

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 12, 2009 at 9:31 A.M.

1. 09-25300-B-7 THOMAS/AMANDA WURTZBERGER HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, VS. 4-13-09 [[12](#)]

Tentative Ruling: Neither the respondents 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 respondents have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of real property located at 460 Alemar Way, Yuba City, CA 95991 (APN 51-461-019) (the "Property") in accordance with applicable nonbankruptcy law. The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Cause for modification of the automatic stay exists because movant alleges without dispute that it acquired title to the Property at a pre-petition foreclosure sale and neither the estate nor the debtors have any interest in the Property, other than a bare possessory interest.

Counterclaims and offsets are not properly adjudicated on a motion for relief from automatic stay; however, the court may consider the existence of the allegations in exercising its discretion to grant or deny relief on the motion. Biggs v. Stovin (In re Luz Int'l.), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998); In re Bialac, 694 F.2d 625, 627 (9th Cir. 1982). Here, debtors in essence ask the court to assume the truth of the allegations in the Action and deny relief on that basis. The court declines to do so. The foreclosure sale took place, movant acquired title to the Property, and debtors currently have only a bare possessory interest. Based on the foregoing, the court finds that movant has established cause for relief from the automatic stay.

Nothing in this ruling prevents the debtors from asserting in any litigation, including without limitation litigation over the right to possession of the Property, that the foreclosure sale is invalid.

The court will issue a minute order.

2. [09-24203](#)-B-7 LAWRENCE/SHARRON MURRAY HEARING - MOTION FOR
DO #1 RELIEF FROM AUTOMATIC STAY
PREMIERWEST BANK, VS. 4-27-09 [[15](#)]

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

3. [09-20104](#)-B-7 RAE-LYNN BRISTER CONT. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE FSB, VS. 4-16-09 [[36](#)]

CONT. FROM 4-28-09

Tentative Ruling: This matter continued from April 28, 2009 after movant filed an amended notice of hearing, purporting to continue this matter to May 12, 2009. The court construed the amended notice of hearing as a request for court approval of the continuance, and the court approved the continuance by order entered on May 1, 2009. (Dkt. 56). Nothing further has been filed in this matter. This matter remains in its preliminary posture as 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 and because of the size of this morning's three related calendars (110 matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After 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 8407 Hialeah Way, Fair Oaks, CA 95628 (APN 261-0410-001) (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 debtor has failed to make nine (9) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

4. 09-24904-B-7 RICHELLE BRUMFIELD
MET #1
AMERICAN HONDA
FINANCE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [8]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to obtain possession of the subject vehicle, a leased 2006 Honda Accord (VIN 1HGCH56156A054722) ("Vehicle"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. 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 alleges without dispute that debtor has failed to make five (5) lease payments. Also, movant alleges without dispute that there is no equity in the Vehicle, and there is no evidence that the Vehicle is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

5. 09-20405-B-7 EDD/BABY DUCUSIN
PD #1
AURORA LOAN
SERVICES, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-08 [28]

DISCHARGED 4-27-09

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part and denied in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on April 27, 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 the movant to foreclose on the real property located at 9020 Testerman Way, Elk Grove, CA 95758 (APN 119-1960-023-0000) (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 debtors have failed to make three (3) mortgage payments. Also, movant alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

6. [08-39206](#)-B-7 JOHN/FLORENCE NATIVIDAD CONT. HEARING - MOTION FOR
RSS #1 RELIEF FROM AUTOMATIC STAY
FIRST FEDERAL BANK 4-8-09 [[39](#)]
OF CALIFORNIA, VS.

DISCHARGED 4-8-09
CONT. FROM 4-28-09

Disposition Without Oral Argument: This matter continued from April 28, 2009 for service on debtors on or before April 28, 2009. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is denied without prejudice.

Following the hearing on April 28, 2009, the court issued a minute order which directed the movant to perform several tasks ("the Order"). (Dkt. 48). The movant failed to comply with the court's directives in the Order. Accordingly, the motion is denied without prejudice for improper service.

The court will issue a minute order.

7. [09-24806](#)-B-7 URBANO/AUDRA RODRIGUEZ HEARING - MOTION FOR
GSD #1 RELIEF FROM AUTOMATIC STAY
PACCAR FINANCIAL CORP., VS. 4-23-09 [[17](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of its collateral, a 2001 Utility Reefer (VIN 1UYVS25331U573114) ("Vehicle"), 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 alleges without dispute that debtors have failed to make one (1) payment. Debtors have filed a statement of intent to surrender the Vehicle.

The court will issue a minute order.

8. [07-27108](#)-B-7 DIANNE MURRAY
PD #1
AMERICA'S SERVICING CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-7-09 [[37](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 1125 Buckthorn Lane, Fairfield, CA 94533 (APN 0168-383-050) ("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 debtor has failed to make eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

9. [09-24308](#)-B-7 HENGLY CHHONG
WGM #1
CENTRAL MORTGAGE CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
4-22-09 [[13](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. However, because debtor has filed a statement of intent to surrender the Property and because of the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 4 Brenham Court, Sacramento, CA 95823 (APN 117-0710-053) ("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 debtor has failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

10. [08-27310](#)-B-7 STRIPER COVE/WASCO, LLC

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [[47](#)]

BRUCE AND IRMA TINER
FAMILY TRUST, VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 15789 Magnolia Avenue, Wasco, CA 93280 (APN 487-150-03-01-1) ("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 debtor has failed to make one (1) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

11. [09-22311](#)-B-7 RITH LIM

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-09 [[12](#)]

PD #1
JPMORGAN CHASE BANK, NA, VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 8755 Bergamo Circle, Stockton, CA 95212 (APN 126-230-07) ("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 debtor has failed to make approximately eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

12. [09-21212](#)-B-7 RUSSELL/JENNIFER GARCIA HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 4-16-09 [[36](#)]
SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 2071 Camp Whitney Circle, Rocklin, CA 95765 (APN 017-174-004-000) ("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 debtors have failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

13. [09-25415](#)-B-7 BRENDA MCGREGOR HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-13-09 [[8](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 4806 Fernwood Court, Fairfield, CA 94534 (APN 0180-211-180) ("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 debtor has failed to make eight (8) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

14. [09-25715](#)-B-7 RICARDO BARRAGAN
PD #1
WELLS FARGO HOME
MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-7-09 [8]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 21 Shasta Drive, Rio Vista, CA 94571 (APN 0049283020) ("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 debtor has failed to make nine (9) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

15. [09-25416](#)-B-7 BARBARA PETERS
PD #1
WELLS FARGO HOME
MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [8]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 537 Poppy Circle, Benicia, CA 94510 (APN 0083-052-290) ("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 debtor has failed to make eight (8) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

16. [09-21417](#)-B-7 EDGAR/RHEA BEACH HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 4-9-09 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 8513 Crystal Ridge Way, Antelope, CA 95843 (APN 203-1290-165) ("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 debtors have failed to make eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors filed a statement of intent to surrender the Property and a statement of non-opposition to the motion.

The court will issue a minute order.

17. [09-23618](#)-B-11 LINX GROUP, INCORPORATED HEARING - MOTION FOR
FWK #1 RELIEF FROM AUTOMATIC STAY
BLACKBURNE AND BROWN 4-13-09 [[17](#)]
MORTGAGE COMPANY, INC., VS.

Disposition Without Oral Argument: The motion is denied as moot because the bankruptcy case was dismissed by order entered on April 30, 2009. (Dkt. 25).

The court will issue a minute order.

18. [08-30919](#)-B-7 NADINE TURNER CONT. HEARING - MOTION TO
MBB #1 RECONSIDER ORDER ON MOTION
FOR RELIEF FROM STAY
3-12-09 [[80](#)]

DISCHARGED 3-17-09
CONT. FROM 3-31-09

Tentative Ruling: This matter continued from March 31, 2009 without a briefing schedule. Nothing further has been filed in this matter.

The motion to reconsider is denied without prejudice.

No proof of service was filed with this motion (Dkt. 80), filed March 12, 2009, or with the declaration of Nadine Turner (Dkt. 86), filed March 23,

2009. Accordingly, there is no presumption of service on any party in interest. The motion was filed only nineteen (19) days prior to the hearing. The notice of hearing fails to advise potential respondents of the proper requirements for opposition. In the absence of proper service, this motion must be denied without prejudice.

The court will issue a minute order.

19. [09-23921](#)-B-7 RAFAEL SIERRA AND HEARING - MOTION FOR
SW #1 ROSALIA LOPEZ RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER 4-28-09 [[21](#)]
SERVICES, 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.

20. [09-21622](#)-B-7 BOONLORM POLSURIYAR HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 4-9-09 [[13](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 337 Killingsworth Circle, Vacaville, CA 95687 (APN 0131-352-090) ("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 debtor has failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

21. [09-23424](#)-B-7 WILMA TORRES HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK NATIONAL ASSN., VS. 4-21-09 [[11](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtor has filed a statement of intent to surrender the Property and because of the size of this morning's three related calendars (110

matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After 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 228 Valley Oak Lane, Vallejo, CA 94591 (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 debtor has failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

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

22. 09-25626-B-7 CLIFF/KIMBERLY HARNER HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 4-24-09 [7]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because debtors have filed a statement of intent to surrender the Property and because of the size of this morning's three related calendars (110 matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After 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 1677 Trumpet Street, Redding, CA 96003 (APN 077520008) (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 debtors have failed to make eight (8) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

23. [09-24729](#)-B-7 CHARLES NORTH
PD #1
AMERICA'S SERVICING CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-09 [[8](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 3730 44th Street, Sacramento, CA 95817 ("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 debtor has failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

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

24. [09-23533](#)-B-7 TEVITA/SELINA TUPOU
APN #1
WELLS FARGO
AUTO FINANCE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [[17](#)]

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

The motion is denied as moot. The automatic stay terminated as to the subject vehicle, a leased 2004 Dodge Ram 2500 (VIN 3D7KU28C84G249239) (the "Vehicle") at 12:01 a.m. on May 2, 2009 by operation of 11 U.S.C. § 365(p) (1), and the debtors' possessory interest in the Vehicle has from that date no longer been property of the estate.

Debtors' petition was filed under chapter 7 on March 2, 2009. Pursuant to the applicable terms of 11 U.S.C. § 365(d) (1), the trustee may assume or reject an unexpired lease of personal property of the debtor within 60 days after the order for relief. In this case, as of May 1, 2009, sixty days after the filing of debtors' petition, the chapter 7 trustee had not assumed or rejected the lease of the Vehicle. Pursuant to 11 U.S.C. § 365(p) (1), where a lease of personal property is rejected or not timely assumed by the trustee under section 362(d), the debtor's interest in the leased property is no longer property of the estate and the automatic stay under section 362(a) is automatically terminated. Thus, the automatic stay terminated with respect to the Vehicle at 12:01 a.m. on May 1, 2009 by operation of 11 U.S.C. § 365(p) (1), and the debtors' possessory interest in the Vehicle has from that date no longer been

property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

25. [09-24133](#)-B-7 ERNEST CRONK AND HEARING - MOTION FOR
PD #1 PAULA JORDAN RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 4-7-09 [[14](#)]

Disposition Without Oral Argument: The motion is denied as moot because the bankruptcy case was automatically dismissed on April 28, 2009, which dismissal was confirmed by order entered on May 1, 2009. (Dkt. 27).

The court will issue a minute order.

26. [09-23338](#)-B-7 HEATHER DOBRANIC HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, VS. 4-16-09 [[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.

27. [08-35939](#)-B-7 CHRISTOPHER/MERISSA HEARING - MOTION FOR
PD #1 SCHREZENMEIER RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-6-09 [[34](#)]
MORTGAGE, INC., VS.

DISCHARGED 2-11-09

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part and denied as moot in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on February 11, 2009, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 1081 Manza Circle, Roseville, CA 95678 (APN 015-350-022) ("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 debtors have failed to make six (6) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender

the Property.

The court will issue a minute order.

28. [09-25141](#)-B-7 MITZI HARRISON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING 4-9-09 [[9](#)]
COMPANY, VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 1304 Huckleberry Court, Tracy, CA 95377 (APN 24050031) (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 debtor has failed to make nine (9) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

29. [09-24742](#)-B-7 SI/LIZA NGUYEN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-6-09 [[8](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 10435 Danichris Way, Elk Grove, CA 95757 (APN 132-1470-088-0000) (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 debtors have failed to make nine (9) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender

the Property.

The court will issue a minute order.

30. [09-24842](#)-B-7 ELIA YANEZ HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, VS. 4-20-09 [[9](#)]

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

31. [09-23345](#)-B-7 ALVIN/KRISTINA THOMAS HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
TOYOTA MOTOR CREDIT CORPORATION, VS. 4-13-09 [[10](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2005 Toyota 4Runner (VIN JTEBT14R650052444) (the "Collateral"), at 12:01 a.m. on May 7, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors 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 debtors indicated an intent to surrender the Collateral. (Dkt. 1 at 47). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2)(B), debtors had until Wednesday, May 6, 2009 to perform their stated intention. There is no evidence that they did so. Thus, as the collateral is personal property, the automatic stay terminated at 12:01 a.m. on May 7, 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.

32. [09-23347](#)-B-7 SERGEI SVIRSKI AND HEARING - MOTION FOR
WGM #1 SILVI YONOLAYNEN RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE CO., VS. ON REAL PROPERTY
4-19-09 [[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.

33. [09-24548](#)-B-7 JOSEPH/ROICE STILLWAGON HEARING - MOTION FOR
RFM #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY BANK, VS. 4-20-09 [[38](#)]

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. [09-24548](#)-B-7 JOSEPH/ROICE STILLWAGON HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-8-09 [[12](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 1750 Harbell Street, North Port, FL 34288 ("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 debtors have failed to make fourteen (14) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

35. [09-24548](#)-B-7 JOSEPH/ROICE STILLWAGON HEARING - MOTION FOR
PD #3 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-10-09 [[18](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 502 Summerfield Way, Venice, FL 34292 (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 debtors have failed to make fourteen (14) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors filed a statement of intent to surrender the Property.

The court will issue a minute order.

36. [09-24548](#)-B-7 JOSEPH/ROICE STILLWAGON HEARING - MOTION FOR
PD #5 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-10-09 [[30](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 5945 Nyberg, North Port, Florida, 34286 (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 debtors have failed to make fourteen (14) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors filed a statement of intent to surrender the Property.

The court will issue a minute order.

37. [09-24849](#)-B-11 HIGHWAY 65, LLP
SHB #1
CENTRAL PACIFIC BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
4-10-09 [[14](#)]

Tentative Ruling: The motion is denied without prejudice or continued with movant's consent to June 9, 2009 at 9:31 a.m. to allow movant to file an amended motion and amended supporting documents that are properly signed. Movant's consent to continuance constitutes movant's waiver of the time requirements of 11 U.S.C. § 362(e).

The motion suffers from a procedural defect. Counsel for movant has failed to sign the motion and its supporting documents (Dkts. 14-19). The motion and supporting documents were filed electronically. The purported signatures on the documents ("/s/") does not comply with G.O. 04-01 ¶ 12(b), detailing how documents must be signed when electronically submitted. G.O. 04-01 ¶ 12(b) states that "[u]nless the electronically filed document has been scanned and shows the user's original signature, the signature of the electronic filer under whose username and password the document was filed shall be preceded by an '/s/' and typed in the space where the signature would otherwise appear" (emphasis added).

Fed. R. Bankr. P. 9011(a) provides the following: "[e]very petition, pleading, written motion, and other paper . . . shall be signed by at least one attorney of record in the attorney's individual name. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." LBR 9004(c) provides that "[a]ll pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them . . . [A]ffidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature."

The court will issue a minute order.

38. [09-24450](#)-B-7 MARY CALDERON
RCO #1
BANK OF AMERICA, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [[7](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 5908 Chestnut Avenue, Orangevale, CA 95662 (APN 223-0251-002) (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 debtor has failed to make eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

39. [09-21952](#)-B-7 DAVID/STERLIE EAVES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-6-09 [[16](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor[s] pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5859 West Park Drive, Ione, CA 95640 (APN 012-331-031-501) (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 debtors have failed to make three (3) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

40. [09-21355](#)-B-7 NESTOR/ANTOINETTE MOISES HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 4-9-09 [[24](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated 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 5621 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 fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that debtors have failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is

no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

41. [09-24455](#)-B-7 ANTHONY/DENYCE NAZZISI HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, NA, VS. 4-10-09 [[7](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 740 Heritage Place, Tracy, CA 95377 (APN 244-050-47) ("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 debtors have failed to make six mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

42. [09-24455](#)-B-7 ANTHONY/DENYCE NAZZISI HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 4-13-09 [[14](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 740 Heritage Place, Tracy, CA 95377 (APN 244-050-47) ("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 debtor has failed to make four mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this

chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

43. 09-22057-B-7 VALERIE WILHITE HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC 4-3-09 [14]
REGISTRATION SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 634 Peridot Way, Fairfield, CA 94534 (APN 0027-370-310) ("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 debtor has failed to make six (6) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

44. 08-38458-B-7 CLAUDE VAUGHAN HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-1-09 [42]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 1726 Presidio Way, Plumas Lake, CA 95961 (APN 022-010-004) ("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 debtor has failed to make eight (8) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the

Property.

The court will issue a minute order.

45. [09-22859](#)-B-7 BESHAM SINGH HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 4-9-09 [[14](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 973 Lavastone Drive, Lincoln, CA 95648 (APN 329-092-001) ("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 debtor has failed to make sixteen (16) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

46. [09-25163](#)-B-7 MOHAMAD KHAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY 4-14-09 [[12](#)]
MORTGAGE CO., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 5133 Lyle Avenue, Stockton, CA 95210 ("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 debtor has failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

47. [09-25863](#)-B-7 GLENN/MAGGIE CHEEVER HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
FIRST FEDERAL BANK 4-22-09 [[7](#)]
OF CALIFORNIA, 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.

48. [09-25065](#)-B-7 MERRIE-LEE MANUMA HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 4-21-09 [[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.

49. [09-24266](#)-B-7 RUTH MITCHELL HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE 4-8-09 [[8](#)]
BANK, NATIONAL ASSN., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 4835 Hope Lane, Sacramento, CA 95821 (APN 240-0471-006-0000) ("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 debtor has failed to make five (5) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Property, and the trustee has filed a report of no distribution.

The court will issue a minute order.

50. [08-22270](#)-B-7 JOSEPH SIAU AND
RCO #1 QIAN WANG
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-3-09 [[132](#)]

DISCHARGED 6-17-09

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. As to the debtors, the motion is denied as moot. The debtors received their discharge on June 17, 2008 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 4570 Rolling Oaks Drive, Granite Bay, CA 95746 (APN 460-110-061-0000) (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 debtor has failed to make eleven mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

51. [09-24870](#)-B-7 KERRY GOODWILL
KAT #1
AURORA LOAN SERVICES, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-15-09 [[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.

52. [09-23873](#)-B-7 ROSARIO MARCHADESCH
EAT #1
INDYMAC FEDERAL
BANK FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-8-09 [[12](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to

foreclose on the real property located at 2130 Sterling Drive, Rocklin, CA 95765 (APN 377-170-056-000) ("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 debtor has failed to make ten (10) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

53. [08-37774](#)-B-7 ROLINDA DEBOER HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS 4-3-09 [[43](#)]
SERVICING L.P., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. As to the debtor, the motion is denied as moot. The debtor received her discharge on April 29, 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 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 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 debtor has failed to make four (4) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

54. [09-25375](#)-B-7 LESLIE DUNHAM HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERCVICES, INC., VS. 4-22-09 [[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 in part. The automatic stay is modified 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 Nissan Altima (VIN 1N4A111E83C216571) ("Vehicle"), 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 court awards no fees or costs. 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 alleges without dispute that debtor has failed to make three (3) payments. Also, movant alleges without dispute that there is no equity in the Vehicle, and there is no evidence that the Vehicle is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Vehicle.

The court will issue a minute order.

55. [09-22777](#)-B-7 MICHAEL/BEVERLY CONNOLLY HEARING - MOTION
SSA #1 FOR RELIEF FROM AUTOMATIC
DON ROBERTS, ET AL., VS. STAY AND/OR ADEQUATE
PROTECTION AND REQUEST
FOR ATTORNEY'S FEES AND
COSTS
4-14-09 [[19](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on undeveloped property described as the south twenty feet of lot seventeen and eighteen in block two of Vista Del Canto, in the County of San Luis Obispo, CA ("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 debtor has failed to make four mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

56. [08-36279](#)-B-7 SANJEEV/BLESILDA HEARING - MOTION FOR
LAZ #1 MANSUKHANI RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 4-13-09 [[52](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 5509 Walnut Avenue, Sacramento, CA 95841 (APN 228-0540-007-000) ("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 debtors have failed to make fifteen (15) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

57. [09-22780](#)-B-7 ROMEO/ELMA CAMPANA CONT. HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 3-5-09 [[9](#)]

CONT. FROM 4-14-09,3-31-09

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant 11 U.S.C. § 362(d) (1) and (d) (2) in order to permit the movant to obtain possession of real property located at 2831 South Van Buren Street, Stockton, CA 95206 (APN 165-290-30) (the "Property") in accordance with applicable nonbankruptcy law. The 10-day stay of Fed. R. Bankr. P. 4001(a) (3) is not waived. Except as so ordered, the motion is denied.

Cause for modification of the automatic stay exists because movant alleges without dispute that it acquired title to the Property at a pre-petition foreclosure sale and neither the estate nor the debtors have any interest in the Property, other than a bare possessory interest.

Counterclaims and offsets are not properly adjudicated on a motion for relief from automatic stay; however, the court may consider the existence of the allegations in exercising its discretion to grant or deny relief on the motion. Biggs v. Stovin (In re Luz Int'l.), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998); In re Bialac, 694 F.2d 625, 627 (9th Cir. 1982). Here, debtor in essence asks the court to assume the truth of the allegations in the Action and deny relief on that basis. The court declines to do so. The foreclosure sale took place, movant acquired title to the Property, and debtor currently has only a bare possessory interest. Based on the foregoing, the court finds that movant has established cause for relief from the automatic stay.

Nothing in this ruling prevents the debtors from asserting in any

litigation, including without limitation litigation over the right to possession of the Property, that the foreclosure sale is invalid.

The court will issue a minute order.

58. [09-24380](#)-B-7 EDMUNDO/SOPHIA AGUILAR HEARING - MOTION FOR
JKB #1 RELIEF FROM AUTOMATIC STAY
WILSHIRE CREDIT CORP., VS. 4-6-09 [[7](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 450 Ross Way, Sacramento, CA 95864 (APN 293-0184-001-0000) ("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 debtors have failed to make twelve (12) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

59. [09-24286](#)-B-7 JAMES LA FORCE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME 4-1-09 [[11](#)]
MORTGAGE, INC., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 1850 Vermont Street, Gridley, CA 95948 (APN 009-220-024) ("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 debtor has failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

60. [09-24286](#)-B-7 JAMES LA FORCE HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE 4-8-09 [[19](#)]
BANK, NATIONAL ASSN., VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 2224 B Street, Oroville, CA 95966 (APN 035-083-018) ("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 debtor has failed to make eleven (11) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. Debtor has filed a statement of intent to surrender the Property.

The court will issue a minute order.

61. [09-22387](#)-B-7 CARLOS AQUINO AND CONT. HEARING - MOTION FOR
PD #1 DEISY ORELLANA RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 2-25-09 [[9](#)]

CONT. FROM 3-31-09

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). In this instance, however, the court issues the following tentative ruling.

The motion is granted in part and denied in part to the extent set forth herein. To the extent that the motion requests modification of the automatic stay of 11 U.S.C. § 362(a) in connection with real property located at 1870 Monique Street, Tracy, CA 95304 (APN 252-400-09) (the "Property"), the motion is denied as moot. Movant's request for a finding under 11 U.S.C. § 362(d) (4) is denied as moot. To the extent that the motion requests confirmation that the automatic stay of 11 U.S.C. § 362(a) is not in effect, the motion is granted. The automatic stay of 11 U.S.C. § 362(a) did not go into effect on the filing of this case pursuant to 11 U.S.C. § 362(c) (4) (A) (i), and the automatic stay has not, since the filing date, been ordered into effect in this case. The

court awards no fees and costs. Except as so ordered, the motion is denied.

Movant has requested relief from the automatic stay of 11 U.S.C. § 362(a) in this case to permit the movant to foreclose its interest in the Property. However, movant alleges without dispute that the debtors have had at least two bankruptcy cases pending within the prior year, both of which were dismissed. No party in interest has made a timely motion under 11 U.S.C. § 362(c)(4)(B) for an order that the automatic stay take effect in this case. Given that the debtors have had two bankruptcy cases pending within the previous year, both of which were dismissed, the movant's request for relief from the automatic stay of 11 U.S.C. § 362(a) is moot because the automatic stay did not go into effect on the filing of this case pursuant to 11 U.S.C. § 362(c)(4).

The court construes movant's request for in rem relief as a request for a finding under 11 U.S.C. § 362(d)(4). That request is denied. A finding under 11 U.S.C. § 362(d)(4) is made as part of a ruling granting relief from the automatic stay. Section 362(d) begins with the language "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section," and it then continues with four numbered subparagraphs, the last of which deals with relief from a stay of an act against real property if the court makes certain findings. However, those findings are only made as a basis for granting relief from the stay imposed by 11 U.S.C. § 362(a). Here no such stay exists in this case from which relief may be granted.

Movant also asks the court to exercise its equitable powers under 11 U.S.C. § 105(a) to grant in rem relief. That request is denied. In the exercise of its § 105(a) authority, a bankruptcy court has broad discretion to shape equitable remedies which further Congressional intent. Pacific Shores Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064, 1070 (9th Cir. 2004) ("[A] bankruptcy court must locate its equitable authority in the Bankruptcy Code."). "[S]tatutory silence alone does not invest a bankruptcy court with equitable powers. Those powers are limited and do not amount to a 'roving commission to do equity.'" Id. (citation omitted). The reference to a "roving commission to do equity" is derived from In re Yaidi, 274 B.R. 843, 848 (9th Cir. B.A.P. 2002) ("§ 105 is not a roving commission to do equity or to do anything inconsistent with the Bankruptcy Code"). The court concludes that purporting to use § 105(a) to grant in rem relief from the automatic stay would conflict with the plain language of § 362(a) ("Except as provided in subsection (b)...a petition filed under section 301, 302, or 303...operates as a stay..."). The conflict between such purported use of § 105(a) and § 362 is highlighted by the multiple filing provisions of section 362(c)(3), (c)(4) and (d)(4), which were added to the Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Had Congress intended that bankruptcy courts could order in rem relief from the automatic stay based on multiple filings, it surely would have specified that authority in BAPCPA.

Because the 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. [09-24887](#)-B-7 WALTER/HELEN POLLARD
MET #1
AMERICAN HONDA FINANCE
CORPORATION, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-6-09 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance and due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After Oral Argument.

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, a 2008 Honda Civic (VIN 1HGFA16888L032748) (the "Collateral"), at 12:01 a.m. on April 21, 2009, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1019(1)(B).

The court will issue a minute order.

63. [09-23088](#)-B-7 ORLANDO/MARIA WORRELL
PD #1
EMC MORTGAGE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-20-09 [[15](#)]

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

64. [09-22391](#)-B-7 RICHARD/BEATRICE PECK
RCO #1
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-3-09 [[13](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 4708 Durham Court, Rocklin, CA 95765 (APN 367-230-043) ("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 debtors have failed to make eight mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

The court will issue a minute order.

65. [08-33892](#)-B-7 XUAN LE
PD #3
AMERICA'S SERVICING CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-7-09 [[80](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 1332 Lick Avenue, San Jose, CA 95110 (APN 434-12-087) ("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 debtor has failed to make eleven mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

66. [09-23892](#)-B-7 TIMOTHY SCHMIDT AND
PD #1 JANET RUSTICI
NATIONAL CITY MORTGAGE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-8-09 [[14](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 128 Mayberry Road, Oroville, CA 95986 ("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 debtors have failed to make four mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this

chapter 7 case. Debtors have filed a statement of intent to surrender the Property.

The court will issue a minute order.

67. [09-23892](#)-B-7 JANET RUSTICI AND HEARING - MOTION FOR
RSL #1 TIMOTHY SCHMIDT RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. (PERSONAL PROPERTY)
4-28-09 [[21](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2003 Fleetwood Motor Coach Revolution 4 (VIN 4UZAABBA23CL84585) (the "Collateral"), at 12:01 a.m. on May 2, 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 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 debtors indicated an intent to surrender the Collateral. (Dkt. 1 at 57). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2)(B), debtors had until Friday, May 1, 2009 to perform their stated intention. There is no evidence that they did so. Thus, as the collateral is personal property, the automatic stay terminated at 12:01 a.m. on May 2, 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.

68. [09-23193](#)-B-7 PRICILLA HARRIS CONT. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 3-27-09 [[9](#)]

CONT. FROM 4-14-09

Tentative Ruling: This matter continued from April 14, 2009 with a briefing schedule. Opposition was due April 28, 2009. Replies, if any, were due May 5, 2009. Nothing further has been filed in this matter. In this case, because the debtors are 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 421 Pickwood Lane, Stockton, CA 95207 (APN 104-120-17) (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 \$150,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$59,448.80. Considering the senior lien of \$337,373, 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.

69. 09-21596-B-7 LUIS/MARIA LUCERO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN 4-13-09 [17]
SERVICES, LLC, VS.

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 1215 Kimick Way, Red Bluff, CA 96080 (APN 039-212-12-1) ("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 debtors have failed to make twelve (12) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intent to surrender the Property, and the trustee has filed a report of no distribution

The court will issue a minute order.

70. [09-20797](#)-B-7 LYNN PEIRANO
WGM #1
JPMORGAN CHASE BANK,
NATIONAL ASSOC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
4-23-09 [[17](#)]

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 pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 10567 Wyckham Way, Truckee, CA 96161 (APN 40-330-25) ("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 debtor has failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is no equity in the Property, and there is no evidence that the Property is necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to surrender the Property, and the trustee has filed a report of no distribution.

The court will issue a minute order.

71. [09-23099](#)-B-7 PHILLIP JACQUES/
APN #1 BREANNA SANCHEZ
WELLS FARGO
AUTO FINANCE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [[21](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2003 Chevrolet Tahoe (VIN 1GNEC13TX3R173346) (the "Collateral"), at 12:01 a.m. on April 28, 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 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 debtors indicated an intent to surrender the Collateral. (Dkt. 1 at 44). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R.

481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2)(B), debtors had until Monday, April 27, 2009 to perform their stated intention. There is no evidence that they did so. Thus, as the collateral is personal property, the automatic stay terminated at 12:01 a.m. on April 28, 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.

72. [09-21864](#)-B-7 NITYA/SAVITA NAND
LSL #1
BUSINESS LOAN CENTER, LLC, VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-6-09 [[29](#)]

CONT. FROM 5-5-09

Tentative Ruling: None.