

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

April 28, 2009 at 9:30 A.M.

- 
1. [09-20104](#)-B-7 RAE-LYNN BRISTER HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-31-09 [[28](#)]

**Disposition Without Oral Argument:** The order to show cause is discharged because the debtor filed the missing documents on April 27, 2009. No monetary sanctions are imposed.

The court will issue a minute order.

2. [09-23618](#)-B-11 LINX GROUP, INCORPORATED HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL,  
CONVERSION OR IMPOSITION OF  
SANCTIONS  
3-25-09 [[12](#)]

**Tentative Ruling:** None.

3. [09-23425](#)-B-7 HELEN GUTIERREZ HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
4-3-09 [[12](#)]

**Tentative Ruling:** The debtor paid the March 30, 2009 filing fee installment in the amount of \$75.00 on April 8, 2009. Pursuant to the order to show cause, the Order Approving Payment of Filing Fee In Installments (Dkt. 5) is modified. The entire unpaid balance (\$224.00) of the filing fee shall be paid on or before May 12, 2009, failing which the case will be dismissed without further notice or hearing. No monetary sanctions are imposed.

The court will issue a minute order.

4. [08-23937](#)-B-7 JAMES/MARY SHAW HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-23-09 [[121](#)]

**Disposition Without Oral Argument:** The order to show cause is discharged because the debtors filed the missing document on April 7, 2009 (Dkt. 123). No monetary sanctions are imposed.

The court will issue a minute order.

5. [09-23639](#)-B-7 CLAUDIA CADENA HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-24-09 [[10](#)]

**Disposition Without Oral Argument:** The order to show cause is discharged because the debtor filed the missing documents on April 8, 2009 (Dkt. 14). No monetary sanctions are imposed.

The court will issue a minute order.

6. [09-23742](#)-B-7 FRANK YAN HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-24-09 [[10](#)]

**Disposition Without Oral Argument:** The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on April 21, 2009. The debtor failed to timely file all of the documents required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

7. [09-25188](#)-B-7 JAVIER ALVAREZ HEARING - ORDER  
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  
4-3-09 [[9](#)]

**Tentative Ruling:** None.

8. [09-23297](#)-B-7 SHARON BROWN-THOMPSON HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-30-09 [[10](#)]

**Disposition Without Oral Argument:** The debtor paid the March 25, 2009 filing fee installment in the amount of \$75.00 on March 30, 2009 and the April 27, 2009 filing fee installment in the amount of \$75.00 on April 24, 2009. The order to show cause is discharged. No monetary sanctions are imposed.

The court will issue a minute order.

9. [08-38898](#)-B-7 IGOR UZUN HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-23-09 [[29](#)]

**Disposition Without Oral Argument:** The order to show cause is discharged because the debtor filed the missing document on April 26, 2009. No monetary sanctions are imposed.

The court will issue a minute order.

10. [09-23799](#)-B-7 BLOOM DEVELOPMENT, LLC HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
4-1-09 [[15](#)]

**Tentative Ruling:** None.

11. [08-33103](#)-B-7 MICHELLE POE HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 3-30-09 [[39](#)]  
REGISTRATION 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 (9<sup>th</sup> 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 8118 Treecrest Avenue, Fair Oaks, CA 95628 (APN 249-0084-004) (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 \$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 \$421,671.08. 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 eighteen (18) 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.

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.

12. 08-36604-B-7 JONATHAN BOGARD HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
DAIMLER TRUST, VS. 3-25-09 [56]

**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. Considering the automatic extension of Fed. R. Bankr. P. 9006(a), the automatic stay terminated as to the subject vehicle, a leased 2007 Mercedes Benz CLS550 (VIN WDDDJ2X07A100904) (the "Vehicle") at 12:01 a.m. on March 24, 2009 by operation of 11 U.S.C. § 365(p)(1), and neither the Vehicle nor the debtors' possessory interest in the Vehicle has from that date been property of the estate.

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, debtor's petition was filed under chapter 13 on November 13, 2008 and was converted to a case under chapter 7 on January 22, 2009 (Dkt. 33). As of March 23, 2009, sixty days after conversion of the debtor's case, 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 March 24, 2009 by operation of 11 U.S.C. § 365(p)(1), and neither the Vehicle nor the debtor's possessory interest

in the Vehicle has from that date been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

13. [08-38205](#)-B-7 ALEKSANDR/LYUDMILA ABANKIN CONT. HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
CITIBANK, N.A., VS. 2-17-09 [[20](#)]

DISCHARGED 3-24-09  
CONT. FROM 3-31-09,3-3-09

**Tentative Ruling:** This matter continued from March 31, 2009 without a briefing schedule. Nothing further has been filed in this matter. This matter remains in its preliminary posture as a motion filed 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.

14. [09-20405](#)-B-7 EDD/BABY DUCUSION HEARING - MOTION FOR  
APN #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A., VS. ON REAL PROPERTY  
3-27-09 [[15](#)]

**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 (9<sup>th</sup> 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 2510 Gordon Glen Court, Apt. 102, Raleigh, North Carolina 27617 (APN 0759.04-90-7277-067) (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 \$123,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$178,119.41. 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.

15. [09-20405](#)-B-7 EDD/BABY DUCUSION HEARING - MOTION FOR  
APN #2 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A., VS. ON REAL PROPERTY  
3-27-09 [[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 (9<sup>th</sup> 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 11351 Clubhaven Place, Apt. 104, Raleigh, North Carolina 27617 (APN 0759.04-90-7277-229) (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 \$133,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$178,119.28. 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.

16. [09-21307](#)-B-7 TAMARA RUSSELL HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
NATIONSTAR MORTGAGE AS 3-25-09 [[11](#)]  
SERVICING AGENT, ET AL.,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 (9<sup>th</sup> 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 2712 Irwin Road, Redding, CA 96002 (APN 067460028000) (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 \$140,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$206,647.54. 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 four (4) mortgage payments. Debtor has filed a statement of intent to surrender the Property. 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.

Because the movant has not established that the value of its collateral 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.

17. [09-23807](#)-B-7 REBEL/SHANE BILLINGSLEY HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HOME MORTGAGE ON REAL PROPERTY  
SERVICING, INC., VS. 4-2-09 [[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.

18. [09-21417](#)-B-7 EDGAR/RHEA BEACH HEARING - MOTION FOR  
ASW #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC REGISTRATION 3-18-09 [[15](#)]  
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 (9<sup>th</sup> 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 2319 Sky Meadows Court, South Lake Tahoe, CA 96150 (APN 023-821-39-100) (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 for the motion plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day stay of 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 \$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 \$342,214.30. Considering the junior lien of \$67,700.00, 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 ten (10) mortgage payments. Debtors have filed a statement of intent to surrender the Property. Debtors also filed a statement of non-opposition on March 23, 2009 (Dkt. 20). 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 for the motion plus costs of \$150.

The court will issue a minute order.

19. [09-20022](#)-B-7 JAMI FERREIRA  
PD #1  
AMERICA'S SERVICING  
COMPANY, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-23-09 [[22](#)]

**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 (9<sup>th</sup> 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 a discharge on April 17, 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 639 Woodside Sierra #3, Sacramento, CA 95825 (APN 294-0250-003-0013) (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 \$64,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$215,635.77. 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.

20. [09-23422](#)-B-7 ANTONIO/REBECCA BRUCE HEARING - MOTION FOR  
JDL #1 RELIEF FROM AUTOMATIC STAY  
DOWNEY SAVINGS ADN LOAN 3-27-09 [[11](#)]  
ASSN., 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 (9<sup>th</sup> 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 6537 Trailride Way, Citrus Heights, CA 95621 (APN 211-0840-088-000) (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 not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$310,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$508,642.21. 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 six (6) mortgage payments. The debtors have filed a statement of non-opposition on April 15, 2009 (Dkt. 24). 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.

21. [09-24324](#)-B-7 REBECCA DEAL HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, VS. 4-2-09 [[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.

22. [08-31025](#)-B-7 LARRY GOLDEN HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICA'S SERVICING CO., VS. 3-18-09 [[38](#)]

**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 (9<sup>th</sup> 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 a discharge on April 17, 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 1206 Losser Avenue, Gridley, CA 95948 (APN 021-260-019-000) (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 \$205,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$217,574.14. 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 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 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. 07-25829-B-7 KELLY/MARY WYLER  
ASW #1  
BANK OF AMERICA, ET AL., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-25-09 [27]

DISCHARGED 11-16-07

**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 (9<sup>th</sup> 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 November 16, 2007 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 101 Paydirt Court, Folsom, CA 95630 (APN 223-0550-041-0000) (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 for the motion plus costs of \$150. These fees and costs may be enforced only against the Property. 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 \$380,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$371,817.38. Considering the junior lien of \$103,459.00, 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 twenty-two (22) 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.

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 for the motion plus costs of \$150.

The court will issue a minute order.

24. 09-23729-B-7 JUAN/EVITA MORENO  
EAT #1  
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-23-09 [11]

**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 (9<sup>th</sup> 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 172 Main Street, Hamilton City, CA 95951 (APN 032-111-015) (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 \$120,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$145,188.74. 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 seven (7) mortgage payments. Debtors have filed a statement of intent to surrender the Property. 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.

25. [09-21131](#)-B-7 DAVID GONZALES  
JMS #1  
GREEN TREE SERVICING, LLC, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-18-09 [[18](#)]

**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 (9<sup>th</sup> 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 240 East Chestnut Street, Dixon, CA 95620 (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 \$246,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$46,488.78. Considering the senior lien of \$373,533.60, 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. 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.

26. 09-22933-B-7 JASON HUFF-COOK  
PD #1  
HOME LOAN SERVICES, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-25-09 [9]

**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 (9<sup>th</sup> 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 8548 Cord Way, Sacramento, CA 95828 (APN 115-0680-023) (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 \$311,729.85. 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. 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.

27. 09-23137-B-7 VICTOR/KATHERINE SINHAWK  
MDE #1  
CITIMORTGAGE, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-30-09 [10]

**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 (9<sup>th</sup> 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 3354 26<sup>th</sup> Avenue, Sacramento, CA 95820 (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 \$175,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$253,821.51. 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.

28. 09-23441-B-7 TYRA HOYTT  
JEG #1  
ADDISON AVENUE CREDIT UNION, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
TO PERMIT FORECLOSURE UPON  
AND SALE OF REAL PROPERTY  
3-26-09 [9]

**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 (9<sup>th</sup> Cir. 1995). 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 1017 Moreno Way, Sacramento, CA 95838 (APN 27-0540-005) (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 \$136,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$244,588.55. 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 nine (9) 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.

29. [09-20842](#)-B-7 CHRISTOPHER JOHNSON HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
CHRYSLER FINANCIAL SERVICES 3-31-09 [[14](#)]  
AMERICAS LLC, VS.

**Tentative Ruling:** The motion is denied as moot. The automatic stay terminated as to the collateral, a 2005 Dodge Ram (VIN 1D7HA18N25J52557) (the "Collateral"), at 12:01 a.m. on February 20, 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. 9<sup>th</sup> Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtors had until Thursday, February 19, 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 20, 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.

30. [09-23642](#)-B-7 LUE LOR AND SIA VANG HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-23-09 [[9](#)]

**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 (9<sup>th</sup> 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[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 56 Fairbanks Avenue, Sacramento, CA 95838 (APN 263-0322-001-0000) (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 \$277,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$260,261.92. Considering the junior lien of \$29,737.00, 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.

The court will issue a minute order.

31. [08-38043](#)-B-7 LESTER/MICHELLE JINKINS HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 4-2-09 [[29](#)]

**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.

32. [09-22643](#)-B-7 JOSE LOPEZ HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 3-20-09 [[12](#)]  
REGISTRATION 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 (9<sup>th</sup> 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 1233 Shoreline Circle, Fairfield, CA 94533 (APN 0170-292-090) (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 \$294,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$401,216.56. 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 nine (9) 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.

The court will issue a minute order.

33. [09-22643](#)-B-7 JOSE LOPEZ HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 3-30-09 [[20](#)]  
REGISTRATION 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.

34. [09-23643](#)-B-7 CAROL DORA HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, VS. 3-20-09 [[10](#)]

**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 (9<sup>th</sup> 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 the first deed of trust on the real property located at 11229 Skagit River Court, Rancho Cordova, CA 95670 (APN 056-0280-025) (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 \$245,000.00 and is encumbered by a perfected first deed of trust or mortgage in favor of movant. That security interest secures a claim of \$296,471.73. 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 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.

The court will issue a minute order.

35. [09-23643](#)-B-7 CAROL DORA  
EAT #1  
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-26-09 [[17](#)]

**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 (9<sup>th</sup> 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 the second deed of trust on the real property located at 11229 Skagit River Court, Rancho Cordova, CA 95670 (APN 056-0280-025) (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 \$245,000.00 and is encumbered by a perfected second deed of trust or mortgage in favor of movant. That security interest secures a claim of \$37,843.05. Considering the senior lien of \$296,471.73, 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. 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.

36. [09-24044](#)-B-7 KENNETH/REBECCA LALOLI HEARING - MOTION FOR  
MET #1 RELIEF FROM AUTOMATIC STAY  
BANK OF THE WEST, VS. 3-31-09 [7]

**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 (9<sup>th</sup> 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 Weldcraft Boat, Motor & Trailer (VINS WCDCE537L405, 35209, 1P9BB20195L476105) (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. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$11,775.00. Movant holds a lien on the Collateral in the amount of \$38,461.31. 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. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

37. [09-23152](#)-B-7 MALKEET PAL AND HEARING - MOTION FOR  
SKI #1 ELIZABETH SINGH RELIEF FROM AUTOMATIC STAY  
AMERICREDIT FINANCIAL 3-25-09 [8]  
SERVICES, 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 (9<sup>th</sup> 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 2003 Cadillac Escalade (VIN 1GYEK63N53R158225) (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. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$14,000.00. Movant holds a lien on the Collateral in the amount of \$23,960.11. 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 three (3) payments. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

38. [09-21754](#)-B-7 BRIAN/LAURA LEET  
PD #1  
CHASE HOME FINANCE, LLC, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-18-09 [[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 (9<sup>th</sup> 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 8908 Van Gogh, Fair Oaks, CA 95628 (APN 248-0220-011) (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 for the motion plus costs of \$150. The 10-day stay of 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 \$437,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$399,396.25. Considering the junior lien of \$135,440.00, 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 thirteen (13) 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 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 for the motion plus costs of \$150. These fees and costs may be enforced only against the Property.

The court will issue a minute order.

39. [09-22554](#)-B-7 KEVIN AMARAL HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 4-1-09 [[17](#)]

**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 (9<sup>th</sup> 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 10038 Upshaw Way, Elk Grove, CA 95757 (APN 132-0900-091-0000) (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 \$274,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$291,820.00. 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.

40. [08-38655](#)-B-7 ROBERT MOE AND HEARING - MOTION FOR  
PD #2 EVALYN MORE RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 3-24-09 [[27](#)]

DISCHARGED 4-2-09

**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 (9<sup>th</sup> 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 2, 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 6608 Doreen Way, Sacramento, CA 95823 (APN 039-0233-003-0000) (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 \$130,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$263,999.99. 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 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 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.

41. 09-21355-B-7 NESTOR/ANTONIETTE MOISES HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-24-09 [[18](#)]

**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 (9<sup>th</sup> 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 561 Lexington Drive, Vallejo, CA 94591 (APN 0082-421-140) (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 \$449,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$139,043.15. Considering the senior lien of \$417,000.00, 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 six (6) 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 after deduction of the amount of the senior lien 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.

42. [09-20656](#)-B-7 ALVIN/NEIKITA WILSON HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
CHRYSLER FINANCIAL 3-20-09 [15]  
SERVICES AMERICAS LLC, VS.

**Tentative Ruling:** The motion is denied as moot. The automatic stay terminated as to the collateral, a 2005 Kia Sedona (VIN KNDUP132656645594) (the "Collateral"), at 12:01 a.m. on February 17, 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. 9<sup>th</sup> Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2) and the automatic extension provided by Fed. R. Bankr. P. 9006(a), the debtors had until Monday, February 16, 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 17, 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.

43. [09-25656](#)-B-7 KEITH STEWART, JR. HEARING - MOTION FOR  
YRL #1 RELIEF FROM AUTOMATIC STAY  
REZA KAMALIAN, VS. 4-2-09 [[11](#)]

**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. [09-24061](#)-B-7 GUSTAVO RAMIREZ HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK NATIONAL ASSOC., VS. 3-31-09 [[10](#)]

**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 (9<sup>th</sup> 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 4495 Valley Hi Drive, Sacramento, CA 95823 (APN 119-0325-011) (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 \$125,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$291,778.22. 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 nine (9) 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.

The court will issue a minute order.

45. [09-22063](#)-B-7 CHAD/REBECCA HARAKA HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
HSBC BANK USA, N.A., VS. 3-31-09 [[11](#)]

**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.

46. [09-24164](#)-B-7 VASILIIY BONDAR  
JDL #1  
DOWNEY SAVINGS AND  
LOAN ASSOC., F.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-24-09 [[7](#)]

**Tentative Ruling:** This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the any party 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 (9<sup>th</sup> 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 2428 Rotterdam Drive, Elverta, CA 94626 (APN 203-0224-029-0000) (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 \$90,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$290,243.47. 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 nine (9) 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.

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.

47. [09-23768](#)-B-7 LAURA/DAVID DAVIS  
PD #1  
CHASE HOME FINANCE LLC, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-26-09 [[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 (9<sup>th</sup> 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

5355 Timberland Drive, Foresthill, CA 95631 (APN 7-043-003-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed for the motion 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 \$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 \$296,843.38. 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 moving party shall submit an order consistent with the foregoing ruling.

48. [06-24942](#)-B-7 JAMES GUASPARI CONT. HEARING - MOTION TO  
[08-2648](#) PCB #2 DISMISS FIRST AMENDED  
JOHN ROBERTS, VS. ADVERSARY COMPLAINT  
2-4-09 [[21](#)]  
GLADYS MARTINES, ET AL.

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

**Tentative Ruling:** None.

49. [04-26357](#)-B-13J LARRY/NANCY TEVIS CONT. HEARING - MOTION TO  
[08-2004](#) LARRY TEVIS, ET AL., VS. DISMISS FOR FAILURE TO STATE  
A CLAIM FOR WHICH RELIEF CAN  
BE GRANTED AND/OR IN THE  
DEPARTMENT OF VETERANS ALTERNATIVE, MOTION FOR A  
AFFAIRS, ET AL. MORE DEFINITE STATEMENT  
2-5-09 [[365](#)]

CONT. FROM 3-31-09, 3-17-09,  
3-10-09

**Tentative Ruling:** None.

DISCHARGED 4-4-02

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). In this instance, the court issues a tentative ruling.

The motion is granted and the compromise of controversy is approved. The chapter 7 trustee is authorized to take all actions required of him under the compromise.

The instant motion involves a compromise of controversy. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

To settle the trustee's claim in adversary proceeding 08-2272, the parties have reached a compromise which provides that the parties shall exchange mutual releases of all known and unknown claims, including a waiver of Cal. Civ. Code § 1542. Selection Management Systems, Inc. ("SMS") shall pay the tee \$35,000.00 as follows: (1) \$10,000.00 within ten (10) days of entry of an order approving compromise and (2) five (5) equal monthly installment of \$5,000.00 thereafter; (3) Adversary Proceeding 08-2272 shall be dismissed with prejudice within ten (10) days after final payment is made; and (4) In the event of a default, a \$100,000.00 judgment shall be entered in favor of the tee and against SMS and John P. Hart in adversary proceeding 08-2272.

The trustee asserts the compromise is fair and equitable. His argument first focuses on the assertion that the probability of success in litigation weighs in favor of the compromise since the value of the transferred assets is uncertain. Second, the trustee's argument focuses on the assertion that the costs, risks and delay of litigation outweigh any benefit to litigation, and that the administration of the bankruptcy case may be concluded sooner if the compromise is approved.

Accordingly, the court finds that the trustee has carried the burden of showing that the proposed compromise is fair and equitable.

Movant shall submit an order that conforms to the foregoing ruling.

51. [07-30784](#)-B-7 MICHELLE REED  
MKR #2

HEARING - MOTION FOR  
SANCTIONS  
3-23-09 [[123](#)]

DISCHARGED 4-22-08

**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 for sanctions is denied.

Through her motion, debtor seeks sanctions against Paul Coppedge, Gabriela Coppedge, Jonathan Coppedge, Jacqueline Coppedge, and their attorney, Douglas Broomell (the "Coppedges"), in the total amount of \$8,000.00. However, pursuant to Fed. R. Bankr. P. 9011(c)(1)(A), a motion for sanctions "may not be filed with or presented to the court unless, within [twenty-one] days after service of the motion . . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected[.] . . ." Here, the debtor has failed to comply with this requirement. The certificate of service indicates that the Coppedges were served with motion on March 20, 2009 (Dkt. 128 at 2). The motion for sanctions was subsequently filed on March 23, 2009 (Dkt. 123), thus providing the Coppedges with only three, instead of twenty-one, days to withdraw or amend their motion for reformation of the compromise of a controversy. Accordingly, the motion for sanctions is denied.

The court will issue a minute order.

52. [07-30784](#)-B-7 MICHELLE REED  
DPB #3

HEARING - MOTION FOR  
COURT REFORMATION OF THE  
APPROVED COMPROMISE BETWEEN  
THE TRUSTEE AND THE COPPEDGES  
3-18-09 [[109](#)]

DISCHARGED 4-22-08

**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 denied without prejudice to the filing of an adversary proceeding seeking equitable relief.

By this motion, movants Gabriela Coppedge, Jonathan Coppedge, and Paul Coppedge ("Movants") seek equitable relief to reform the compromise of a controversy approved by court order entered September 22, 2008 (Dkt. 41). The equitable relief that Movants seek is unavailable by motion. Proceedings to obtain an injunction or other equitable relief require an adversary proceeding. See Fed. R. Bankr. P. 7001(7). Accordingly, the request for reformation is denied without prejudice to the filing of an adversary proceeding that seeks equitable relief.

The court will issue a minute order.

53. [07-30784](#)-B-7 MICHELLE REED HEARING - OBJECTION  
DPB #4 TO THE FINAL REPORT AND THE  
PROPOSED DISTRIBUTION OF THE  
ESTATE BALANCE BY PAUL COPPEDGE,  
GABRIELA COPPEDGE, ET AL.  
4-7-09 [[140](#)]
- DISCHARGED 4-22-08

**Tentative Ruling:** None.

54. [08-26339](#)-B-7 LAUREN BOTTGER HEARING - TRUSTEE'S  
JRR #1 MOTION FOR APPROVAL OF  
COMPROMISE AND SETTLEMENT  
3-24-09 [[21](#)]
- DISCHARGED 8-26-08

**Tentative Ruling:** None.

55. [09-22767](#)-B-7 LUCIAN/SILVANIA MAGHIAR HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A, VS. 3-23-09 [[13](#)]

**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 (9<sup>th</sup> 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 2801 China Well Drive, Auburn, CA 95603 (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 \$725,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$854,977.44. Considering the junior lien of \$34,942.78, 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).

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

56. [09-21968](#)-B-7 GEZA/ANA NAGY  
MBB #1  
GREENPOINT MORTGAGE  
FUNDING, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-24-09 [[13](#)]

**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 (9<sup>th</sup> 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 3542 Pinehill Way, Antelope, CA 95843 (APN 203-1170-046-0000) (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 waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$219,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$257,875.54. Considering the junior lien of \$95,000.00, 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 ten (10) mortgage payments. Debtors have filed a statement of intent to surrender the Property and a statement of non-opposition to the motion. 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.

57. [08-34471](#)-B-7 CLAUDETTE/EMMANUEL ARUCAN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 4-2-09 [[41](#)]  
REGISTRATION 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.

58. [08-38471](#)-B-7 NICHOLAS/SANDRA DESTEFANO HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME 3-18-09 [[18](#)]  
MORTGAGE, INC., VS.

DISCHARGED 4-1-09

**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 (9<sup>th</sup> 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 1, 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 as 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 383 Coventry Circle, Folsom, CA 95630 (APN 072-1360-006) (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 \$330,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$434,894.00. Considering the junior lien of \$106,000.00, 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 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.

59. [09-23771](#)-B-7 EMMANUEL/STELLA TAGLE HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK 3-30-09 [[9](#)]  
FSB, 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.

60. [09-22672](#)-B-7 ARTURO/PATRICIA SANCHEZ HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK N.A., VS. 4-2-09 [[16](#)]

**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 719 Carnelian Avenue, Lathrop, CA 95330 (APN 196-690-37) (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 \$218,691.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$323,072.00. Considering the junior lien of \$49,963.00, 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 ten (10) 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.

61. [09-23973](#)-B-7 GUILLERMO/MARIA CRUZ  
JDL #1  
DOWNEY SAVINGS AND  
LOAN ASSOCIATION, F.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-27-09 [[7](#)]

**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 (9<sup>th</sup> 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 324 Beelard Drive, Vacaville, CA 95687 (APN 0132-272-030) (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 \$229,371.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$323,557.33. Considering the junior lien of \$43,199.00, 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. 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.

62. [08-37774](#)-B-7 ROLINDA DEBOER  
RCO #1  
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-24-09 [[37](#)]

**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 (9<sup>th</sup> 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 3039 Rector Street, Placerville, CA 95667 (APN 003-071-62-100) (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 \$149,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$51,638.39. Considering the senior lien of \$199,000.00, 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 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).

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

63. [09-20376](#)-B-7 ANTHONY/MARGARET DAVIS HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
NATIONAL CITY MORTGAGE CO., VS. 4-1-09 [[16](#)]

**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 (9<sup>th</sup> 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 2284 Rockin Robin Dr., Sparks, NV 89436 (APN 530-643-18) (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 \$300,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$223,975.08. Considering the junior lien of \$100,000.00, 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 nine (9) 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.

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.

64. 08-37977-B-7 PAUL/ZYRENE ZUNIGA HEARING - MOTION FOR  
JMS #1 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE, LLC, VS. 3-20-09 [43]

**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 (9<sup>th</sup> 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 130 Rhea Court, Vallejo, CA 94589 (APN 0067244040) (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 \$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 \$303,732.05. Considering the senior lien of \$4,709.14 and the junior lien of \$90,000.00, 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 twelve (12) 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.

65. [08-39181](#)-B-7 DAN REHKOP  
PD #1  
BANK OF AMERICA MORTGAGE, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-26-09 [[28](#)]

**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 (9<sup>th</sup> 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 289 Big Grizzly, Portola, CA 96122 (APN 028-110-020) (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 \$159,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$217,970.26. 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 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).

The court will issue a minute order.

66. [09-21886](#)-B-11 CONG TRAN AND  
EAT #1 HUYNH PHUONG  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-27-09 [[31](#)]

**Disposition Without Oral Argument:** The motion is denied as moot because the bankruptcy case was dismissed on April 2, 2009. (Dkt. 38).

The court will issue a minute order.

67. 08-39387-B-7 ROBERT SIEGEL  
TJP #1  
TRIAD FINANCIAL  
CORPORATION

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-31-09 [13]

**Tentative Ruling:** The motion is denied as moot. The automatic stay terminated as to the collateral, a 2001 Chevrolet Silverado 1500 (VIN 1GCEC14VX1Z149246) (the "Collateral"), at 12:01 a.m. on January 30, 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 filed a statement of intention with respect to this item of personal property within the deadline established by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1007(b)(2). The debtor stated that he would "retain collateral and continue to make regular payments." 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. 9<sup>th</sup> Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtor had until Thursday, January 29, 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 January 30, 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.

68. 09-23792-B-7 EDMUND/MELODY PAJARILLO  
EAT #1  
BANK OF AMERICA, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-20-09 [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 (9<sup>th</sup> 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 2326 Highlet Court, Tracy, CA 95377 (APN 238-250-70) (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 \$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 \$278,772.69. Considering the senior lien of approximately \$5,338.00 and the junior lien of \$190,087.99, 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. 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.

69. [09-22696](#)-B-7 JUSTIN/KRISTAL HALE HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK 3-30-09 [[13](#)]  
NATIONAL TRUST COMPANY, 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.

70. [09-23697](#)-B-7 ALEJANDRO TAPIA HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 3-31-09 [[9](#)]  
REGISTRATION 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 (9<sup>th</sup> 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 1378 North Northstar Avenue, Colton, CA 93234 (APN 0250-333-55-0-000) (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 for the motion 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 \$208,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$150,427.13. Considering the junior lien of \$68,977.00, 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 four (4) 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 for the motion 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.

71. [07-29801](#)-B-7 DALE/KAREN MOTE HEARING - MOTION  
KB #1 TO REOPEN CASE TO INCLUDE  
PARTIES INVOLVED IN A PENDING  
LAWSUIT  
3-9-09 [[108](#)]

**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 denied as moot.

Through this motion, debtors ask the court to reopen the instant bankruptcy case pursuant to 11 U.S.C. § 350(b) and Fed. R. Bankr. P. 5010. In this instance, the bankruptcy case was filed on November 16, 2007 but was never closed. Debtors, therefore, already have the relief that they seek.

The court will issue a minute order.

72. [05-36908](#)-B-7 THOMAS DANIEL HEARING - OBJECTION  
DNL #17 TO PROOF OF CLAIM NO. 8 BY  
AMICARE OF MISSOURI DBA  
PINEY RIDGE CENTER  
2-23-09 [[236](#)]

**Disposition Without Oral Argument:** The failure of a creditor to file 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 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim no. 8 on the court's claims register, filed by Cottage AmiCare of Missouri dba Piney Ridge Center, ("Claim") is resolved without oral argument.

The objection is sustained, and the Claim is disallowed except to the extent already paid by the trustee. Except as so ordered, the objection is overruled.

The Claim was not timely filed. The last date to file a claim was July 21, 2006. (Dkt. 41). AmiCare of Missouri dba Piney Ridge Center filed the Claim for \$34,238.28 on April 21, 2008. Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

The court will issue a minute order.

73. [08-38513](#)-B-7 LEE ANNE/VANDEVER MCCLELLAN HEARING - MOTION  
UST #1 FOR ASSESSMENT OF FINES AGAINST  
HONEY GUYON FOR VIOLATIONS  
AND FOR REVIEW OF FEES  
3-30-09 [[27](#)]

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). In this instance, the court issues a tentative ruling.

The motion is granted. Honey Guyon ("Guyon") shall pay a total of \$3,400.00 to debtors, Lee Anne K. McClellon and Vandever McClellon (collectively "Debtors"), consisting of a \$2,000.00 fine pursuant to 11 U.S.C. § 110(i)(1)(B)(i) and forfeiture of the \$1,200.00 fee charged to Debtors for the preparation of their bankruptcy petition and schedules pursuant to 11 U.S.C. § 110(h)(3)(B).

The facts are undisputed. Debtors paid \$1,200.00 to Guyon to prepare their bankruptcy petition and schedules and an additional \$600.00 for assistance regarding debtor Lee Anne K. McClellon's child support issues. Guyon advised Debtors, a father and daughter, that Vandever McClellon needed to file bankruptcy because he is a joint owner on a truck with his daughter even though he did not have any delinquent debts. Guyon, acting as a petition preparer for Debtors, prepared Debtors' petition, Statement of Financial Affairs, and schedules, each of which did not contain the complete identifying number, or social security number of Guyon. Guyon did not provide Debtors with written notice, disclosing the limitations on her services or fees, or file it with the court. Guyon also failed to file with the court within ten days of the filing of the petition a declaration under penalty of perjury disclosing all fees collected in the year prior to the bankruptcy filing from Debtors.

Guyon's conduct violates several provisions of 11 U.S.C. § 110. The \$1,200.00 fee Guyon charged Debtors exceeds the maximum allowable fee of \$125.00 permitted in this district pursuant to 11 U.S.C. § 110(h)(1) and the Guidelines Pertaining to Bankruptcy Petition Preparers in Eastern District of California Cases. Her failure to notify Debtors of the maximum allowable fee and her failure to disclose the actual amount

received from Debtors also violates 11 U.S.C. §§ 110(h)(1) and (h)(2). Also, as a non-attorney, Guyon impermissibly gave Debtors legal advice in violation of 11 U.S.C. § 110(e)(2), including advising Vandever McClellon that he needed to and was permitted to file a bankruptcy jointly with his daughter.

The court finds that Guyon's conduct violates § 110 and further finds her conduct to be fraudulent, unfair, and deceptive. Accordingly, the court orders Guyon to pay \$2,000.00 to Debtors pursuant to 11 U.S.C. § 110(i)(1)(B)(i) and further orders the forfeiture to Debtors of the impermissible \$1,200.00 fee paid by Debtors to Guyon.

Counsel for the movant shall prepare an order consistent with the foregoing ruling.

74. [08-33523](#)-B-11 AHMAD/DARCI JAYOUSI HEARING - MOTION  
WSD #6 TO VALUE LIEN OF NATIONAL  
CITY BANK  
3-31-09 [[128](#)]

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of creditor's claim secured by the second deed of trust on real property located at 7665 Wildflower Court, Granite Bay, California (APN 035-162-034-000) (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

For the purposes of this motion, the Property had a value of \$1,395,000.00 on the date of the petition. The Property is encumbered by Placer County Tax Collector's tax lien with a balance of approximately \$8,000.00 and a first deed of trust also held by American Home Mortgage with a balance of approximately \$1,553,810.00. Thus, the collateral value available to National City Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

75. [08-38394](#)-B-7 JOSE/LOU ANN SAENZ HEARING - MOTION  
CWS #2 FOR EXTENSION OF TIME FOR  
FILING A COMPLAINT OBJECTING  
TO DISCHARGE  
3-23-09 [[35](#)]

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted. The deadline for the trustee to file a complaint objecting to the discharge of the debtors under 11 U.S.C. § 727 is extended to Monday, June 15, 2009.

The trustee timely filed the motion pursuant to Federal Rule of Bankruptcy Procedure 4004(b). The chapter 7 trustee alleges without dispute that he has discovered that the debtors may have undervalued certain assets and overvalued certain liabilities in debtors' schedules. The trustee further alleges without dispute new questions have arisen regarding debtors' assets and financial affairs. Accordingly, in the absence of opposition, the court finds that the chapter 7 trustee has established cause for extension of the deadlines to file a complaint objecting to the debtors' discharge.

The court will issue a minute order.

76. [06-23603](#)-B-13J JASON DAVIS HEARING - ORDER  
[06-2395](#) TO SHOW CAUSE  
G.E. MONEY BANK, VS. 4-6-09 [[22](#)]

JASON DAVIS

**Tentative Ruling:** None.

77. [08-33103](#)-B-7 MICHELLE POE CONT. HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
3-12-09 [[35](#)]

CONT. FROM 4-14-09

**Tentative Ruling:** None.

78. [09-20104](#)-B-7 RAE-LYNN BRISTER HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
WACHOVIA DEALER 4-14-09 [[30](#)]  
SERVICES, INC., VS.

**Tentative Ruling:** The motion is denied as moot. Considering the automatic extension provided by Fed. R. Bankr. P. 9006(a), the automatic stay terminated with respect to the collateral, a 2006 Nissan Xterra (VIN 5N1AN08W06C514741) (the "Collateral"), at 12:01 a.m. on March 17, 2009 by operation of 11 U.S.C. § 362(h) (1), 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 filed a statement of intention with respect to this item of personal property within the deadline established

by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1007(b)(2). The debtor indicated an intent to reaffirm her obligation to movant regarding the Collateral. (Dkt. 14 at 16). 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. 9<sup>th</sup> Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2)(B) and considering the automatic extension provided by Fed. R. Bankr. P. 9006(a), debtor had until Monday, March 16, 2009 to perform the stated intention. There is no evidence that she did so. Thus, as the collateral is personal property, the automatic stay terminated at 12:01 a.m. on March 17, 2009 by operation of 11 U.S.C. § 362(h)(1), 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.

79. [08-39206](#)-B-7 JOHN/FLORENCE NATIVIDAD HEARING - MOTION FOR  
RSS #1 RELIEF FROM AUTOMATIC STAY  
FIRST FEDERAL BANK 4-8-09 [[39](#)]  
OF CALIFORNIA, VS.

DISCHARGED 4-8-09

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

This matter is continued to May 12, 2009 at 9:31 am. On or before April 28, 2009, the date of this hearing, the movant shall serve the motion, its supporting papers, and notice of the continued hearing on the debtors at their address of record in this case (Dkt. 1) and shall file proof of such service with the court within three court days thereafter. LBR 9014-1(e)(2). If the movant fails to do any of the foregoing the motion will be denied without prejudice for improper service.

The court will issue a minute order.

80. [09-22909](#)-B-7 MANUEL/LETICIA GALAVIZ HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC REGISTRATION 4-8-09 [[15](#)]  
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.

81. [08-39317](#)-B-7 NIKKI SEID  
HDR #1

HEARING - DEBTOR'S  
MOTION FOR COURT ORDER  
DIRECTING SHERIFF TO RELEASE  
FUNDS TO DEBTOR  
4-6-09 [[15](#)]

DISCHARGED 4-13-09

**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. [07-30732](#)-B-7 GARY/JACQUELINE JONES  
MPD #2

HEARING - MOTION  
FOR APPROVAL OF COMPROMISE AND  
SETTLEMENT OF THE ESTATE'S CLAIM  
FOR RECOVERY OF NON EXEMPT  
PROPERTY OF THE DEBTORS TOGETHER  
WITH ABANDONMENT OF THE DEBTORS'  
RESIDENCE BACK TO THEM  
3-19-09 [[94](#)]

DISCHARGED 10-23-08

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is denied without prejudice.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

This case was commenced under chapter 13 on December 11, 2007. The case was converted to chapter 7 by order entered July 1, 2008 (Dkt. 59). The motion states that "during the course of administering the estate [the chapter 7 trustee] discovered that the debtors owned a residence at 1852

16<sup>th</sup> Street, Oroville, CA 95965 APN 030-038-003"("Property"). The trustee's discovery apparently occurred when the trustee read the debtors' schedules, because the Property is listed in the debtors' Schedule A filed December 11, 2007. The Property was schedules with a value of \$230,000.00 and a secured claim of \$20,000.00. Schedule D lists a first deed of trust on the Property in favor of Larry Jones. Schedule E lists real property taxes of \$6,171.00, and Schedule C claims a homestead exemption of \$75,000.00. Based on the schedules, the Property had, at the time of the filing, \$128,829.00 of non-exempt equity. The motion contains no information about the current value of the Property. The motion states only that the trustee initially sought to market and sell the Property in order to administer the Property for the benefit of creditors and that the debtors proposed to pay the sum of \$18,000.00 to the estate in exchange for the estate's abandonment of the Property to the debtors. The motion recites that the proposed settlement will pay all filed claims (\$13,960.00) in full, with "a small amount of interest," trustee's fees and costs totaling \$2,350.00 and attorneys' fees and costs of totaling \$1,664.08.

The trustee asserts the compromise is fair and equitable. His argument first focuses on the assertion that the outcome of the sale of the Property is uncertain since the real estate market is declining and poses a risk to the estate of recovering less than \$18,000.00 for the benefit of creditors. Second, the trustee's argument focuses on the assertion that the costs, risks and delay of the sale would substantially diminish the distribution to creditors whereas the subject compromise will pay creditors in full. Finally, the trustee argues that the administration of the bankruptcy case may be concluded sooner if the compromise is approved.

As to the trustee's request to abandon the Property, the trustee alleges without dispute that there is non-exempt equity in the Property. The only information available to the court indicates that non-exempt equity to be \$128,829.00. Although the trustee asserts that the non-exempt equity in the Property need not be administered because the debtors' payment of \$18,000.00 to the estate will satisfy all claims in this case, the foregoing does not show that the Property is of inconsequential value and benefit to the estate or that it is burdensome to the estate, the statutory grounds for abandonment pursuant to 11 U.S.C. § 554(b)(1). Furthermore, with the apparent non-exempt equity in the Property, the trustee has failed to show that paying a total of \$25.92 of interest to creditors should be approved when they appear to be entitled under 11 U.S.C. § 726(a)(5) to interest at the legal rate from the date of the filing of the petition.

Based on the foregoing, the court finds that the trustee has not carried the burden of persuading the court that the proposed compromise is fair and equitable.

The court will issue a minute order.

83. [07-30732](#)-B-7 GARY/JACQUELINE JONES  
MPD #3

HEARING - VERIFIED  
MOTION FOR APPROVAL OF ATTORNEY  
FEES OF \$1,550.00 PLUS COSTS  
OF \$114.08 TO MICHAEL P.  
DACQUISTO AS ATTORNEY FOR THE  
BANKRUPTCY ESTATE, FIRST AND  
FINAL REQUEST  
3-19-09 [[89](#)]

DISCHARGED 10-23-08

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is granted to the extent set forth herein. The application is approved for a total of \$1,550.00 in fees and costs of \$114.08. Of that amount, \$1,664.08 shall be paid as an administrative expense of the estate. Except as so ordered, the motion is denied.

On December 11, 2007, the debtors filed a chapter 13 petition. The case was subsequently converted to one under chapter 7 on July 1, 2008. John W. Reger was appointed as the chapter 7 trustee on July 1, 2008. The court authorized the employment of a Michael P. Dacquisto as attorney for the trustee, effective December 12, 2008, on December 22, 2008. Applicant now seeks compensation for services for the period of December 14, 2008 through March 19, 2009, equaling \$1,550.00 in attorney's fees. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

84. [09-20033](#)-B-7 KOW/NAI SAETEUN

HEARING - DEBTORS' MOTION  
TO DISMISS CASE  
4-14-09 [[31](#)]

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

The motion is continued to May 12, 2009 at 9:32 a.m. The debtors failed to establish service of the motion on all creditors, as required by Fed. R. Bankr. P. 2002(a)(4). Simply stating that the motion was served on "all creditors listed on the master address list" (Dkt. 33) is insufficient to show service on all creditors. The names and addresses of the creditors served must be included in the proof of service.

On or before April 28, 2009, the date of this hearing, the debtors shall serve the motion, its supporting papers, and notice of the continued hearing on all creditors listed on the master address list. The debtors shall also file the notice of the continued hearing with the court. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the debtors fail to do any of the foregoing the motion will be denied without prejudice for improper service.

The court will issue a minute order.

85. [08-33476](#)-B-11 FINS MARKET, INC.  
SMR #2

CONT. HEARING - MOTION  
TO ALLOW ASSUMPTION OF NON-  
RESIDENTIAL REAL PROPERTY LEASE  
2-17-09 [[81](#)]

CONT. FROM 3-17-09

**Tentative Ruling:** This matter was continued from March 17, 2009 to allow the debtor to properly serve all parties in interest with this motion and its supporting paperwork. On March 26, 2009, debtor filed a notice of continued hearing pursuant to LBR 9014-1(f)(1) and a certificate of service, showing that the notice of continued hearing only was served on all creditors and the United States trustee. In this instance, the court issues the following tentative ruling.

The motion is denied without prejudice due to a procedural defect.

Debtors failed to file a proof of service showing service of this motion and all supporting paperwork in derogation of Fed. R. Bankr. P. 6006. Pursuant to Fed. R. Bankr. P. 6006(a), "[a] proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014." Pursuant to Fed. R. Bankr. P. 6006(c), "[n]otice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and . . . to the United States trustee." Fed. R. Bankr. P. 6006(c). In this instance, the certificate of service fails to show that the motion and its supporting declaration were served on any party in interest. Accordingly, there is no presumption of service of these documents on any party in interest, as required by Fed. R. Bankr. P. 6006 and 9014.

The court will issue a minute order.

86. [07-24889](#)-B-7 ALEXEY/LARISA MIKITYUK  
[08-2283](#) SMR #4  
VIKTOR DEREVYANCHUK, ET AL., VS.

HEARING - PLAINTIFF'S  
MOTION TO DISMISS ADVERSARY  
PROCEEDING  
3-18-09 [[20](#)]

ALEXEY MIKITYUK, ET AL.

DISCHARGED 10-3-07

**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 denied without prejudice.

Plaintiffs seek dismissal of all seven claims for relief against defendants Alexey Mikityuk and Larisa Mikityuk (collectively "Defendants") pursuant to Fed. R. Civ. P. 41(a)(2), made applicable here pursuant to Fed. R. Bankr. P. 7041. Pursuant to Fed. R. Civ. P. 41(a)(2), the court may order the dismissal of an action at the plaintiff's request on terms that the court considers proper, except as

provided in Bankruptcy Rule 7041(a)(1). Bankruptcy Rule 7041(a)(1)(A) permits a plaintiff to dismiss an action unilaterally before the opposing party serves either an answer or a motion for summary judgment. Here, Defendants filed an answer on July 16, 2008. Therefore, a stipulation or motion is required. No stipulation for dismissal appears on the docket. This is Plaintiffs' attempt at a motion, but Plaintiffs served neither Defendants nor their counsel of record.

The court will issue a minute order.

87. [09-23918](#)-B-7 PABLO/SUSANA DIAZ HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. ON REAL PROPERTY  
4-9-09 [[11](#)]

**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 346 Illinois Street, Vallejo, CA 94590 (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 \$275,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$326,395.59. 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 eleven (11) 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.

88. 08-38619-B-7 VERNON/SHONNA FRIETAS HEARING - DEBTORS'  
MOH #1 MOTION TO COMPEL ABANDONMENT  
OF TRUSTEE'S INTEREST IN  
DEBTORS' REAL PROPERTY  
4-14-09 [33]

**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.

89. 09-23320-B-7 LAURA CERVELLIN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC 4-8-09 [11]  
REGISTRATION SYSTEMS, INC., VS.

**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 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 11754 Melones Circle, Gold River, CA 95670 (APN 069-0510-056) (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 \$590,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$615,127.70. Considering the junior lien of \$180,000.00, 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 debtor has failed to make nine (9) 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.

90. [09-24133](#)-B-7 ERNEST CRONK AND  
PAULA JORDAN HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
4-6-09 [[12](#)]

**Tentative Ruling:** None.

91. [09-23742](#)-B-7 FRANK YAN HEARING - ORDER  
TO SHOW CAUSE RE DISMISSAL  
OF CASE OR IMPOSITION OF  
SANCTIONS  
4-7-09 [[13](#)]

**Tentative Ruling:** None.

92. [08-35844](#)-B-7 LAUREEN RUSS  
ND #1 HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
LA SALLE BANK N.A., VS.  
4-3-09 [[45](#)]

**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.

93. [08-39345](#)-B-7 KATRINA CHARAN  
DNL #2 CONT. HEARING - MOTION  
FOR ORDER COMPELLING  
ABANDONMENT  
3-26-09 [[37](#)]

CONT. FROM 4-14-09

**Tentative Ruling:** This matter continued from April 14, 2009 without a briefing schedule. Nothing further has been filed in this matter. The matter remains in its preliminary posture as one filed 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.

94. [09-23951](#)-B-7 BRANDON GEPHART  
SW #1 HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
WACHOVIA DEALER  
SERVICES, INC., VS.  
4-10-09 [[10](#)]

**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.

95. 09-20357-B-7 BRENT LAWRENCE  
DO #1  
COMMUNITY BUSINESS  
BANK, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-13-09 [50]

**Tentative Ruling:** The motion is denied as moot. Considering the automatic extension provided by Fed. R. Bankr. P. 9006(a), the automatic stay terminated as to the collateral, equipment (the "Collateral"), at 12:01 a.m. on February 10, 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 Fed. R. Bankr. P. 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. 9<sup>th</sup> Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2) and considering the automatic extension provided in Fed. R. Bankr. P. 9006(a), the debtor had until February 9, 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 February 10, 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.

96. 09-20357-B-7 BRENT LAWRENCE  
FRL #2

HEARING - MOTION  
FOR SALE OF ASSET  
4-7-09 [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.

97. 09-23860-B-7 BERNARD CORNER  
WGM #1  
AMERICAN HOME MORTGAGE  
SERVICING, INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
ON REAL PROPERTY  
4-6-09 [8]

**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 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 19271 Forrest View Circle, Pioneer, CA 95666 (APN 023-050-019) (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 \$240,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$251,077.99. 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 five (5) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of 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.

98. 09-20463-B-7 JASON RAMOS  
WGM #1  
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
ON REAL PROPERTY  
4-3-09 [13]

**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.

99. 09-24676-B-7     CONSTANCE ABELLA  
WGM #1  
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
ON REAL PROPERTY  
4-6-09   [7]

**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 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 1998 Veronica Court, Yuba City, CA 95993 (APN 56-240-074) (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 \$260,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$373,017.44. Considering the junior lien of \$36,000.00, 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 debtor has failed to make ten (10) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of 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.

100. 09-24379-B-7     LYSSA SKEAHAN  
RDW #1  
PATELCO CREDIT UNION, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
4-1-09   [9]

**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 Collateral, the court issues the following tentative ruling.

The motion is granted to the extent set forth herein. 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 the movant to obtain possession of its collateral, a 2000 Landrover Disco (VIN SALTY1244YA233454) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any

attorney's 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 debtor 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 \$5,675.00. Movant holds a lien on the Collateral in the amount of \$11,918.61. 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 and report of no distribution by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtor has not made five (5) payments. Debtor has filed a statement of intention indicating an intent to surrender the Collateral. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

101. 09-23389-B-7 DEAN/KRISTI COWLEY HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A., VS. 4-3-09 [14]

**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 1613 Poppy Circle, Rocklin, CA 95765 (APN 373-030-028) (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 \$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 \$251,048.88. Considering the junior lien of \$107,045.27, 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 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.

102. [09-22695](#)-B-7 LINDA SUKAUSKAS HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. ON REAL PROPERTY  
4-7-09 [[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.

103. [08-35540](#)-B-11 REGENT HOTEL, LLC HEARING - APPLICATION FOR  
SRH #6 ORDER AUTHORIZING DEBTOR TO  
EMPLOY ATTORNEYS FOR SPECIAL  
PURPOSE  
3-23-09 [[224](#)]

**Tentative Ruling:** The court issues no tentative ruling on the merits of the motion. Creditor First Bank's countermotion is filed 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 countermotion.

104. [09-20104](#)-B-7 RAE-LYNN BRISTER HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
WACHOVIA MORTGAGE FSB, VS. 4-16-09 [[36](#)]

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

This matter is continued to the court's calendar on May 12, 2009 at 9:31 a.m.

This motion was initially set on this calendar. Movant attempted to continue the matter unilaterally from this calendar to the court's May 12, 2009, 9:31 am calendar. (Dkt. 42). Continuances must be approved by the court. LBR 9014-1(j). Simply filing an amended notice of hearing is ineffective. However, in this instance, the court construes the amended notice of hearing as a request for court approval of the continuance and grants the request to continue this matter to the court's May 12, 2009, 9:31 am calendar.

The court will issue a minute order.

105. [09-24175](#)-B-11 AUBURN MULTI-FAMILY I, LLC  
HM #1

HEARING - MOTION OF  
LLD & B LIMITED PARTNERSHIP  
TO CONTEST DEBTOR'S CLAIM IT  
IS NOT A SINGLE ASSET REAL  
ESTATE DEBTOR  
3-31-09 [[14](#)]

**Tentative Ruling:** This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the debtor, and all other parties 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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). In this instance, the court issues a tentative ruling.

The motion is denied without prejudice.

Through this motion, LLD & B Limited Partnership ("Movant") seeks an order determining that the real property scheduled by the debtor, real property located at 1401 Canal Street, Auburn, California ("Property"), is single-asset real estate as that term is defined in 11 U.S.C. § 101(51B). The court denies this request without prejudice because Movant has not shown that the Property satisfies that definition. The Bankruptcy Code defines "single asset real estate" as

real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.

11 U.S.C. § 101(51B). Here, Movant has not alleged or proved facts establishing whether or not the Property is residential real property or if so whether or not it contains four or more residential units. Accordingly, the Movant has not shown that it is legally entitled to the relief that it seeks.

The court will issue a minute order.

106. [08-33476](#)-B-11 FINS MARKET, INC.  
PP #3

HEARING - MOTION  
TO MODIFY SALARIES PAID TO THE  
OWNERS OF THE DEBTOR AND MOTION  
TO APPROVE STIPULATION BETWEEN  
THE DEBTOR AND THE COMMITTEE  
CAPPING SALARIES  
4-14-09 [[111](#)]

**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.

107. [04-24880](#)-B-11 GAVRILO SPAICH  
DD #74

HEARING - MOTION  
BY TRUSTEE FOR APPROVAL OF  
COMPROMISE OF CONTROVERSY AND  
SALE OF PROPERTY OF ESTATE  
3-30-09 [[2184](#)]

**Tentative Ruling:** None.