
CWS #2 STORAGE, LLC RELIEF FROM AUTOMATIC STAY
CB HOLDINGS, INC., VS. 11-4-08 [[202](#)]
- CONT. FROM 2-17-09,2-3-09,
1-20-09,12-23-08,11-18-08

Disposition Without Oral Argument: This matter was withdrawn by the moving party on April 2, 2009 and is removed from the calendar.

34. [09-23768](#)-B-7 LAURA/DAVID DAVIS HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 3-18-09 [[8](#)]

Tentative Ruling: This motion for relief from the automatic stay has been filed purportedly under LBR 4001-1 and LBR 9014-1(f)(1). However, this motion was filed and served only twenty-seven (27) days before the date of the hearing. In this instance, pursuant to Fed. R. Bankr. P. 9006(c)(1), the court shortens time by one day to allow the motion to be resolved on this calendar. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Because the court is shortening time by one day, it issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located 5355 Timberland Drive, Foresthill, CA 95631 (APN 007-043-003-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$490,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$306,308.61. Considering the junior lien of \$291,000.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually

billed plus costs of \$150. These fees and costs may be enforced only against the Property.

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

35. [09-22671](#)-B-7 SARA KUBOTA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 3-6-09 [[9](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 7998 Dersingham Drive, Sacramento, CA 95829 (APN 121-0840-001) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$257,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$271,339.59. Considering the junior lien of \$88,204.28, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make nine (9) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

36. [09-21472](#)-B-7 MATTHEW JOHNSON HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-16-09 [[13](#)]
SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties

in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 107 Loma Vista, Vallejo, CA 94590 (APN 0054-193-020) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$235,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$221,143.03. Considering the junior lien of \$101,101.62, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make six (6) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of written opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property.

Counsel for the movant shall submit an order that is consistent with the foregoing ruling.

37. [08-38874](#)-B-7 SAMUEL/MARIETTA BALANCIO HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 3-17-09 [[14](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located 9110 Cambridge Circle, Vallejo, CA 94591 (APN 0183-062-040) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$453,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$797,568.17. Considering the senior lien of \$10,147.00 and the junior lien of \$97,187.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make eight (8) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

38. [08-38775](#)-B-7 DORIS FISHER
PD #1
CHEVY CHASE BANK, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-9-09 [[14](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtor, the motion is denied as moot. The debtor received her discharge on April 7, 2009, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2025 Walbridge Street, Red Bluff, CA 96080 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$186,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$235,998.54. Considering the senior lien of \$1,255.22, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make four (4) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

39. [09-22077](#)-B-7 SUSAN/MICHAEL DALE HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL SERVICES 3-12-09 [[17](#)]
AMERICAS LLC, VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2005 Dodge 1500 (VIN 1D7HA16DX5J618448) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the Collateral is being used by the debtors without compensation and is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$13,400.00. Movant holds a lien on the Collateral in the amount of \$16,205.03. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation in this chapter 7 case. The lack of opposition by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtors have not made two (2) payments. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

40. [09-22777](#)-B-7 MICHAEL/BEVERLY CONNOLLY HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL SERVICES 3-12-09 [[9](#)]
AMERICAS LLC, VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2007 Dodge Ram 1500 (VIN 1D7HA18237S222466) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the Collateral is being used by the debtors without compensation and is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$21,000.00. Movant holds a lien on the Collateral in the amount of \$23,518.89. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation in this chapter 7 case. The lack of opposition by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtors have not made four (4) payments. Debtors have filed a statement of intent indicating an intent to surrender the Collateral. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

41. 08-32280-B-7 HEAVEN INVESTMENT HOLDING HEARING - MOTION FOR
DRT #21 CORPORATION RELIEF FROM AUTOMATIC STAY
WILSON 1991 REVOCABLE 3-6-09 [[215](#)]
LIVING TRUST, VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part and denied in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to foreclose on the real property located at 2733 Lerwick Road, Sacramento, California (APN 254-0071-011-0000) and real property located at 3367 Western Avenue, Sacramento, California (APN 250-0306-001-0000) (collectively the "Properties") and to obtain possession of the Properties following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make nine (9) mortgage payments. The statement of non-opposition and motion to abandon the Properties (Dkt. 230) by the trustee show that the trustee cannot administer the Properties for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Counsel for the movant shall submit an order that is consistent with the

foregoing ruling.

42. [08-37529](#)-B-7 MARK/DENISE SCHALLBERGER HEARING - MOTION
UST #2 OF THE UNITED STATES TRUSTEE TO
DISMISS CASE 707(B)(2) BASED
UPON PRESUMPTION OF ABUSE AND
707(B)(3) BASED UPON TOTALITY
OF THE CIRCUMSTANCE
2-17-09 [[29](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on April 3, 2009 and is removed from the calendar.

43. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD HEARING - MOTION FOR
HLC #18 AUTHORIZATION TO FILE AND
MAINTAIN EXHIBITS TO SECOND
AMENDED PLAN AND DISCLOSURE
STATEMENT UNDER SEAL PENDING
FURTHER COURT ORDER
3-27-09 [[405](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

44. [02-30522](#)-B-11 CREEKSIDE VINEYARDS CONT. HEARING - MOTION
[09-2085](#) RDN #1 OF DEFENDANTS HIRSCH FOR MORE
KATHLEEN JANSSEN, ET AL., VS. DEFINITE STATEMENT, OR IN THE
ALTERNATIVE, TO DISMISS
DAVID HIRSCH 3-2-09 [[8](#)]
CONT. FROM 3-31-09

Tentative Ruling: None.

45. [08-32680](#)-B-7 JACSON/ANGELA SMITH CONT. HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 2-9-09 [[31](#)]
SYSTEMS, INC., VS.
CONT. FROM 3-10-09

Tentative Ruling: This matter continued from March 10, 2009 without a briefing schedule. Nothing further has been filed in this matter. In this case, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2)

in order to permit movant to foreclose on the real property located at 2983 Brookstone Way, Sacramento, CA 95833 (APN 225-0475-004-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$213,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$269,479.45. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make fourteen (14) mortgage payments. The lack of written opposition by the trustee shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

46. [09-21886](#)-B-11 CONG TRAN AND HEARING - MOTION FOR
WGM #1 PHUONG HUYNH RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. ON REAL PROPERTY
3-19-09 [[21](#)]

Tentative Ruling: The motion is denied as moot. This bankruptcy case was dismissed by order entered April 2, 2009 (Dkt. 38).

The court will issue a minute order.

47. [08-29587](#)-B-7 JAMIE HOANG HEARING - MOTION FOR
[08-2578](#) CRL #1 RELIEF FROM BANKRUPTCY STAY
PEOPLE OF THE STATE 3-13-09 [[44](#)]
OF CALIFORNIA, VS.

DISCHARGED 10-27-08

Tentative Ruling: The stipulation to continue this matter (AP Dkt. 54) is not approved. The motion is denied without prejudice.

Continuances of hearings require court approval. LBR 9014-1(j).

Through this motion, movants People of the State of California, specifically the County of Yuba, seek relief from the automatic stay to proceed with a state court action under 11 U.S.C. § 362(d)(1). However, movants admit that they filed a state court action on August 7, 2008 (Dkt. 46 at 2). Defendant/debtor Jamie Raine Hoang filed his voluntary petition under chapter 7 on July 15, 2008. Essentially, the movant is seeking relief from the automatic stay to continue a proceeding that was commenced in violation of the automatic stay and is therefore void. In re Miller, 397 F.3d 726, 729 (9th Cir. 2005); Parker v. Bain, 68 F.3d 1131, 1138 (9th Cir. 1995); In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992). Accordingly, the motion is denied without prejudice.

Alternatively, the motion is denied without prejudice for procedural defects. First, this motion for relief from the automatic stay should have been filed in debtor's main bankruptcy case, not the adversary proceeding. Second, the movant filed the notice of hearing and the motion as the same document. LBR 9014-1(d)(2) provides that "[e]very motion shall be accompanied by a separate notice of hearing stating the docket control number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held." LBR 9014-1(d)(2). Third, the movant did not serve the debtors with the motion and its supporting documents. Service on the debtors is required pursuant to Fed. R. Bankr. P. 7004(b)(9) as this is a contested matter under Fed. R. Bankr. P. 9014 in which the movant seeks relief against the trustee and the debtor.

The court will issue a minute order.

48. [09-22787](#)-B-7 AMADOR GARCIA HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL 3-12-09 [[10](#)]
SERVICES AMERICAS LLC, VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to obtain possession of its collateral, a 2006 Dodge Ram 1500 (VIN 1D7HA18K36J147322) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the Collateral is being used by the debtors without compensation and is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$4,225.00. Movant holds a lien on the Collateral in the amount of \$13,046.77. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation in this chapter 7 case. The lack of opposition by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

49. [09-23187](#)-B-7 JESSIE ROBERTS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 3-19-09 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

50. [09-20388](#)-B-7 HAINEE BOLTON CONT. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 2-23-09 [[19](#)]
SYSTEMS, INC., VS.

CONT. FROM 3-17-09

Tentative Ruling: This matter continued from March 17, 2009 with a briefing schedule. Opposition was due March 31, 2009. Replies, if any, were due April 7, 2009. Nothing further has been filed in this matter. In this instance, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 1461 Joseph Menusa Lane, Tracy, CA 95377 (APN 238-590-13) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$269,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$525,120.76. Considering the junior lien of \$133,153.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make twenty-two (22) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

51. [08-38689](#)-B-7 RICHARD/DENISE DAVIS HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 3-16-09 [[16](#)]
SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local

rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on April 8, 2009 and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at located at 5860 Elmwood Court, Rocklin, CA 95677 (APN 046280008000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$250,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$224,368.08. Considering the junior lien of \$133,384.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors has failed to make five (5) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property.

The court will issue a minute order.

52. [08-31913](#)-B-7 BALWINDER DULKU HEARING - MOTION FOR
[08-2670](#) DEFAULT JUDGMENT
CHASE BANK USA, N.A., VS. 3-12-09 [[13](#)]

BALWINDER DULKU

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

On April 6, 2009, the movant filed a notice of withdrawal of its motion for default judgment (Dkt. 22). This matter is therefore dropped from the calendar.

53. [08-33523](#)-B-11 AHMAD/DARCI JAYOUSI
WSD #8

HEARING - VERIFIED
MOTION BY DEBTORS IN POSSESSION
FOR SECOND EXTENSION OF TIME TO
ASSUME OR REJECT NONRESIDENTIAL
REAL PROPERTY LEASES
3-17-09 [[121](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion is granted. Pursuant to 11 U.S.C. § 365(d)(4)(B)(i) and Fed. R. Bankr. P. 9006, the time within which the debtors may assume or reject the leases described in the motion and in Exhibit 1 (Dkt. 125) ("Leases") is enlarged to and including July 20, 2009.

The debtors timely filed the motion pursuant to 11 U.S.C. § 365(d)(4)(B)(i) and Fed. R. Bankr. P. 9006(b)(1). The debtors allege that Fins Market, Inc. ("Fins"), which also filed a chapter 11 petition on September 22, 2008, and the debtors are involved in ongoing negotiations with the Official Committee of Unsecured Creditors ("Committee") in the Fins case regarding Fins' proposed plan of reorganization. Debtors do not believe it is prudent for them to assume the leases until Fins has come to terms with the Committee and is prepared to proceed with plan confirmation. The debtors allege without dispute that their action on the Leases is dependent on Fins' successful restructuring and that the requested extension will allow debtors time to finalize certain agreements with lessors for the assumption of the Leases. On March 17, 2009, lessors CSS Properties and WMF Limited filed consents to the request contained in the instant motion. Accordingly, in the absence of opposition, the court finds that the debtors have established cause for extension of the deadlines to assume or reject the Leases.

The court will issue a minute order.

54. [09-22326](#)-B-7 MICHAEL/MARGO POWERS
DSW #1

HEARING - AMENDED MOTION
TO REQUIRE THE TRUSTEE TO
ABANDON PROPERTY OF THE ESTATE
3-18-09 [[18](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied without prejudice for procedural defects.

First, the movant failed to file a proof of service in connection with this motion. LBR 9014-1(e)(2) provides that "[a] proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) calendar days after they are filed." LBR 9014-1(e)(2)

Second, the movant's notice of hearing fails to specify whether and when written opposition must be filed. LBR 9014-1(d)(3) provides that "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." LBR 9014-1(d)(3).

The court will issue a minute order.

55. [07-27129](#)-B-7 DONALD/KATHERINE STRAIN HEARING - MOTION
DKC #7 FOR ORDER TO ALLOW TRUSTEE TO
ABANDON REAL PROPERTY
3-9-09 [[104](#)]

DISCHARGED 2-13-08

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted in part. Pursuant to 11 U.S.C. § 554(a), the real property located at 217-219 3rd Street, Yreka, CA ("Property"), is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that he has been unable to sell the Property since it was listed approximately one year ago. The trustee further asserts that interest and penalties which have been accruing on the subject Property, in addition to the costs of maintenance and insurance, constitute an undue burden to the bankruptcy estate.

The court will issue a minute order.

56. [09-21336](#)-B-11 MILESTONE DEVELOPMENT, LLC HEARING - MOTION OF
UST #1 THE UNITED STATES TRUSTEE
FOR CONVERSION OR DISMISSAL
OF CHAPTER 11 CASE
3-17-09 [[20](#)]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted, and this case is converted to one under chapter 7. Except as so ordered, the motion is denied.

By this motion the United States trustee ("UST") seeks conversion of this chapter 11 case to one under chapter 7 or, alternatively, that the case be dismissed. The court notes that the UST has not sought dismissal of

this case. Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) also limits the foregoing directive in several ways:

First, under section 1112(b)(1), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a)(3). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(3) requires that, absent the movant's consent or compelling circumstances that prevent the court from meeting the requirements of the subsection, the court must commence a hearing on the motion within thirty (30) days after it is filed and must decide the motion within fifteen (15) days after the hearing is commenced. This motion was filed on March 3, 2009 and the hearing shall commence on March 31, 2009, twenty-eight (28) days later. The hearing on this motion, therefore, will be commenced within the thirty-day deadline, and the determination on this matter will also take place within the fifteen-day deadline.

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause."

The court finds that the UST has established cause for dismissal or conversion.

The UST has established that the debtor has failed to appear, on at least one occasion, to the meeting of creditors convened under 11 U.S.C. § 341(a). This case was filed on January 27, 2009. On January 29, 2009, the court issued an Order to Show Cause (Dkt. 7) why this case should not be dismissed because the debtor is a limited liability company and the debtor is not represented by counsel. A hearing on the Order to Show Cause was held on February 17, 2009. Ms. Lorna Sanchez, a non-lawyer, appeared at the February 17 hearing and represented that the debtor was attempting to engage counsel. The hearing on the Order to Show Cause was continued to March 3, 2009. On February 26, 2009, the first meeting of creditors was convened. Lorna Sanchez, as representative of Milestone Development, attended, but did not testify. Ms. Sanchez stated that just prior to the meeting, that she was seeking an attorney and that wanted to have an attorney attend during her testimony. The meeting was continued to March 13, 2009. On March 3, 2009, the continued hearing on the Order to Show Cause was held. Attorney David Henderson appeared on behalf of the debtor, and the court discharged the Order to Show Cause. No application to employ David Henderson or any other lawyer has since been filed. On March 13, 2009, the meeting of creditors was again convened. The only attendees were representatives and counsel for First Northern Bank of Dixon. With no representative of debtor attending, the meeting of creditors was continued on the record to April 9, 2009. Ms. Sanchez arrived later that morning, after the UST had already continued the meeting. Pursuant to 11 U.S.C. § 1112(b)(4)(G), "failure to attend the meeting of creditors convened under section 341(a)" constitutes cause for dismissal or conversion.

The UST has established that debtor has failed to file timely monthly operating reports in this case. Pursuant to Local Bankruptcy Rule 2015-1, a debtor or trustee in a chapter 11 case is required to file and serve monthly operating reports on the fifteenth day following any month end. Because this case was filed on January 27, 2009, less than seven calendar days before the end of January, the debtor was permitted to include the January post-filing period in the monthly operating report for February, 2009. LBR 2015-1(c). The January/February, 2009 operating report was due March 16, 2009. Id., F.R.Bankr.P. 9006(a). No such report was filed by that date. Debtor's opposition concedes this point. Pursuant to 11 U.S.C. § 1112(b)(4)(F), "unexcused failure to satisfy timely any filing or reporting requirement established by [the Bankruptcy Code] or by any rule applicable to a case under [chapter 11]" constitutes cause for dismissal or conversion.

The UST alleges that, pursuant to LBR 5008-1, upon the filing a chapter 11 petition, the debtor is to close all existing bank accounts and open new accounts which clearly establish that the account holder is a debtor-in-possession. Debtor has not provided any proof that it has met this requirement, as requested by the UST. The debtor has also failed to provide proof of insurance, as requested by the UST. Pursuant to 11 U.S.C. § 1112(b)(4)(H), "failure timely to provide information or attend meetings reasonably requested by the [UST]" constitutes cause for dismissal or conversion.

The court further finds that debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. Debtor has failed to establish any of the requirements of section 1112(b)(2)(B). Debtor has not asserted that there is a reasonable likelihood that a plan will be confirmed in this case. Debtor has offered no reasonable justification for its failure to file timely

operating reports or to provide the information reasonably requested by the UST. Debtor has not established that its failure to file timely operating reports can be fully cured within a reasonable amount of time.

Based on the foregoing, the court finds that the UST has established cause for conversion or dismissal and that debtor has not established that the case should not be dismissed or converted despite the existence of cause. The court further finds that conversion is in the best interests of creditors and the estate for the reasons stated by the UST.

The court will issue a minute order.

57. [08-35540](#)-B-11 REGENT HOTEL, LLC HEARING - MOTION OF
[09-2061](#) SBH #1 DEFENDANT EAST WEST BANK TO
OTIS ELEVATOR CO., VS. DISMISS COMPLAINT FOR FAILURE
TO STATE A CLAIM
REGENT HOTEL, LLC 3-4-09 [[14](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

On April 10, 2009, movant filed a notice of withdrawal of its motion to dismiss complaint for failure to state a claim (Dkt. 23). This matter is therefore dropped from the calendar.

58. [06-24942](#)-B-7 JAMES GUASPARI CONT. HEARING - MOTION TO
[08-2648](#) PCB #2 DISMISS FIRST AMENDED
JOHN ROBERTS, VS. ADVERSARY COMPLAINT
GLADYS MARTINES, ET AL. 2-4-09 [[21](#)]

DISCHARGED 2-27-07
CONT. FROM 3-17-09

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter has been continued to the court's April 28, 2009 calendar by court approved stipulation. This matter is therefore dropped from this calendar.

59. [08-37167](#)-B-7 ANNA ARMITAGE HEARING - MOTION FOR
ADR #3 AUTHORITY TO REDEEM PERSONAL
PROPERTY AND APPROVAL OF
ASSOCIATED FINANCING AND
ATTORNEY FEES
3-18-09 [[31](#)]

DISCHARGED 3-12-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

60. [08-35380](#)-B-7 JERRY NICHOLS
[09-2083](#) JMO #1
CHASE BANK USA, N.A., VS.

HEARING - APPLICATION
FOR ENTRY OF DEFAULT AND
DEFAULT JUDGMENT
3-17-09 [[10](#)]

JEROME NICHOLS

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this instance, because the Defendant/Debtor is in pro se, the court issues the following tentative ruling.

The motion is granted in part and denied in part. Default judgment will be rendered against debtor Jerry Nichols in the amount of \$4,482.64, including contractual and additional interest to the date of entry of judgment, which judgment will be nondischargeable under 11 U.S.C. § 523(a)(2)(A). The court awards no fees. The court awards costs of \$150.00, representing the filing fee for the adversary complaint. Except to that extent, the motion is denied.

Plaintiff Chase Bank USA ("Plaintiff") seeks entry of a default judgment against debtor Jerry Nichols ("Defendant"). Plaintiff commenced the adversary proceeding by filing a complaint against Defendant on February 2, 2009. Defendant did not answer the complaint, and on March 18, 2009, his default was entered. Plaintiff now seeks entry of default judgment against Defendant in the amount of \$4,482.64 and requests that the judgment be declared nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(C).

The facts alleged without dispute in the complaint (Dkt. 1) include the following. Plaintiff granted Defendant an extension of credit in the form of a credit card account. Defendant created a balance due and owing in the amount of \$4,482.64 including interest as of the petition date. Defendant incurred \$4,447.13 in cash advances/convenience check charges/retail charges against the credit card account between August 1, 2008 and August 23, 2008 without the intent to repay the charges.

Based on the facts alleged in the complaint, a judgment of nondischargeability under 11 U.S.C. § 523(a)(2)(A) is appropriate in this case. Under § 523(a)(2)(A), any debt "for money, property, services, or an extension, renewal, or refinancing of credit, the extent obtained by-- []false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's an or an insider's financial condition," is excepted from discharge. Here, Plaintiff alleges without dispute that it extended credit to Defendant in the form of a credit card on or around November 2007. By accepting the extension of credit, Defendant represented his intent to repay the amounts charged. Plaintiff's allegation that defendant in fact incurred the debt without the intention to repay is admitted under F.R.Bankr. P. 7008 and F.R.Civ.P. 8(b)(6). Defendant's representations of intent to repay were therefore false. Finally, Plaintiff alleges without dispute that it justifiably relied on Defendant's representation and has been damaged in the total amount of \$4,482.64 as a result.

The Plaintiff's request for attorney's fees is denied. Plaintiff has not provided evidence to support an award of fees.

The court will issue a minute order granting the motion to the foregoing extent. Plaintiff shall submit a form of judgement that conforms to the court's ruling and complies with F.R.Bankr. P. 9021.

61. [09-24302](#)-B-7 JOSEPH/CHERYL ROBERTSON HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE LLC, VS. ON REAL PROPERTY
3-27-09 [8]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

62. [08-24908](#)-B-7 LURIE/SVETLANA GRAMA HEARING - ORDER TO
[08-2340](#) SHOW CAUSE, IF ANY, WHY THE
UKRAINIAN FEDERAL CREDIT COMPLAINT SHOULD NOT BE
UNION, VS. DISMISSED FOR FAILURE TO PRO-
LURIE GRAMA, ET AL. SECUTE THE CASE
3-31-09 [19]
- DISCHARGED 7-28-08

Tentative Ruling: None.

63. [09-24011](#)-B-7 ROBERT/CYNTHIA HAWKEN HEARING - MOTION FOR
RDN #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE NATIONAL (UNLAWFUL DETAINER)
ASSOCIATION, VS. 3-25-09 [7]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

64. [09-23917](#)-B-7 ANTHONY/JEANETTE FORBES HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS ON REAL PROPERTY
SERVICING, L.P., VS. 3-24-09 [7]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

65. [09-22219](#)-B-7 KENNETH/STACIE GANDY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE ON REAL PROPERTY
COMPANY, VS. 3-30-09 [[13](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to April 21, 2009 at 9:30 a.m. This case was converted to one under chapter 13 by order entered April 3, 2009 (Dkt. 20).

66. [08-36024](#)-B-7 TODD/DEBORAH LANGDON HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, 3-20-09 [[30](#)]
NATIONAL ASSOC., VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

67. [09-21024](#)-B-7 DANILO/MARY ASIO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE CO., VS. ON REAL PROPERTY
3-24-09 [[22](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtor has filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor[s] pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 6105 Kermit Lane, Stockton, CA 95207 (APN 081-322-09) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$185,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$221,185.45. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic

stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

68. [09-20930](#)-B-7 FELIPE HERNANDEZ AND HEARING - MOTION FOR
RDW #2 ALBA BERRIOS RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION, VS. 3-23-09 [[25](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2005 Nissan Armada (VIN 5N1AA08B75N703270) (the "Collateral"), at 12:01 a.m. on February 21, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1019(1)(B). In order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtors had until Friday, February 20, 2009 to file a statement of intention that stated with respect to the Collateral one of the intentions specified in the statute. Because they did not file a compliant statement of intention timely and because the collateral at issue here is personal property, the automatic stay terminated as to the Collateral at 12:01 a.m. on February 21, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

69. [09-23231](#)-B-7 HENRY/STACEY DEDRICK HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL ON REAL PROPERTY
TRUST CO., VS. 3-26-09 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

70. [08-31840](#)-B-7 CLINTON MYERS HEARING - TRUSTEE'S
MLG #13 MOTION FOR ORDER AUTHORIZING
ABANDONMENT OF CERTAIN REAL
PROPERTIES
3-31-09 [[218](#)]

DISCHARGED 2-9-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

71. [08-31840](#)-B-7 CLINTON MYERS HEARING - TRUSTEE'S
MLG #14 MOTION FOR ORDER REGARDING
ABANDONMENT OF TWO SECURITIES
OF THE ESTATE
3-31-09 [[222](#)]

DISCHARGED 2-9-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

72. [09-20040](#)-B-7 CHRIS MORRIS HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 3-31-09 [[33](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated with respect to the collateral, a 2000 Ford Mustang (VIN 1FAFP42X8YF264573) (the "Collateral"), at 12:01 a.m. on March 15, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor did not file a statement of intention with respect to the Collateral within the time allowed by law. The debtor had until March 14, 2009, 30 days after entry of the order converting this case to one under chapter 7, to file a statement of intention that addressed the Collateral. Because he did not timely file such a statement of intention and because the Collateral is personal property, the automatic stay terminated at 12:01 a.m. on March 15, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

73. [08-35041](#)-B-7 RAYMOND/DONNA RAMIREZ
JKB #1
WILSHIRE CREDIT CORP., VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-19-09 [[27](#)]

DISCHARGED 1-20-09
CONT. FROM 3-31-09

Tentative Ruling: This matter continued from March 31, 2009 with a briefing schedule. Supplemental briefs were due on or before April 7, 2009. Supplemental replies, if any, were due on or before April 10, 2009. Both debtors and movant timely filed supplemental briefs. In this instance, the court issues the following tentative ruling.

The trustee's opposition is sustained. The motion is dismissed. The chapter 7 trustee's request for attorney's fees and costs is denied.

Through this motion, Wilshire Credit Corporation ("Wilshire") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on real property located at 2132 Horseshoe Glen Circle, Folsom, CA 95630 (APN 072-2660-011) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law.

The chapter 7 trustee John R. Roberts ("trustee") filed opposition to this motion, asserting the following: (1) that movant's supporting declarant lacked personal knowledge under the Fed. R. Evid.; (2) that movant failed to file admissible evidence under LBR 9014-1(d)(6); (3) that movant lacks constitutional standing to file a motion for relief from automatic stay under Article III of the Constitution; and (4) that movant is not a party in interest under Fed. R. Bankr. P. 9014.

The trustee correctly argues that movant lacks standing to bring the instant motion for relief from automatic stay. Therefore, the motion does not present a case or controversy within the meaning of Article III, § 2, of the United States Constitution. Therefore, the court lacks subject matter jurisdiction over the motion.

A brief summary of the facts is appropriate here. On February 8, 2006, Resmae Mortgage Corporation ("Resmae") funded a loan to debtors in the original sum of \$349,612.00 plus interest. The loan was secured by a deed of trust against the subject property, which was recorded in the County of Sacramento on February 24, 2004 in Book 20060224 at page 2044 (Dkt. 38 at 24). The deed of trust identified Mortgage Electronic Registration Systems, Inc. ("MERS") as the nominee of lender Resmae and its successors to be the beneficiary under the deed of trust (See Zumwalt Declaration filed concurrently herewith at ¶ 4 [Dkt. 37 at 2]). In May 2006, Resmae indorsed the note and delivered possession of the note and deed of trust to LaSalle Bank ("LaSalle"), as trustee for the MLMI Trust Series 2006-RM2. The first payment on the note became due on April 1, 2006. Since May 2006, or since the second loan payment became due, movant Wilshire has acted as the loan servicing agent for LaSalle under the terms of a servicing agreement with LaSalle. Wilshire has been responsible for the handling of all matters relative to the underlying loan, including but not limited to collecting, processing, and applying payments as they are made, adding all proper charges to the loan, keeping current property taxes and insurance if necessary, and communicating with

the borrowers on all matters relative to the loan (See Zumwalt Declaration ¶ 6 [Dkt. 37 at 3]).

"Under the Bankruptcy Code, a party seeking relief from stay must establish entitlement to that relief[,] . . . [f]oreclosure agents and servicers do not automatically have standing." In re Jacobson, No. 08-45120, 2009 WL 567188 (Bankr. W.D. Wash. Mar. 10, 2009) (citing In re Hayes, 393 B.R. 259, 266-67 (Bankr. D. Mass. 2008); In re Scott, 376 B.R. 285, 290 (Bankr. D. Idaho 2007). "For a federal court to have jurisdiction, the litigant must have constitutional standing, which requires an injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." In re Jacobson, No. 08-45120, 2009 WL 567188 (Bankr. W.D. Wash. Mar. 10, 2009) (citing United Food & Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 551 (1996)). Constitutional standing, which is based on the "case or controversy" requirement under Article III, § 2 of the U.S. Constitution, cannot be waived as it is "a threshold jurisdictional requirement." See id. (citing Pershing Park Villas Homeowners Ass'n v. United Pac. Ins. Co., 219 F.3d 895, 899-00 (9th Cir. 2000)). The United States Supreme Court recently held that in order to meet this jurisdictional requirement, an assignee must hold legal title to the claim being asserted. Sprint Commc'ns Co. v. APCC Services, Inc., ___ U.S. ___, 128 S. Ct. 2531, 171 L.Ed.2d 424 (2008). An assignment for collection will suffice. Id., at 2542. Here, however, Wilshire has failed to demonstrate that it has any legal title to the claim being asserted. Movant has only alleged that it has the right to collect payment from debtors, and that it entered into a loan modification agreement with debtors in its capacity as servicer for LaSalle Bank, as trustee for the MLMI Trust Series 2006-RM2. Accordingly, movant lacks standing under Article III, § 2 of the U.S. Constitution. This court does not have jurisdiction to hear the motion for relief from automatic stay.

The trustee's argument that movant is not the real party in interest is interesting, but irrelevant. That argument addresses matters of federal procedure. Such matters presume federal jurisdiction. There is no federal jurisdiction here.

The trustee's request for attorney's fees and costs is denied. The trustee has neither cited to nor evaluated any legal authority demonstrating that it is entitled to attorney's fees in a matter over which the court has no jurisdiction. Even if the trustee were entitled to legal fees and costs in such a matter, the trustee has not provided evidence to support an award of fees or costs.

The court will issue a minute order.

74. 09-21742-B-13J ROY DUCKETT
RSS #1
DLJ MORTGAGE CAPITAL, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
(UNLAWFUL DETAINER)
4-1-09 [18]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to April 21, 2009 at 9:30 a.m.

The court will issue a minute order.

75. [08-39345](#)-B-7 KATRINA CHARAN HEARING - MOTION
DNL #2 FOR ORDER COMPELLING
ABANDONMENT
3-26-09 [[37](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

76. [09-22850](#)-B-7 KARL/JODI HANF HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL ON REAL PROPERTY
TRUST COMPANY, ET AL., VS. 3-26-09 [[10](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtors have filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 8545 Heartland Drive, Redding, CA 96001 (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$470,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$580,826.96. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make eight (8) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because movant has not established that the value of the Property exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the moving party shall submit an order consistent with the foregoing ruling.

77. [09-23059](#)-B-7 TIMOTHY/DIANA VERNON HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 3-26-09 [[13](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtor has filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 1628 Burger Road, Fernley, NV 89408 (APN 022-263-34) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$139,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$218,387.38. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

78. [09-22572](#)-B-7 SAUL/PATRICIA REYNOSO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK ON REAL PROPERTY
NATIONAL ASSOC., VS. 3-26-09 [[14](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

79. [08-36279](#)-B-7 SANJEEV/BLESILDA MANSUKHANI HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE CORPORATION, VS. 3-23-09 [[43](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

80. [08-32280](#)-B-7 HEAVEN INVESTMENT CONT. HEARING - RELATED MOTION
DNL #3 HOLDING CORP. FOR RELIEF FROM AUTOMATIC STAY
ROSEMARY HART, AS SUCCESSOR 3-24-09 [[242](#)]
TRUSTT, ET AL., VS.

CONT. FROM 3-31-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

81. [09-22780](#)-B-7 ROMEO/ELMA CAMPANA CONT. HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 3-5-09 [[9](#)]

CONT. FROM 3-31-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

82. [08-29382](#)-B-7 TRACY/DANIELLE WILLIAMS HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, VS. 3-20-09 [[58](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

83. [09-25086](#)-B-7 DAVID MOORE AND HEARING - ORDER
LAKESHA VAUGHNS TO SHOW CAUSE RE DISMISSAL
AND/OR IMPOSITION OF SANCTIONS
FOR FAILURE TO TENDER FEES OR
AN APPLICATION TO PAY FEES IN
INSTALLMENTS WITH BANKRUPTCY
PETITION
3-25-09 [[9](#)]

Tentative Ruling: None.

84. [09-22890](#)-B-7 FREDERICK/JUDY SHAW HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 3-23-09 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

85. [09-22893](#)-B-7 STEPHEN/LAURIE DIBBLE HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
3-26-09 [[13](#)]

Tentative Ruling: The order to show cause is discharged because the debtor paid the missing fee on April 1, 2009. No monetary sanctions are imposed. The Order Approving Payment of Filing Fee In Installments (Dkt. 10) is modified. The entire unpaid balance (\$224.00) of the filing fee shall be paid on or before April 24, 2009, failure of which will result in dismissal of the case without further notice or hearing.

The court will issue a minute order.

86. [09-23193](#)-B-7 PRICILLA HARRIS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 3-27-09 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

87. [08-38394](#)-B-7 JOSE/LOU SAENZ HEARING - MOTION TO
KMA #2 APPROVE STIPULATION FOR
MARTIN M. ENOS PROFIT RELIEF FROM THE AUTOMATIC STAY
SHARING PLAN, VS. 3-31-09 [[40](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

Tentative Ruling: This motion was improperly filed under LBR 9014-1(f). In this instance, because the motion is unopposed, the court issues the following tentative ruling.

The motion is granted and Case No. 08-36497-B-7 is dismissed. Except as so ordered, the motion is denied.

The court finds that Case No. 08-36497-B-7 was filed in error as a duplicate of Case No. 08-36451-A-7. Accordingly, the motion to dismiss Case No. 08-36497-B-7 is granted for cause pursuant to 11 U.S.C. § 707(a).

The motion to strike Case No. 08-36497-B-7 is denied without prejudice. Movant asks the court to strike Case No. 08-36497-B-7, filed on November 12, 2008, as a duplicate of Case No. 08-36451-A-7, also filed on November 12, 2008. Debtor asserts that Case No. 08-36451-A-7 was correctly filed. However, debtor has neither cited to nor evaluated any legal authority in the demonstrating that she is entitled to have Case No. 08-36497-B-7 stricken.

The court also notes the following procedural defects. First, the movant's notice of hearing fails to specify whether and when written opposition must be filed. LBR 9014-1(d)(3) provides that "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." LBR 9014-1(d)(3). Second, the movant failed to assign a docket control number to the instant motion. LBR 9014-1(c)(1) provides that "[i]n motions filed in the bankruptcy case, a Docket Control Number (designated as DC No.) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." (emphasis added) LBR 9014-1(c)(1). Docket control numbers assist the court in its preparation for calendars and assist all parties in locating easily on the docket all papers related to a particular motion.

The court will issue a minute order.