

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 19, 2008 at 9:30 A.M.

1. [08-28407](#)-B-7 BEONICA PIERCE HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-15-08 [[8](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor filed the missing documents on July 21, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

2. [08-29711](#)-B-7 DAVID ROCK 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
7-24-08 [[10](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the filing fee on July 24, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

3. [07-24913](#)-B-7 MICHAEL/HELEN MCMAHON HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-14-08 [[78](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor filed the missing document on July 14, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

4. [08-29641](#)-B-7 RONALD/NICOLE PRESSLEY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-22-08 [[5](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on August 14, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

5. [08-26746](#)-B-7 ROBERT GRAY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-18-08 [[11](#)]

Tentative Ruling: None.

6. [08-27446](#)-B-7 KERRY CAZARES HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-11-08 [[14](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the delinquent filing fee installment on July 14, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

7. [08-21965](#)-B-7 MERRY JARRELL HEARING - AMENDED ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-21-08 [[41](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the delinquent filing fee installment on July 30, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

8. [08-29166](#)-B-7 RYAN/ASHLEY KELLY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-16-08 [[4](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on July 29, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

9. [08-29166](#)-B-7 RYAN/SHLEY KELLY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-16-08 [[5](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on July 29, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

10. [07-24285](#)-B-7 ROSIE PHAO HEARING - ORDER TO
SHOW CAUSE RE: CLOSING OF CASE
7-23-08 [[36](#)]

Tentative Ruling: None.

11. [08-27404](#)-B-7 DENNIS/SONYA LEE HEARING - MOTION FOR
ND #1 RELIEF FROM AUTOMATIC STAY
SAXON MORTGAGE ON REAL PROPERTY
SERVICES, INC., VS. 7-24-08 [[14](#)]

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtors have filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. As to the debtors and 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 6094 Meeks Way, Sacramento, California 95835 (APN 201-0870-062) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. No fees or costs are awarded. 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

\$324,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$356,745.69. Without considering the junior lien of \$22,839.53, 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 debtors have filed a statement of intent to surrender the Property. The lack of opposition and filing of a report of no distribution 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.

12. [08-25513](#)-B-7 GARRY/VALARIE MCGEE HEARING - MOTION FOR
ND #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL 7-23-08 [[72](#)]
TRUST COMPANY, ET AL., VS.

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and 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.

13. [08-28014](#)-B-7 THO DUONG AND SOYEON LEE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-23-08 [[10](#)]
SYSTEMS, INC., VS.

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtors have filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. As to the debtors and 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 9229 Surlingham Court, Sacramento, California 95829 (APN 121-0930-013-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. No fees or costs are awarded. 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 \$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 \$242,226.04. Without considering the junior lien of \$140,000.00, 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 debtors have filed a statement of intent to surrender the Property. The lack of opposition and filing of a report of no distribution 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.

14. [08-27115](#)-B-7 RUSTOM/MARIE LOMBOY HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
TOYOTA MOTOR CREDIT 7-16-08 [[20](#)]
CORPORATION, VS.

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

The motion is denied as moot. The motion is moot because the debtors' statement of intention provides that they will surrender the movant's collateral, a 2006 Toyota Sienna (VIN 5TDZA23C56S82012), to the movant. Pursuant to 11 U.S.C. § 521(a)(2)(B), debtors had until Friday, July 30, 2008 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 July 31, 2008 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.

15. [08-27518](#)-B-7 JANE HABEBO HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
CITIMORTGAGE, INC., VS. 7-14-08 [[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 debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2548

Terrace Way, Bakersfield, California 93304 (APN 147-060-30-00) (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 or 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 \$320,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$323,070.95. 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 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.

16. [08-28118](#)-B-7 SETH BOUSQUET HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
FINANCIAL SERVICES AMERICAS LLC, VS. 7-14-08 [26]

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

The motion is granted. 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 obtain possession of its collateral, a 2004 Jeep Wrangler (VIN 1J4FA49S84P778723) (the "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 waived. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Vehicle is \$10,985.00. Movant holds a lien on the Vehicle in the amount of \$12,296.16. There is no equity in the Vehicle, and it is not necessary for an effective reorganization or rehabilitation. The lack of written opposition and report of no distribution by the trustee shows that the trustee cannot administer the Vehicle for the benefit of creditors. Debtors have filed a statement of intention indicating an intent to surrender the Vehicle. Movant also alleges without dispute that debtor has not made two (2) payments. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

17. 08-25521-B-7 LISA/DENNIS HARRY
JHW #1
DAIMLERCHRYSLER FINANCIAL
SERVICES AMERICAS LLC, VS.

HEARING - MOTION
FOR ORDER CONFIRMING
TERMINATION OF STAY
7-17-08 [23]

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

The motion is denied as moot. The motion is denied to the extent that it seeks an order confirming termination of the automatic stay of 11 U.S.C. § 362(a) by operation of 11 U.S.C. § 362(h). Treating the motion as requesting relief from the automatic stay, the motion is denied as moot. The automatic stay terminated as to the collateral, a 2005 Dodge Ram 2500 (VIN 3D7KS28D75G901719) (the "Collateral"), at 12:01 a.m. on May 30, 2008, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate. Movant's request for waiver of the 10-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3) is granted.

Movant seeks an order from the court confirming termination of the automatic stay of 11 U.S.C. § 362(a) by operation of 11 U.S.C. § 362(h) as to the Collateral. Movant seeks the order under 11 U.S.C. § 362(j). Section 362(j), however, provides only for the issuance of an order confirming termination of the automatic stay by operation of 11 U.S.C. § 362(c), not § 362(h). See In re Dienberg, 348 B.R. 482, 484-85 (Bankr. N.D. Ind. 2006):

Section 362(j) very plainly and very explicitly references subsection (c). It does not say that, on the request of a party in interest, the court shall issue an order confirming that the automatic stay has been terminated. If it did, it would be quite easy for the court to conclude that any time the Bankruptcy Code operated to end the automatic stay-whether through § 362(c), § 362(h), § 521(a)(6), or § 365(p)-the court was authorized to issue an order confirming what had already occurred. Instead of that broad and clear language, § 362(j) is more circumscribed. The order the court is authorized to issue is "an order under subsection (c)." Consequently, unless the court is to disregard that additional language, something which it should not do, see, United States Dept. of Treasury v. Fabe, 508 U.S. 491, 504, 113 S.Ct. 2202, 2209-10, 124 L.Ed.2d 449 (1993), in order to give proper effect to all the language of the statute, it appears that the issuance of a comfort order is only authorized where termination of the stay is grounded upon the operation of § 362(c) and not some other portion of the Bankruptcy Code. Accord, In re Ermi, 2006 WL 2457144 (Bankr.N.D. Ohio 2006); In re Woods, No. 06-40458 (Bankr.E.D.Mich. Apr. 27, 2006); In re Sanders, 16 CBN 410, No. 06-40096 (Bankr.E.D.Mich.2006). This is an entirely reasonable and appropriate way to read the statute and one which gives full effect to all of the words which it contains, rendering none of them superfluous. Hibbs v. Winn, 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory

Construction § 46.06, pp. 181-86 (rev. 6th ed.2000)); Fabe, 508 U.S. at 504, 113 S.Ct. at 2210 fn. 6 (1993); Jenkins v. Heintz, 124 F.3d 824, 833 (7th Cir.1997) (quoting Dept. of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 340-41, 114 S.Ct. 843, 127 L.Ed.2d 165 (1994)); Matter of Merchants Grain by and Through Mahern, 93 F.3d 1347, 1353-54 (7th Cir.1996) (citing cases).

The self-executing nature of § 362(h), supports one of the reasons that Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: to alleviate in part the burden of increased consumer bankruptcy filings on the courts. See H.R.Rep. No. 31, 109th Cong., 1st Sess., at 2 (2005), U.S.Code Cong. & Admin.News 2005, pp. 88, 89. Because § 362(h) is self-executing, the court need not expend judicial resources reviewing, ruling on, and issuing orders on motions confirming that the automatic stay has terminated pursuant to its provisions. The comfort order requested by the movant would undermine this purpose.

The court treats the motion as including a request for relief from the automatic stay. Debtors filed a statement of intention with respect to the Collateral within the deadline established by 11 U.S.C. § 521(a)(2) and [Interim 2006] Federal Rule of Bankruptcy Procedure 1007(b)(2). The debtors stated that they would retain the Collateral and that they would continue to make payments. However, Section 362(h)(1)(A) requires something more. In order for the automatic stay to remain in effect with respect to personal property that the debtor is retaining, the debtor must either redeem the personal property or enter into a reaffirmation agreement with the creditor. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481 (9th Cir. B.A.P. 2008). A review of the docket in this case reveals that neither of these requirements has been satisfied.

Pursuant to 11 U.S.C. § 521(a)(2), the debtors had until May 29, 2008 to file a statement of intention that properly addressed the Collateral. Because they did not file a compliant statement of intention timely and because the Collateral is personal property, the automatic stay terminated as to the Collateral at 12:01 a.m. on May 30, 2008, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The court will issue a minute order.

18. 08-28225-B-7 ALICIA HERNANDEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC., VS. 7-14-08 [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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5617

Adobe Road, Rocklin, California 95765 (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 or 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 \$85,637.92. Considering the senior liens of \$340,000.00 and \$2,568.10, 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 three (3) mortgage payments. The debtor filed 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.

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).

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

19. [08-28629](#)-B-7 CESAR/CATALINA MANITI HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
GREENPOINT MORTGAGE 7-21-08 [9]
FUNDING, INC., VS.

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

The motion is granted in part. As to the debtors and 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 2504 Goldsmith Way, Stockton, California (APN 128-190-40) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. No fees or costs are awarded. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$250,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$414,601.46. Without considering the junior lien of \$49,389.00, 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 debtors have filed a statement of intent to

allowed secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

22. [08-28237](#)-B-7 DAVID/ANNA BLAIR HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC 7-15-08 [[15](#)]
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 debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 550 Shanghai Bend Road, Yuba City, California 95991 (APN 55-050-006) (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 \$265,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$282,390.34. 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.

The court will issue a minute order.

23. [08-28339](#)-B-7 RYAN SANTOS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, ET AL., VS. 7-21-08 [[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 debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

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

order to permit movant to foreclose on the real property located at 2186 Golden Gate Drive, Plumas Lake, California 95961 (APN 016-340-007) (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 or 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 \$296,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$297,600.00. Without considering the junior lien of \$73,572.81, 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 three (3) 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 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.

24. 07-23542-B-7 CAROLYN ANDREWS HEARING - MOTION FOR
MBB #2 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-8-08 [[57](#)]
SYSTEMS, INC., VS.

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 7550 Branchwood Way, Sacramento, California 95823 (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 \$375,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$314,734.48.00. Considering the junior lien of \$73,000.00, 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. 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.

25. [08-22846](#)-B-7 BARBARA BROWN HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-14-08 [[42](#)]
SYSTEMS, INC., VS.

DISCHARGED 7-22-08

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

The motion is granted in part. As to the debtor, the motion is denied as moot. 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 1900 Van Buren Street, Hollywood, Florida 33020 (APN 514215cf2370) (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.

The debtor received her discharge on July 22, 2008. The automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C).

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 \$354,258.10. Without considering the junior lien of \$41,083.00, 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 seven (7) mortgage payments. The debtor has 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.

26. [08-28046](#)-B-7 JAIME/ARTEMISA MILLAN
KAT #1
FIRST HORIZON HOME
LOANS, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-22-08 [[18](#)]

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtors have filed a statement of intent to surrender the Property, the court issues the following tentative ruling.

The motion is granted in part. As to the debtors and 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 993 Doradell Court, Galt, California 95632 (APN 148-0680-028-0000) (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 the Property has a value of \$221,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$301,999.15. There is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this Chapter 7 case. Movant also alleges without dispute that the debtors have failed to make seven (7) mortgage payments. The debtors have filed a statement of intent to surrender the Property. The lack of opposition and filing of a report of no distribution 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.

27. [08-26947](#)-B-7 CALLIE WILLIAMS
EDH #1
U.S. BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-9-08 [[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 debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 8170 Big Sky Drive, Antelope, California 95843 (APN 203-0780-061-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards 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 \$269,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$302,716.22. Without considering the junior lien of \$72,379.29, 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 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 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.

28. [08-28947](#)-B-7 LONNY PHILLIPS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WILSHIRE CREDIT CORP., ET AL., VS. 7-21-08 [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 debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5900 Kelly Way, Sacramento, California 95824 (APN 025-0242-005-000) (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 \$269,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$302,716.22. Without considering the junior lien of \$72,379.29, 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 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 the Property

exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

29. [08-25349](#)-B-7 CARINA VOSSOS HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
NISSAN - INFINITI, LT, VS. 7-16-08 [[32](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the leased 2006 Infiniti G35 (VIN JNKCV54E86M702939) (the "Vehicle") as of 12:01 a.m. on June 25, 2008 by operation of 11 U.S.C. § 365(p)(1), and the debtor's possessory interest in the Vehicle has from that date no longer been property of the estate. The court awards no fees and costs.

Debtor's petition was filed under chapter 7 on April 25, 2008. Pursuant to the applicable terms of 11 U.S.C. § 365(d)(1), the trustee may assume or reject an unexpired lease of personal property of the debtor within 60 days after the order for relief. In this case, as of June 24, 2008, sixty days after the filing of debtor's 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 June 25, 2008 by operation of 11 U.S.C. § 365(p)(1), and the debtor's possessory interest in the Vehicle has from that date no longer been property of the estate. Movant already has the relief it seeks by this motion.

Because the movant has not established that it is the holder of an allowed secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

30. [08-28155](#)-B-7 SEAN LANEY HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., VS. 7-17-08 [[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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

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

order to permit movant to foreclose on the real property located at 3015 Swansea Way, Rancho Cordova, California 95670 (APN 077-0065-005) (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 \$180,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$256,162.79.22. Without considering the junior liens of \$103,403.00 and 101,000.00 or the senior tax lien of \$4,000.00, 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. The 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.

The court will issue a minute order.

31. 08-28655-B-7 ERIN SIMPSON HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FINANCIAL 7-15-08 [7]
SERVICES AMERICAS LLC, VS.

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

The motion is granted. 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 obtain possession of its collateral, a 2005 Chrysler Pacifica (VIN 2C8GM68455R670054) (the "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 waived. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Vehicle is \$13,830.00. Movant holds a lien on the Vehicle in the amount of \$21,179.08. There is no equity in the Vehicle, and it is not necessary for an effective reorganization or rehabilitation in this chapter 7 case. The lack of written opposition and report of no distribution by the trustee shows that the trustee cannot administer the Vehicle for the benefit of creditors. The debtor has filed a statement of intent to surrender the Vehicle. Movant also alleges without dispute that debtor has not made eight (8) payments. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

32. [08-27957](#)-B-7 OSCAR CORTES HEARING - MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
CITIFINANCIAL AUTO CORP., VS. 7-7-08 [[9](#)]

Tentative Ruling: The motion is denied as moot. Considering the automatic extension provided by Bankruptcy Rule 9006(a), the automatic stay terminated with respect to the collateral, a 2006 Toyota Tundra (VIN 5TBDT441X6S519865) (the "Vehicle"), at 12:01 a.m. on July 15, 2008, by operation of 11 U.S.C. § 362(h), and the Vehicle 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 Vehicle. The debtor did not file a statement of intention with respect to the Collateral within the time allowed by law. The debtor had until July 14, 2008, 30 days after the filing of the petition commencing the case, to file a statement of intention that addressed the Collateral. Because he did not timely file such a statement of intention, and because the Vehicle is personal property, the automatic stay terminated at 12:01 a.m. on July 15, 2008, by operation of 11 U.S.C. § 362(h), and 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.

33. [08-26063](#)-B-7 RICHARD/PARALEE GUNSAULLUS HEARING - MOTION FOR
JAY #1 RELIEF FROM AUTOMATIC STAY
M & I MARSHALL AND 7-10-08 [[14](#)]
IISLEY BANK, VS

Tentative Ruling: The motion is denied as moot. Considering the automatic extension provided by Bankruptcy Rule 9006(a), the automatic stay terminated with respect to the collateral, a 2003 USCG fifth wheel trailer (VIN 4X4FCRN203P187052) (the "Vehicle"), at 12:01 a.m. on June 10, 2008, by operation of 11 U.S.C. § 362(h), and the Vehicle 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 Vehicle. The debtors did not file a statement of intention with respect to the Collateral within the time allowed by law. The debtors had until June 9, 2008, 30 days after the filing of the petition commencing the case plus the automatic extension provided by Bankruptcy Rule 9006(a), to file a statement of intention that addressed the Collateral. Because they did not timely file such a statement of intention, and because the Vehicle is personal property, the automatic stay terminated at 12:01 a.m. on June 10, 2008, by operation of 11 U.S.C. § 362(h), and 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.

34. [08-27067](#)-B-7 DANIEL CULLEM
KAT #1
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-18-08 [[8](#)]

DISCHARGED 7-15-08
CONT. FROM 7-15-08

Disposition Without Oral Argument: This matter continued from July 15, 2008. The court established a briefing schedule. The movant gave debtor timely notice of the continued hearing and the briefing schedule. The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is now resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the 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 1711 Riviera Drive, Redding, CA 96001 (APN 108-220-022-000) (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 \$202,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$214,331.17. Without considering the junior lien of \$56,200.00, 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. 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.

35. [08-26474](#)-B-7 TIMOTHY/ROCIO RAMONETT
MDE #1
LITTON LOAN SERVICING, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-22-08 [[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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at

706 South Pershing Avenue, Stockton, California 95203 (APN 145-220-41) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral. 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 \$355,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$329,331.04. Considering the junior lien of \$44,713.00, 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. 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 plus costs of \$150. These fees and costs may be enforced only against the Property.

The court will issue a minute order.

36. [08-27175](#)-B-7 LUCAS EATHERTON HEARING - MOTION FOR
RDW #1 RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION, VS. 7-24-08 [\[14\]](#)

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtor has filed a statement of intent to surrender the Subject Property and because debtor's attorney filed a declaration of non-opposition, 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 foreclose the first and/or second deeds of trust on the real property located at 5617 Walnut Avenue #19, Orangevale, California 95662 (APN 235-0420-053-0008) (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 \$180,000.00 and is encumbered by perfected deeds of trust or mortgages in favor of the movant. Movant's claim secured by its first deed of trust is \$188,612.46, and movant's claim secured by its second deed of trust is \$50,317.78. There is no equity in the Property, and it 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 three (3) mortgage payments on the obligation secured by movant's first deed of trust, and two (2) mortgage payments on the obligation secured by movant's second deed of trust. Debtor has filed a statement of intent to surrender the Property. The lack of opposition and report of no distribution 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 the Property exceeds the amount of its first deed of trust, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

37. [08-27086](#)-B-7 RICHARD WISCHHUSEN HEARING - MOTION FOR
EDH #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, NA., VS. 7-14-08 [[12](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 1111 Duvall Court, Stockton, California 95210 (APN 104-390-08) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court award 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 \$207,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$294,634.13. Even without considering the junior lien of \$53,744.60, 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 two (2) mortgage payments. The lack of opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because 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.

Tentative Ruling: The motion is denied.

By this motion movant and secured creditor Umpqua Bank ("Umpqua") seeks relief from the automatic stay of 11 U.S.C. § 362(a) for "cause" pursuant to 11 U.S.C. § 362(d)(1) to allow it to proceed to foreclose upon the debtor's real property assets consisting of a "[m]ixed use project with office building, retail/restaurant, commercial and residential real properties located in Roseville, California" (the "Property"). (Dkt. 119). Alternatively, Umpqua requests that the debtor be ordered to pay to movant all interest that has accrued on movant's debt since the filing of the petition, and post-petition interest that continues to accrue on its debt. Movant also wants debtor to turn over all rents received by and to be received by the debtor.

Umpqua has not established that cause for relief from the automatic stay exists at the present time. Umpqua's argument rests primarily, if not exclusively, on its argument that the value in the Property, above the amount owed to the creditor with a secured claim, or "equity cushion" is too small to adequately protect Umpqua's interest in the Property if the automatic stay remains in effect. The court is not persuaded by Umpqua's argument. Based on Umpqua's own valuation of the property and the calculation of its debt, Umpqua is adequately protected by an equity cushion in the property at the present time.

As set forth in Umpqua's memorandum of points and authorities, the debtor owed Umpqua \$27,009,971.95 on its debt as of the petition date. Umpqua also asserts that due to accruing interest on the debt, the debtor will owe Umpqua \$27,565,391.03 by August 19, 2008, the date of the hearing on this motion, an increase of \$555,419.08. Considering that approximately four months will have passed between the filing of the petition and the date this motion comes on for hearing, the court calculates the accrual of interest at approximately \$138,854.77 per month. In the memorandum of points and authorities Umpqua asserts that the interest on the loans accrues at the rate of \$162,373.20 per month.

Umpqua's own valuation of the Property places a value of \$30,000,000.00 on the Property. After deducting the amount allegedly owed to Placer County on its senior tax lien in the amount of \$60,669.75, Umpqua is left with an equity cushion of \$2,373,399.22, or 7.91% of the value of the Property as of August 19, 2008, based on Umpqua's valuation. If interest accrues at the rate calculated by the court at \$138,854.77 per month, the equity cushion is sufficient to allow interest on Umpqua's debt to continue to accrue for more than seventeen (17) months. If interest accrues at \$162,373.20 per month, the rate asserted by Umpqua in its memorandum of points and authorities, the equity cushion is sufficient to allow interest on Umpqua's debt to continue to accrue for more than fourteen (14) months.

In either case, the court finds that the equity cushion is sufficient to adequately protect Umpqua at the present time. The court notes that the debtor filed a disclosure statement and chapter 11 plan on July 24, 2008 (Dkt. 137, 138). A hearing on approval of the disclosure statement is scheduled for September 9, 2008, less than one month from the date of the

hearing on this motion. The court finds that the persistence of the equity cushion over fourteen to seventeen months is presently sufficient to protect movant.

Umpqua's assertion that bankruptcy courts "throughout the United States" have held that an equity cushion of less than ten percent (10%) is inadequate does not persuade the court that the equity cushion in this case is insufficient. The authorities cited by Umpqua in support of its ten percent figure, In re Kost, 102 B.R. 829, 832 (D. Wyo. 1989) and In re Tucker, 5 B.R. 180, 183 (S.D.N.Y. 1980) are not binding on this court. Furthermore, the Kost decision itself points out that "[w]hether an equity cushion provides adequate protection to a creditor is determined on a case-by-case basis rather than by mechanical application of a formula." Kost, 102 B.R. at 831. The other authorities from within the Ninth Circuit cited by Umpqua, including In re Mellor, 734 F.2d 1396 (9th Cir. 1984), Matter of Plaza Family Partnership, 95 B.R. 166 (E.D. Cal. 1989) and In re Pitts, 2 B.R. 476, 487 (C.D. Cal. 1979) also do not require the court to grant relief from the automatic stay when the equity cushion falls below a fixed threshold.

Furthermore, Umpqua misunderstands an important part of the adequate protection analysis. Umpqua does have a right to protection from depreciation in the value of its collateral that would impair its secured claim. In re Mellor, 734 F.2d 1396, 1400 n.2 (9th Cir. 1984). However, Umpqua is incorrect that "a decrease in value can occur when the debt owed to the secured creditor continues to accrue interest, thereby shrinking the equity cushion." (Dkt. 121 at 4). Whether interest continues to accrue on Umpqua's debt has nothing to do with whether the Property, or Umpqua's collateral, is depreciating in value. Umpqua's citation to Kost in support of the foregoing assertion is misplaced. The court's reading of Kost is that Kost sets forth the view that the amount of interest ordinarily owed is relevant in calculating debt for the purposes of determining the size of the equity cushion. That has no effect on whether the collateral is depreciating in value.

Umpqua's assertion that the continuing accrual of interest on its debt will cause Umpqua's "interest in [the Property]" for the purposes of 11 U.S.C. § 361(1) to "continue to dramatically decrease by thousands of dollars on a daily basis" (Dkt. 121 at 6) is also incorrect. Umpqua mistakes its "interest" in the Property under § 361(1) for its equity cushion. The United States Supreme Court has held otherwise. "The phrase 'value of such creditor's interest' in § 506(a) means 'the value of the collateral.' . . . We think the phrase 'value of such entity's interest' in § 361(1) and (2), when applied to secured creditors, means the same." United Sav. Ass'n v. Timbers of Inwood Forest, 484 U.S. 365, 372 (1988) (emphasis added). See also Id. at 371 ("It is common ground that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay." [emphasis added]). Therefore, Umpqua is also not entitled to adequate protection payments equal to all interest accrued to date, plus all interest that will continue to accrue on its debt as long as the automatic stay remains in place. Adequate protection payments are intended to compensate the movant for a loss in the value of the collateral itself while the stay remains in place, not for an accrual of interest on the debt. Umpqua has not submitted any evidence, nor has it argued that the Property itself is presently depreciating in value. In

fact, Umpqua's own evidence shows that the Property has not declined in value during the pendency of this bankruptcy case. The declaration of David Jarrette, filed previously in this case on July 22, 2008 and submitted as an exhibit in support of Umpqua's request for judicial notice here, states that Umpqua's \$30,000,000.00 valuation figure represents a "quick sale" price as of April 7, 2008, which price "is what Umpqua Bank could reasonably expect in a sale of the subject property within the next 90-120 days." (Dkt. 122 at 4). Umpqua's own valuation of the Property shows that a sale of the property at \$30,000,000.00 was possible as recently as August 5, 2008, fourteen days before the date of this hearing and 102 days since the filing of the petition in this case. Umpqua has presented no evidence showing a decline in the value of the Property since then.

Finally, the debtor's alleged failure to make payments to Umpqua does not constitute cause for relief from the automatic stay. Timbers specifically overruled cases such as In re American Mariner Industries, Inc., 734 F.2d 426 (9th Cir. 1984) that had previously required periodic payments based on the value of the collateral to compensate for "lost opportunity." Timbers, 484 U.S. at 367-68. See, also, In re Air Beds, Inc., 92 B.R. 419, 422 (9th Cir. BAP 1988) ("The general rule is that a distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances.").

Umpqua's request for an order requiring that rents paid to the debtor and to be paid to the debtor be turned over to Umpqua because the debtor is presently prohibited from using the rents to fund its post-petition operations and was required by the court to segregate the rents in an interest bearing bank account, is also denied. The court acknowledges that its order denying the debtor's motion to use cash collateral (Dkt. 74) prohibits the debtor from using all rents collected since the date of the filing of the petition. However, a denial of a motion to use cash collateral under 11 U.S.C. § 363 does not also require the court to order turnover of the cash collateral to the secured creditor, and Umpqua has cited no authority supporting that proposition.

The court declines to reach Umpqua's arguments relating to the admissibility of the declarations of David Jarrette and Stephen Des Jardins submitted in support of the debtor's opposition. The admissibility of the declarations is irrelevant to the court's ruling, which is based on Umpqua's own assertions of value and interest accrual.

The court will issue a minute order.

39. [04-26357](#)-B-13J LARRY/NANCY TEVIS HEARING - MOTION
[08-2004](#) DD #1 TO DISMISS OR FOR MORE
LARRY/NANCY TEVIS, VS. DEFINITE STATEMENT
7-14-08 [[141](#)]

DEPT. OF VETERANS AFFAIRS, ET AL.

Tentative Ruling: This motion was properly filed under LBR 9014-1(f)(1). Written opposition to the motion was required no later than fourteen days before the date of the hearing. Plaintiffs filed written opposition to the motion on August 15, 2008, ten days late and only four days before the hearing. The court issues the following tentative ruling.

Defendant David Dahmen's ("Dahmen") request for a more definite state pursuant to Fed. R. Civ. P. 12(e) is granted. The plaintiff debtors ("Plaintiffs") shall file an amended complaint that specifies which claims for relief set forth in the complaint are asserted against Dahmen and, if fraud is averred against Dahmen, shall plead any claim for fraud with the particularity required by Federal Rule of Civil Procedure 9(b). The debtors shall file and serve the amended complaint on or before September 22, 2008. If Plaintiffs do not file an amended complaint by the foregoing date, Dahmen may submit an order that dismisses Dahmen from the adversary proceeding without prejudice.

In granting Dahmen's request for a more definite statement, the court declines to reach Dahmen's request for his dismissal from the adversary proceeding under Federal Rule of Civil Procedure 12(b)(6).

Dahmen seeks an order requiring Plaintiffs to file a more definite statement as to him in this adversary proceeding pursuant to Federal Rule of Civil Procedure 12(e), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012. Rule 12(e) allows a party to move for a more definite statement "of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e).

In this case, the first amended complaint (the "FAC") filed by Plaintiffs names thirty separate defendants and sets forth ten separate claims for relief, including fraud/deceit/misrepresentation/constructive fraud against a fiduciary, fraudulent inducement/recission, defamation/libel/slander, breach of written contract, breach of oral/implied contract, breach of fiduciary duties, negligence, equitable/declaratory/injunctive relief/accounting, intentional infliction of emotional distress, and negligent infliction of emotional distress. Dahmen is specifically mentioned by name in two places in the FAC, both times as "Dahman." Dahmen is specifically mentioned in paragraph 24 of the FAC, for the purpose of introducing him as a named defendant in the adversary proceeding. (Dkt. 35 at 6). Dahmen is also specifically mentioned, along with every other named defendant, in the prayer of the FAC. (Dkt. 35 at 23). Dahmen is not specifically mentioned in any other paragraph of the FAC.

In addition, as defendants to this proceeding Moving Defendants are also mentioned in each of the ten claims for relief under the undefined term "Defendants." Plaintiffs have asserted each of the ten claims for relief against "Defendants" generally without specifying which of the thirty named defendants are implicated in each claim. Plaintiffs have also asserted that each defendant acted as the "authorized agent, servant, and/or employee" of each of the other defendants, that each defendant "may have authorized, negligently supervised, and/or ratified each act of" each of the other defendants, and that each defendant "may be the alter ego" of each of the other defendants. (Dkt. 35 at 8).

Motions for a more definite statement are generally not favored, because a party's pleadings are to be construed liberally to do substantial justice. "Rule 12(e)'s standard is plainly designed to strike at unintelligibility rather than lack of detail In the presence of proper, although general, allegations, the motion will usually be denied on the grounds that discovery is the more appropriate vehicle for obtaining the detailed information." James Wm. Moore, et. al., Moore's Federal Practice § 12.36[1] (2008). Despite a general disfavor of the

motion, Professor Moore goes on to describe the utility of a Rule 12(e) motion in two types of situations:

First, proper pleading under Rule 8 requires a pleading to contain allegations of each element of the claim. If it does not, and if the deficiency is not so material that the pleading should be dismissed under Rule 12(b)(6), a more definite statement is appropriate. Second, if a complaint approaches the other extreme of being overly prolix or complex, the motion for more definite statement can assist the court in "the cumbersome task of sifting through myriad claims, many of which may be foreclosed by various defenses." Because of its potential usefulness in that respect, courts will occasionally order a more definite statement sua sponte, which they have the freedom to do.

James Wm. Moore, et. al., Moore's Federal Practice § 12.36[1] (2008) (citations omitted). In particular, Professor Moore cites Anderson v. District Board of Trustees of Central Florida Community College, 77 F.3d 364, 366 (11th Cir. 1996) for the proposition that a court has a supervisory obligation to order a more definite statement where the complaint incorporates every antecedent allegation by reference into each subsequent claim and fails to adequately link a claim for relief to its factual predicates.

Here, each of the ten claims for relief asserted by Plaintiffs incorporates by reference each of the "general statements and allegations" set forth in paragraphs 35 through 71 of the FAC. However, Plaintiffs fail to adequately link each claim for relief to the facts alleged in paragraphs 35 through 71. The ten claims for relief set forth in the FAC contain only general allegations that do not connect the alleged facts or conduct to the relief sought, making it difficult for Dahmen to evaluate whether Plaintiffs assert that any of Dahmen's conduct with respect to Plaintiffs constitutes fraud/deceit/misrepresentation/constructive fraud against a fiduciary, fraudulent inducement/recission, defamation/libel/slander, breach of written contract, breach of oral/IMPLIED contract, breach of fiduciary duties, negligence, equitable/declaratory/injunctive relief/accounting, intentional infliction of emotional distress, or negligent infliction of emotional distress. The FAC is also ambiguous as to which of the thirty named "Defendants," including Dahmen, are implicated in each claim for relief. Given the large number of defendants Plaintiffs against whom seek relief, and given the large number of claims asserted in the FAC, a more definite statement is required to apprise the defendants of the conduct that Plaintiffs assert to be actionable pursuant to each claim for relief, and which defendants are implicated by each claim. A more definite statement will also assist the court in sifting through the numerous claims asserted by Plaintiffs with respect to each defendant.

Furthermore, with respect to first and second claims for relief for fraud/deceit/misrepresentation/constructive fraud against a fiduciary, and fraudulent inducement/recission, the complaint fails to plead those claims for relief with the particularity required by Federal Rule of Civil Procedure 9(b). The Ninth Circuit Court of Appeals has interpreted Federal Rule of Civil Procedure 9(b) to require that the complaint (1) specify the averred fraudulent representations; (2) aver the representations were false when made; (3) identify the speaker; (4) state when and where the statements were made; and (5) state the manner in which the representations were false and misleading. Decker v. GlenFed

Inc., (In re Glenfed, Inc. Sec. Litig.), 42 F.3d 1541, 1547, fn. 7 (9th Cir. 1994) (en banc), superseded by statute on other grounds as stated in In re Silicon Graphics, Inc., 970 F. Supp. 746, 754 (N.D. Cal. 1997); Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405 (9th Cir. 1991); Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103-04 (9th Cir. 2003). After examining the first and second causes of actions, particularly paragraphs 73-82 and 84-85, the court finds that Plaintiffs have failed to specify the averred fraudulent representations, identify the speaker, state when and where the statements were made, and state the manner in which the representations were false and misleading.

Plaintiffs filed opposition ten days late on August 15, 2008. The opposition is stricken as late-filed. Local Bankruptcy Rules 1001-1(g) and 9014-1(l). Alternatively, the opposition is overruled on the merits. Plaintiffs assert that because they filed a request for entry of Dahmen's default on July 9, 2008, the instant motion is "improper and in Default." (Dkt. 175 at 1). Plaintiffs cite no authority in support of the argument. Furthermore, Dahmen's default has not been entered. Dahmen filed opposition to the request for entry of default on July 11, 2008. The clerk's office has issued a calendar memorandum (Dkt. 133), stating that due to the filing of the opposition the request for entry of default must be set for hearing. The debtors have not set the request for entry of default for a hearing. Dahmen's default has not been entered, and the instant motion for dismissal or a more definite statement is not improper. Furthermore, even after a defendant's default has been entered the defendant is not prevented from presenting evidence attacking the sufficiency of Plaintiffs' complaint for failing to state a claim upon which relief can be granted or as legally insufficient. See Salomon v. Davis (In re Salomon), No. SC-07-1290 at *14-*15 (9th Cir. BAP June 27, 2008).

The court will issue a minute order.

40. 08-27095-B-7 ANNABETH/SCOTT ALLAN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CITI RESIDENTIAL LENDING, INC., VS. 7-16-08 [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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2504 Yosemite Avenue, Escalon, CA 95320 (APN 227-550-56) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$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 \$425,518.32. Considering the junior lien of \$106,925.00, 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. 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 Subject 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.

41. [08-24898](#)-B-7 JAMSHAI D FARAKH AND HEARING - MOTION FOR
EAT #1 MAJHABEEN AKHTAR RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC 7-14-08 [[15](#)]
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 debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. As to the debtors, the motion is denied as moot. 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 5514 Moonlight Way, Elk Grove, CA 95758 (APN 117-1110-0050) (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.

The debtors received their discharge on July 30, 2008. The automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C).

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 \$313,286.40. Even without considering the junior lien of \$74,707.00, 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.

The court will issue a minute order.

42. [08-24300](#)-B-7 NICOLE DUPONT
MFB #1

HEARING - OBJECTION
TO DEBTOR'S CLAIM OF EXEMPTION
AND MOTION FOR TURNOVER OF
NON-EXEMPT ASSETS
7-14-08 [[37](#)]

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 and denied in part. The trustee's objection to the debtor's claim of exemption is sustained. The trustee's request for a turnover order is denied without prejudice.

The trustee's objection to the debtor's claim of exemption is sustained. The debtor has claimed a total of \$30,271.00 in exemptions pursuant to various sub-sections of Cal. Civ. Proc. Code § 703.140(b). However, as debtor concedes, debtor is legally a married person. If a married person files a petition individually, the exemptions provided by Cal. Civ. Proc. Code § 703.140, other than the provisions of subdivision (b), are applicable. See Cal. Civ. Proc. Code § 703.140(a)(2) (emphasis added). However, if both the husband and the wife effectively waive in writing the right to claim, during the pendency of the case commenced by filing the petition, the exemptions provided by Cal. Civ. Code § 703.140, other than subdivision (b), then they may elect to use the applicable exemptions in subdivision (b). Id. Here, neither debtor nor debtor's spouse has filed any written document which waives any right to claims of exemptions under the California Code of Civil Procedure. Accordingly, at the present time, the debtor is not entitled to her asserted claims of exemption under Cal. Civ. Proc. Code § 703.140(b).

The trustee's request for turnover of all personal property assets in this case is denied without prejudice. Even though the debtor has failed to oppose trustee's request for turnover, the trustee has not shown that he is legally entitled to the relief he seeks. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ("...default does not entitle a plaintiff to judgment as a matter of right or as a matter of law."). The trustee has failed to specify precisely the property he seeks to compel the debtor to turn over. Moreover, the trustee has not shown that the debtor is actually in possession of either "all personal property assets" in this case or any specific items of personal property. "The [language of Section 542] requires actual or constructive possession by a defendant as a fundamental predicate to a trustee's turnover rights." In re De Berry, 59 B.R. 891, 895 (Bankr. E.D.N.Y. 1986). The trustee bears the burden of proof of showing that the debtor is in possession of the specific property the trustee seeks by way of turnover order. Id. at 896. The trustee has not carried his burden here.

The court also notes that the trustee has cited no authority for his turnover request. LBR 9014-1(d) (5).

The court will issue a minute order.

43. [08-24300](#)-B-7 NICOLE DUPONT HEARING - MOTION
MFB #2 TO ABANDON REAL PROPERTY
OF THE ESTATE
7-15-08 [[41](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the subject property, a 10680 Horton Street, Penn Valley, CA (APN 51-270-37) (the "Property") is deemed abandoned by the estate, effective as of April 4, 2008.

The movant points out that debtor's Schedule A values the Property at \$360,000.00 and Schedule D lists a lien on the Property in the amount of \$375,432.00. The movant further allege without dispute that, after having completed a market review of the Property with a local realtor, he has concluded that the amount of indebtedness secured by the Property exceeds its true market value. The movant has shown that the Property is of inconsequential value and benefit to the estate.

The general rule is that abandoned property reverts to the debtor as of the date of the filing of the bankruptcy case, so that the debtor is treated as having owned it continuously. However, the general rule is a legal fiction and need not be followed if to do so would produce an unjust result. Wallace v. Lawrence Warehouse Co., 338 F.2d. 392, 394 n.1 (9th Cir. 1964). See also U.S. v. Grant, 971 F.2d 799, 804 (1st Cir. 1992) and Knapp v. Seligson (In re Ira Haupt & Co.), 398 F.2d 607, 613 (2nd Cir. 1968). Here, no facts have been presented to support a deviation from the general rule.

The court will issue a minute order.

44. [05-37923](#)-B-7 RUTH CARROLL HEARING - TRUSTEE'S
RJH #2 FIRST AND FINAL APPLICATION
FOR COMPENSATION FOR ACCOUNTANT
FOR THE BANKRUPTCY ESTATE
(\$1,169.00)
7-21-08 [[52](#)]

DISCHARGED 2-8-06

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

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

In order for a lien to be avoidable under § 522(f), first there must be a lien. Here, the record fails to disclose a lien. A judgment lien on real property is created by recording an abstract of judgment with the county recorder. Cal. Code Civ.Proc. § 697.310(a). Subject to certain exceptions, a recorded abstract of judgment creates a lien on all of the judgment debtor's interests in real property in the county where the lien was created (i.e., where the abstract was recorded). Cal. Code Civ. Proc. § 697.340(a). See Grothe v. Cortland Corp., 11 Cal. App. 4th 1313, 1320, 15 Cal. Rptr. 2d 38, 42-43 (1992).

A mobilehome is generally personal property that is subject to the registration and other requirements of Part 2 of the California Health and Safety Code, Section 18000, et seq. A mobilehome that is not affixed to land is personal property. Cal. Civ. Code § 658.663. A judgment lien on personal property does not attach to a mobilehome or commercial coach required to be registered pursuant to the Health & Safety Code. CCP § 697.530(d).

A mobilehome may be installed on a foundation system as either a fixture or improvement to real property or as a chattel (personal property). Health & Safety Code § 18551. Installation by either method must comply with statutory requirements. Cal. Health & Safety Code §§ 18551(a) and (b) and 18613. To be considered a fixture or improvement to real property, a mobilehome must either be installed as such in accordance with statutory requirements (Cal. Health & Safety Code § 18551(a)) or be legally converted to that status by compliance with the statutory conversion requirements outlined in Cal. Health & Safety Code § 18555 (Cal. Health & Safety § 18555(I)).

"A mobilehome that is permanently attached to real property on a foundation becomes a fixture and part of the real property for purposes of taxation, financing, and sale when the owner of the mobilehome also owns the land." Miller & Starr, California Real Estate § 17.68 (3rd Ed. 2000) (emphasis added). The foregoing statement from Miller & Starr is apparently derived from Cal. Health & Safety Code §§ 18039.1 and 18551. The former section states, inter alia, that "[n]otwithstanding any other provision of law to the contrary, if a manufactured home or mobilehome is affixed to a permanent foundation pursuant to Section 18551, ...procedures for notice of default and sale shall be governed by Chapter 2 (commencing with Section 2920) of Title 14 of the Civil Code and shall not be governed by the provisions of this chapter." (emphasis added). The emphasized language from Section 18039.1 is important because, in order for a mobilehome to be "affixed to a permanent foundation pursuant to Section 18551," the owner or building contractor must obtain a building permit. In order to obtain that permit the owner or contractor must provide, among other things, written evidence that (1) the owner of the

mobilehome owns the real property where the mobilehome is to be installed on a foundation, (2) that the owner of the mobilehome is purchasing the real property where the mobilehome is to be installed on a foundation, or (3) that the owner of the mobilehome is the lessee of the real property where the mobilehome is to be installed on a foundation under a lease that is for a term of 35 years or more or that meets certain other requirements. Cal. Health and Safety Code § 18551(a)(1)(A).

For the reasons stated above, the record reflects no facts that would lead to the conclusion that debtors' mobilehome has become a fixture on real property. That being the case, the record reflects no facts that would lead to the conclusion that an abstract of judgment recorded in San Joaquin County would create a lien on debtors' mobilehome.

The court neither makes nor implies any ruling on any issue other than the existence of a lien.

The court will issue a minute order. a minute order.

46. [08-24539](#)-B-7 SEIFUDEEN MATEEN AND HEARING - MOTION
UST #1 TALYA JACOBS FOR EXTENSION OF TIME FOR
FILING A COMPLAINT OBJECTING
TO DEBTOR'S DISCHARGE OR FOR
FILING A MOTION TO DISMISS
7-17-08 [[19](#)]

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

The motion is granted. The deadline to file a complaint objecting to the discharge of the debtors under 11 U.S.C. § 727 or a motion to dismiss pursuant to 11 U.S.C. § 707(b)(3) is extended to Friday, September 5, 2008.

The United States Trustee ("UST") timely filed the motion pursuant to Federal Rule of Bankruptcy Procedure 4004(b). The UST alleges without dispute that it has received information suggesting that debtors may have received and may be receiving income from the operation of a boxing club, which income is not reflected on debtor's schedules or statement of financial affairs. The UST further alleges without dispute that new questions have arisen regarding debtors' assets and financial affairs. Accordingly, in the absence of opposition, the court finds that the UST has established cause for extension of the deadlines to file a complaint objecting to the debtors' discharge or to file a motion to dismiss the case.

The court will issue a minute order.

47. [08-29000](#)-B-7 EDWARD/JILL BERNI HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. ON REAL PROPERTY
7-30-08 [[11](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 8, 2008 and is removed from the calendar.

48. [08-26408](#)-B-7 CURTIS/KATHLEEN WHITE HEARING - MOTION FOR
ND #2 RELIEF FROM AUTOMATIC STAY
SAXON MORTGAGE SERVICES, INC., VS. ON REAL PROPERTY
7-29-08 [[35](#)]

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 3960 Garnet Road, Pollock Pines, CA 95726 (APN 042-611-031) (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 \$180,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$247,141.91. Without considering the junior lien of \$55,327.00, 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 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.

49. [08-28821](#)-B-7 CARL/JOAN PALUMBO HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, F.S.B., VS. 7-29-08 [[10](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 413 Donaldson Court, Suisun City, CA 94585 (APN 0173-475-060) (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 \$320,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$426,829.26. Without considering the junior lien \$45,958.03 or the senior lien of \$6,013.56, 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.

50. [08-22725](#)-B-11 BAYER PROTECTIVE SERVICES, HEARING - MOTION FOR
DGN #1 INC. RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 7-31-08 [[55](#)]

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.

51. [08-22725](#)-B-11 BAYER PROTECTIVE SERVICES, HEARING - MOTION FOR
DGN #2 INC. RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 7-31-08 [[61](#)]

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. [08-22725](#)-B-11 BAYER PROTECTIVE SERVICES, HEARING - MOTION FOR
DGN #3 INC. RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 7-31-08 [[67](#)]

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.

53. [08-27930](#)-B-7 JAVIER/EMILY SANCHEZ HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-29-08 [[17](#)]
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 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 4130 Golden Pond Way, Rancho Cordova, CA 95742 (APN 067-0460-085-0000) (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 \$375,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$386,789.61. Without considering the junior lien of \$93,720.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make six (6) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

54. [08-27531](#)-B-7 LANCE/SHANNON BENNETT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-29-08 [[16](#)]
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 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 713 Marbella Court, Lincoln, CA 95648 (APN 334-050-012) (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 \$500,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$692,719.95. Without considering the junior lien of \$40,000.00, 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. 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.

55. [08-26432](#)-B-7 DANIEL/MARIAM METTLER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. ON REAL PROPERTY
7-30-08 [\[13\]](#)

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 159 Rivergate Place, Lodi, CA 95240 (APN 041-420-21) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$365,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$350,027.32. Considering the junior lien of \$80,000.00, 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. 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 plus costs of \$150. These fees and costs may be enforced only against the Property.

The court will issue a minute order.

56. [08-28532](#)-B-7 JOHN/LINDA KLABIUS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-25-08 [[16](#)]
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 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 9563 Highland Park Drive, Roseville, CA 95678 (APN 357-080-024) (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 \$475,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$476,972.39. Without considering the junior lien of \$57,698.00, 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.

The court will issue a minute order.

57. [08-23534](#)-B-7 JAMES SODERQUIST HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, 7-29-08 [[58](#)]
INC., VS.

Disposition Without Oral Argument: The motion is denied as moot because the bankruptcy case was dismissed by order entered August 7, 2008. (Dkt. 66).

The court will issue a minute order.

58. [08-28538](#)-B-7 LIDIA RIVERA AND
WGM #1 YANCEY RASH
AMERICAN HOME MORTGAGE
SERVICING, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
7-31-08 [[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 2027 Cassia Way, Rocklin, CA 95765 (APN 365-260-005-000) (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 \$498,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$624,806.40. Without considering the junior lien of \$93,805.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make five (5) mortgage payments. 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.

59. [07-21846](#)-B-7 DANA ANDREWS
JRR #4

CONT. HEARING - TRUSTEE'S
MOTION FOR APPROVAL OF
COMPROMISE AND SETTLEMENT
6-9-08 [[140](#)]

DISCHARGED 4-7-08
CONT. FROM 8-5-08,7-15-08

Tentative Ruling: This matter continued from August 5, 2008 without a briefing schedule for consideration of the supplemental briefs filed July 29, 2008 (Dkt. 173) and August 1, 2008 (Dkt. 177). In addition, the court closed the record on this matter as of August 5, 2008. In this instance, the court issues the following 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 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.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th 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 (9th 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.

The instant motion seeks approval of a compromise. Although the arguments raised in debtor's opposition and several counter arguments raised in the replies reference and/or evaluate the standard for summary judgment, a motion for summary judgment is not currently before the court. Accordingly, any such arguments will be addressed only insofar as they may be construed as applying to one or more of the relevant factors contained in In re A & C Properties.

The compromise in question arises from a an adversary proceeding, case no. 07-2119, ("Adversary Proceeding") filed by the plaintiff debtor against Esther Louise Andrews, Esther Louise Andrews as trustee of the Andrews Family Revocable Trust, and Gary Perry. Generally speaking, all five claims in the second amended adversary complaint arise out of debtor's position that he was unlawfully stripped of his inheritance from the Andrews Family Revocable Trust ("Trust"). To support his position, debtor argues, among other things, that an invalid amendment to the Trust, executed in or about August 2004 (the "Amendment"), and an invalid general durable power of attorney, worked to reduce debtor's share of the Trust proceeds by approximately \$25 million. The parties, consisting of the trustee, Gary Perry, individually and dba Law Offices of Gary Perry ("Perry"), the estate of Esther Louise Andrews, Frank P. Andrews, Jr., Esther Lou Lytton, and Brent Andrews, individually and as co-trustees of the Andrews Family Trust and Andrews Enterprises, a corporation, and the Estate of Frank Andrews (collectively "Andrews Parties"), propose the following compromise to resolve the Adversary Proceeding. In consideration of the dismissal with prejudice of the Adversary Proceeding, and other mutual promises contained in the settlement agreement (Dkt. 142), Perry and the Andrews Parties agree to pay a total of \$25,000.00 to the estate.

The court will address each of the four A&C factors in turn.

First, the trustee has failed to persuade the court that probability of success in litigation is low. The debtor argues that, in the event that the trustee abandons the Adversary Proceeding to him, he can likely prosecute the Adversary Proceeding successfully. The debtor further argues that, even if the state court determines that the Agreement bars any further litigation, the Agreement may nevertheless be avoided as a fraudulent transfer pursuant to 11 U.S.C. § 548. The Placer County Superior Court in Dana C. Andrews v. Esther Louise Andrews, as successor trustee of the Andrews Family Trust, case no. SPR 4203 ("Second Lawsuit") deemed debtor's underlying theories of recovery in the Adversary Proceeding barred. As the second amended complaint in the Adversary Proceeding states, the state court ruled that a written settlement agreement ("Agreement") executed by the debtor in a previous lawsuit, Dana Andrews v. Esther Louise Andrews and Esther Louise Andrews, as representative of the estate of Franklyn P. Andrews, Sr. and Andrew Enterprises, Inc. dba Andrews Lincoln Mercury, case no. SCV 17689 ("First Lawsuit"), "was a bar" to the bringing of the Second Lawsuit. (Dkt. 146 at 11, lines 17-19). That state court ruling is currently on appeal. The debtor's argument, therefore, depends on one of two things, reversal on appeal the state court ruling that claims in the Adversary Proceeding are barred or, alternatively, avoidance of the Agreement as a fraudulent transfer under 11 U.S.C. § 548. The trustee contends that, if the state court ruling in the Second Lawsuit is reversed, the probability of success in the litigation is "uncertain". (Dkt. 140 at 4). The trustee does not address the probability of success if the state court ruling in the Second Lawsuit is affirmed, but the Agreement is challenged as a fraudulent transfer pursuant to 11 U.S.C. § 548. No party has persuaded the court that the Agreement cannot be attacked as a fraudulent transfer. Instead, the closest argument, raised by the Andrews Parties, is that the Andrews Parties found little or no authority for setting aside a court-approved settlement on the basis of a constructive fraudulent transfer theory. Based on the foregoing, the court is not persuaded that the probability of success in litigation is necessarily low. Therefore, the court finds that the first A&C factor weighs against settlement.

Second, the trustee has not persuaded the court that the potential costs and delays of litigation outweigh any benefit to the litigation. If the instant motion is denied, and the state court decision is reversed, or the state court decision is affirmed but the Agreement is avoided as a fraudulent transfer, the ensuing litigation would involve numerous legal issues, several lawsuits in various stages in both the state court system and the bankruptcy court, and numerous defenses potentially available to the defendants. There is no doubt that the litigation would be complex and expensive. Moreover, the potential delay due to the pending appeal, is likely to be significant. See, e.g. Dkt. 146 at 12, lines 4-5. However, the proposed settlement amount is \$25,000.00, compared to the debtor's valuation of the claims at somewhere between \$2.0 million (Dkt. 1 at 10) and \$25 million (Dkt. 146 at 6). Importantly, the debtor proposes to pursue the litigation on behalf of the estate (Dkt. 147, p. 9, ¶ 32). Based on the foregoing, the court finds that the second A&C factor weighs against the settlement.

Third, the trustee concedes, and the debtor agrees, that collection of a judgment in the Adversary Proceeding would not be difficult as the probate estate in question is solvent. Therefore, the court finds that the third A&C factor weighs against settlement.

Fourth, the trustee has failed to persuade the court that settlement is in the paramount interests of the creditors. The trustee argues that settlement is in the best interests of creditors because it will avoid the expense and delay of litigation. Despite the trustee's argument, the only creditor to take a position on the matter, Robert Mark McLaughlin ("McLaughlin"), has filed written opposition to the motion. McLaughlin's response comments that a settlement of \$25,000.00 based on a maximum possible recovery of \$25 million "would be an insult to the creditors." (Dkt. 164 at 1). Based on the foregoing, the court finds that the fourth A&C factor weighs against settlement.

Accordingly, the court finds that, on the whole, the A&C factors weigh against settlement and that the trustee has not carried his burden of persuading the court that the proposed compromise is fair and equitable.

The court will issue a minute order.

60. [08-27149](#)-B-7 EVELYN COOPER HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 7-28-08 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, in this instance, the court issues the following tentative ruling.

The motion is denied as moot.

Through the motion, movant seeks relief from the automatic stay in connection with a 2006 Ford Mustang (VIN 1ZVFT84N965206321) (the "Vehicle"). The motion is denied as moot because the debtor's statement of intention provides that she will surrender the Vehicle to the movant. Pursuant to 11 U.S.C. § 521(a)(2)(B), debtor had until Friday, August 1, 2008 to perform her 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 August 2, 2008 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.

61. [08-24850](#)-B-7 ANA AGUILERA HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-25-08 [[25](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the missing installment on August 5, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

62. [08-28455](#)-B-7 TOBERTHA MORGAN HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-30-08 [[12](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the missing installment on August 1, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

63. [08-28256](#)-B-7 JOSEPH CABARDO HEARING - MOTION FOR
KH #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 8-4-08 [[23](#)]

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. [08-29856](#)-B-7 EDWIN MALO AND HEARING - ORDER
LADIZ MORALES TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-30-08 [[5](#)]

Tentative Ruling: None.

65. [08-29856](#)-B-7 EDWIN MALO AND HEARING - ORDER
LADIZ MORALES TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-30-08 [[6](#)]

Tentative Ruling: None.

66. [08-29759](#)-B-7 JACK/MYRA LEDYARD HEARING - MOTION FOR
RTD #1 RELIEF FROM AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION, VS. 7-25-08 [[9](#)]

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 intention indicating an intent to surrender the Vehicle, 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 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 Buick LeSabre (VIN 1G4HP52K15U220804) (the "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 waived. Except as so ordered, the motion is denied.

The motion is granted to the extent set forth herein. Movant claims without dispute that the value of the Vehicle is \$8,000.00. Movant holds a lien on the Vehicle in the amount of \$14,561.43. There is no equity in the Vehicle, 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 Vehicle for the benefit of creditors. Debtors have filed a statement of intent to surrender the Vehicle. Movant also alleges without dispute that debtors have failed to provide proof of insurance on the Vehicle and have not made one (1) payment. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

67. [08-28677](#)-B-7 DAVID KREVITSKY HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 7-31-08 [[10](#)]

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 4920 Coffee Creek Road, Trinity Center, CA 96091 (APN 004-260-17) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$600,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$520,239.66. Considering the junior lien of \$90,997.00 and the senior lien of \$780.00, 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 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.

68. [08-28187](#)-B-7 JOSE/GUILLERMINA RODRIGUEZ HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-25-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. This case was automatically dismissed at 12:01 am on August 5, 2008 pursuant to 11 U.S.C. § 521(i).

The court will issue a minute order.

69. [08-26788](#)-B-7 HOUA/MARIGOLD YANG HEARING - MOTION FOR
ND #1 RELIEF FROM AUTOMATIC STAY
EVERHOME MORTGAGE CO., ON REAL PROPERTY
ET AL., VS. 7-28-08 [[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.

70. [08-29090](#)-B-7 MARIEO DAVIS HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-25-08 [[10](#)]

Tentative Ruling: None.

71. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS HEARING - MOTION
HLC #6 TO EMPLOY CERTIFIED
PUBLIC ACCOUNTANT
7-14-08 [[103](#)]

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of 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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. Pursuant to 11 U.S.C. § 327(a) and Bankruptcy Rule 2014, the debtor-in-possession is authorized to employ Brown, Fink, Boyce & Astle, LLP ("BFBA") to prepare tax returns and perform other accounting functions in the ordinary course of business. BFBA's employment is approved effective June 14, 2008. BFBA's compensation shall be awarded pursuant to fee application(s) under 11 U.S.C. § 330. The court approves no specific hourly rates. Hourly rates will be considered in assessing the reasonableness of fees requested in fee application(s). 11 U.S.C. § 330(a)(3)(B); Boone v. Derham-Burk (In re Eliapo), 298 B.R. 392, 398 (9th Cir. BAP 2003) ("A customary review of a fee application under § 330 starts with a determination of the 'lodestar,' by multiplying a reasonable number of hours expended by a reasonable hourly rate.").

The court finds that BFBA is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court will issue a minute order.

72. 08-25847-B-7 GERALD DOBSON, VS. HEARING - MOTION TO
DES #1 AVOID JUDICIAL LIEN
TRI-CAP INVESTMENT 7-23-08 [15]
PARTNERS

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

The motion is denied without prejudice for improper service.

Through this motion, movant seeks to avoid the judicial lien in favor of Tri-Cap Investment Partners, LLC, recorded in the official records of Siskiyou County, Document No. 07-0011200, as against the real property located at 304 Key Court, Yreka, CA 96097. The proof of service filed in connection with this matter shows that movant served Rogers, MacLeith & Stolp, LLP at 10061 Talbert Avenue, Suite 300, Fountain Valley, California 92708 for Tri-Cap Investment Partners, LLC. (Dkt. 17 at 2). Movant states that Rogers, MacLeith & Stolp, LLP is the law firm of record for Tri-Cap Investment Partners, LLC as shown on the recorded abstract of judgment. Movant then explains that service was performed on Rogers, MacLeith & Stolp, LLP for Tri-Cap Investment Partners, LLC after movant's searches of the corporate records of the California Secretary of State failed to locate a business entity known as either "Tri-Cap Investment Partners, LLC" or "Tri-Cap Investment Partners" and, therefore, failed to list an agent for service of process for either entity. (Dkt. 15 at 2).

The court notes that, as this is a contested matter under Bankruptcy Rule 9014, service on Tri-Cap Investment Partners, LLC is governed by Bankruptcy Rule 7004. Based on movant's allegations, movant has not shown that service on Rogers, MacLeith & Stolp, LLC constitutes proper service on Tri-Cap Investment Partners, LLC under Bankruptcy Rule 7004. Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 94 (9th Cir. BAP 2004). Accordingly, there is no presumption of service on Tri-Cap Investment Partners, LLC, as required pursuant to Bankruptcy Rules 9014(b) and 7004.

The court will issue a minute order.

73. [06-24949](#)-B-7 PATRICIA LIGHT HEARING - MOTION
MPD #2 FOR APPROVAL OF COMPROMISE AND
SETTLEMENT OF THE ESTATE'S CLAIM
FOR RECOVERY OF NON EXEMPT
PROPERTY OF THE DEBTOR
7-15-08 [20]

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

The motion is granted to the extent set forth herein. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th 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 (9th 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.

The compromise in question arises from the debtor's interest in an inheritance from the probate estate of Mary Louise Jenkins, the debtor's mother. During the course of administering the bankruptcy estate, the chapter 7 trustee learned of debtor's interest in the inheritance, which trustee contends is property of the bankruptcy estate.

To settle the bankruptcy estate's claim for recovery of the debtor's interest in the inheritance, the trustee, the debtor, and the probate estate's executor have agreed that the executor of the probate estate will pay \$25,000.00 to the chapter 7 trustee, which represents a portion of the non-exempt inheritance debtor is to receive from the probate estate. The trustee proposes to use the sum of \$25,000.00 to satisfy the filed claims in this case, totaling \$12,986.92, interest on the filed claims estimated at 5% over two years in the amount of \$1,298.69, attorney fees and costs in the amount of \$4,565.78, and the chapter 7 trustee's fees and costs, estimated in the amount of \$2,700.00.

The trustee asserts the compromise is fair and equitable. He addresses, as he should, the relevant factors under In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). However, mechanical application of those factors does not fit this compromise. Here, the trustee has proposed a

compromise that essentially duplicates the result that would occur if the trustee recovered the entire inheritance, but does so faster and at a lesser cost. If the trustee recovered the entire inheritance, all filed and allowed claims would be paid in full, with interest, the trustee would be paid his fees and costs and the excess would be returned to the debtor. 11 U.S.C. § 726(a). That is exactly what is proposed by the compromise, with fewer fees and costs incurred by the trustee and a faster distribution to creditors.

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

The court will issue a minute order.

74. [06-24949](#)-B-7 PATRICIA LIGHT HEARING - VERIFIED
MPD #3 MOTION FOR APPROVAL OF ATTORNEY
FEES OF \$4,496.25 PLUS COSTS OF
\$69.53 TO MICHAEL P. DACQUISTO
AS ATTORNEY FOR THE ESTATE
7-15-08 [[25](#)]

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

The motion is granted to the extent set forth herein. The application is approved for a total of \$4,221.25 in fees and costs of \$28.33. Of that amount, \$4,249.58 shall be paid as an administrative expense by the chapter 7 trustee.

On November 22, 2006, the debtor filed a chapter 7 petition. By order entered February 1, 2007, the court approved the employment of Michael P. Dacquisto ("Dacquisto") to assist the chapter 7 trustee in investigating and recovering debtor's fractional interest in an inheritance originally undisclosed by the debtor. Dacquisto now seeks compensation for services for the period of January 11, 2007 through August 19, 2008, equaling \$4,221.25 in professional fees. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

Except as so ordered, the motion is denied.

The court will issue a minute order.

75. [04-26357](#)-B-13J LARRY/NANCY TEVIS
[08-2004](#) RHB #1
LARRY/NANCY TEVIS, VS.

HEARING - MOTION
TO DISMISS
7-14-08 [[136](#)]

DEPART. OF VETERANS AFFAIRS, ET AL.

Disposition Without Oral Argument: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of 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 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. Defendant Sierra West Group and defendant Mary E. Wallers are dismissed from the adversary proceeding without prejudice pursuant to Federal Rule of Bankruptcy Procedure 7004(a), incorporating Federal Rule of Civil Procedure 4(m).

Through this motion, defendant Sierra West Group ("Sierra") and defendant Mary E. Wallers ("Wallers") (collectively "Defendants") seek an order dismissing Defendants from the complaint. Defendants motion is made on two separate grounds. First, Defendants request dismissal for insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5), which is made applicable here pursuant to Federal Rule of Bankruptcy Procedure 7012. Second, Defendants request dismissal for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), which is also made applicable here pursuant to Federal Rule of Bankruptcy Procedure 7012. The court will address each request in turn.

Defendants argue that plaintiffs' complaint should be dismissed as to Defendants for insufficient service of process. According to Defendants, plaintiffs failed to serve Wallers with the summons and complaint. Additionally, Defendants argue that plaintiffs failed to serve Sierra because the "only proof of service that could pertain to . . . Sierra [shows that Sierra] was served [untimely] on June 13, 2008". The court finds Defendants' argument persuasive.

In pertinent part, Federal Rule of Civil Procedure 4(m), made applicable here pursuant to Federal Rule of Bankruptcy Procedure 7004(a)(1), provides a 120-day time limit for service of process. Fed. R. Civ. P. 4(m). The court notes that plaintiffs filed their initial complaint on January 2, 2008 and later a first amended complaint on May 13, 2008. However, the court further notes that Wallers and Sierra are named in both the initial complaint and the first amended complaint. The 120-day time limit of Fed. R. Civ. P. 4(m) refers to the filing of the first version of the complaint naming the particular defendant to be served. Bolden v. City of Topeka, 441 F.3d 1129, 1149 (10th Cir. 2006); First Horizon Home Loan Corp. v. Phillips, 2008 U.S. Dist. LEXIS 26964 (D. Ariz. Mar. 31, 2008); see also McGuckin v. United States, 918 F.2d 811 (9th Cir. 1990). Because the initial complaint was filed on January 2, 2008, the 120-day period expired on May 1, 2008. Plaintiffs have yet to file a proof of service showing that Wallers was properly served with a summons and complaint. With regards to Sierra, plaintiffs filed a proof of service as to Sierra, showing that Sierra was served on May 27, 2008 (Dkt. 42 at 19); however, plaintiffs' subsequent declaration (Dkt. 54) states that Sierra was not served until June 13, 2008. Under either service date, service on Sierra was untimely as it was not performed on

or before May 1, 2008.

Plaintiffs have failed to file written opposition to the motion. Therefore, the court finds that plaintiffs have not shown good cause for their failure to timely serve Defendants. The court notes that it has previously warned plaintiffs, on numerous occasions, about dismissal of improperly served defendants. Such occasions include the continued status conference, held May 14, 2008 (Dkt. 40), and the continued status conference, held June 25, 2008 (Dkt. 93), where the court ordered numerous other parties dismissed without prejudice pursuant to Federal Rule of Bankruptcy Procedure 7004(a) (Dkt. 95). Based on the foregoing, the court orders dismissal of the Defendants from the adversary proceeding without prejudice.

The court declines to reach the merits of Defendants' request for dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

The court will issue a minute order.

76. [08-27980](#)-B-7 GINA MARTIN
PD #1
JPMORGAN CHASE
BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-15-08 [[12](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 803 Carrion Circle, Winters, CA 95694 (APN 003-410-27-1) (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 \$362,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$393,473.43. Without considering the junior lien of \$96,681.51, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make eight (8) mortgage payments. 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.

77. [08-21167](#)-B-7 AFRICA FARR HEARING - OBJECTION
TO CASE CLOSURE BY
CREDITWEST CORPORATION
7-2-08 [[20](#)]

DISCHARGED 5-2-08

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 15, 2008 and is removed from the calendar.

78. [08-20174](#)-B-7 CHARLES/BONNIE HUGHES HEARING - MOTION
RJH #5 FOR APPROVAL OF COMPROMISE
OF CONTROVERSY
7-17-08 [[98](#)]

DISCHARGED 4-22-08

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

The motion is granted to the extent set forth herein. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th 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 (9th 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.

The compromise in question arises from a payment of \$3,500.00 (the "Transfer") by debtors to creditor Chase Credit Card Services, Inc. ("Chase") within 90 days of the debtors having filed their bankruptcy petition on January 4, 2008. The trustee asserts that the Transfer may be avoidable as a preferential transfer. The trustee concedes that,

subsequent to the Transfer, debtors charged an additional \$952.36 on debtors' credit card account with Chase. Accordingly, a dispute has arisen between the trustee and Chase as to the sum of \$2,547.64, the amount of the Transfer less the subsequent \$952.36 charge.

To settle trustee's claim to the proceeds of the Transfer, the trustee and Chase have agreed that Chase will pay \$1,783.35 to the bankruptcy estate. That amount is 70% of the "net transfer," and represents a reduction of \$764.29 from the "net transfer"

The trustee asserts the compromise is fair and equitable. His argument focuses on the assertion that the costs, risks and delay of further litigation outweigh any benefit of further litigation and that the administration of the bankruptcy case may be concluded sooner if the compromise is approved. The court agrees that the trustee could easily incur \$764.29, or more, of additional fees and costs by continuing the litigation and that continuing the litigation would delay distribution to creditors. No creditors have opposed the motion.

Accordingly, in the absence of opposition, the court finds that the trustee has carried the burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

79. [08-24883](#)-B-7 ANGELA ECKELMAN CONT. HEARING - MOTION FOR
ALS #1 AUTHORITY TO REDEEM PERSONAL
PROPERTY AND APPROVAL OF
ASSOCIATED FINANCING AND
ATTORNEY FEES
6-27-08 [[18](#)]

CONT. FROM 7-15-08

Tentative Ruling: This matter continued from July 15, 2008 with a briefing schedule. Opposition was due by August 5, 2008. Replies, if any, were due by August 12, 2008. No further briefs have been filed in this matter since the previous hearing date. In this instance, the court issues the following tentative ruling.

The motion is granted in part and denied in part.

Debtor's request to redeem Tri Counties Bank's collateral, a 2003 Honda CR-V (VIN JHLRD78833C015967) (the "Vehicle"), is granted pursuant to 11 U.S.C. § 722 and Bankruptcy Rule 6008. The debtor is authorized to redeem the Vehicle from Tri Counties Bank ("Creditor") for \$8,005.00. The entire redemption amount shall be tendered to Creditor so that it is received on or before September 5, 2008. Debtor's request for an order compelling Tri Counties Bank to accept the redemption payment and release its lien is denied without prejudice.

The redemption is authorized because the Vehicle qualifies as personal property used for personal family or household use, and it has been exempted by debtor on Schedule C.

Debtor's request for an order compelling Tri Counties Bank to accept the

redemption payment and release its lien is denied without prejudice because 11 U.S.C. § 722 and Bankruptcy Rule 6008 do not authorize that relief. Such a request requires an adversary proceeding under Bankruptcy Rule 7001(2).

The court will issue a minute order.