

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

December 23, 2008 at 9:30 A.M.

1. [08-35700](#)-B-7 WESLEY DOBROW HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-21-08 [[10](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on Tuesday, December 16, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

2. [08-23207](#)-B-7 DANIEL/PATRICIA SCHWEITZER HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-24-08 [[125](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on December 9, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

3. [08-26912](#)-B-7 SHEILA RICHARDSON HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
FOR FAILURE TO TENDER FEES
11-24-08 [[83](#)]

Tentative Ruling: None.

4. [08-33519](#)-B-7 ROBI QUICK HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-19-08 [[14](#)]

Tentative Ruling: None.

5. [08-35226](#)-B-7 GURMEJ GREWAL HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-17-08 [[10](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on Tuesday, December 9, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

6. [08-36236](#)-B-7 JEFFREY JOHNSON HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-24-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the missing fee on December 3, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

7. [08-35270](#)-B-7 DANIEL/SUSAN MOSBY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-25-08 [[11](#)]

Tentative Ruling: None.

8. [08-29173](#)-B-7 GREG/JULIE WEATHERLY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-18-08 [[46](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on November 24, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

9. [08-29173](#)-B-7 GREG/JULIE WEATHERLY HEARING - MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
CITIFINANCIAL AUTO CORP., VS. 11-24-08 [[55](#)]

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 denied as moot. The automatic stay terminated with respect to the collateral, a 2002 Ford Explorer (VIN 1FMZU73W82UB45489) (the "Collateral"), at 12:01 a.m. on Thursday, November 27, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors did not file a statement of intention with respect to the Collateral within the time allowed by law. The debtors had until Wednesday, November 26, 2008, 30 days after entry of the order converting this case to one under chapter 7, to file a statement of intention that addressed the Collateral. Because they did not timely file such a statement of intention, and because the Collateral is personal property, the automatic stay terminated at 12:01 a.m. on Thursday, November 27, 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 movant already has the relief it seeks by this motion.

The court will issue a minute order.

10. [08-35891](#)-B-7 CHALEE BILBO HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
11-25-08 [[15](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on Tuesday, December 16, 2008. The debtor

failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

11. [08-35100](#)-B-7 LELEFU/ROMANASITA VUI HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, 11-24-08 [[11](#)]
ET AL., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the 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 2113 65th Street, Sacramento, CA 95822 (APN 047-0124-008) (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 \$150,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$244,655.62. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make six (6) mortgage payments. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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

The court will issue a minute order.

12. [08-28701](#)-B-7 WILLIAM/VERNA COSTA HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL ON REAL PROPERTY
TRUST COMPANY, ET AL., VS. 11-25-08 [[72](#)]

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.

13. [08-34203](#)-B-7 SCOTT BRYANT AND HEARING - MOTION FOR
PPR #1 RACHAEL TAYLOR-BRYANT RELIEF FROM AUTOMATIC STAY
FIRST FRANKLIN FINANCIAL 11-12-08 [[16](#)]
CORPORATION, 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 5499 Foxview Way, Elk Grove, CA 95757 (APN 132-1360-021) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$288,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$392,675.45. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. 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.

14. [08-34013](#)-B-7 ROYCE/SHANNON STARR HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 11-20-08 [[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 Paloran Court, Shingle Springs, CA 95682 (APN 070-062-01-100) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$150,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$186,007.84. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The 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 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.

15. [08-35922](#)-B-7 FRANK/MARGARET ARANDA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE LLC, VS. 11-12-08 [\[10\]](#)

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, because the debtors are pro se, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the 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 415 Kohler Street, Stockton, CA 95206 (APN 165-091-19) (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 \$120,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$268,456.92. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make eleven (11) mortgage payments. The 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 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.

16. [08-36025](#)-B-7 GEORGE/TAMMY MULLEN HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
THE MECHANICS BANK, VS. 11-25-08 [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 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 denied as moot. The automatic stay terminated as to the collateral, a 2007 Chevrolet Suburban (VIN 3GNFK16327G168828) (the "Collateral"), at 12:01 a.m. on December 4, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1019(1)(B). In order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtors had until Wednesday, December 3, 2008 to file a statement of intention that stated with respect to the Collateral one of the intentions specified in the statute. Because they did not file a compliant statement of intention timely and because the collateral at issue here is personal property, the automatic stay terminated as to the Collateral at 12:01 a.m. on Thursday, December 4, 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 movant already has the relief it seeks by this motion.

The court will issue a minute order.

17. [08-32626](#)-B-7 VERNITA FAISON
PD #1
OCWEN LOAN SERVICING, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-21-08 [[22](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5101 Calvine Road, Sacramento, CA 95823 (APN 117-1050-001-0000) (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 \$220,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$345,960.62. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make twenty-two (22) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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.

18. [08-33326](#)-B-7 JAMES/CAROL SHURTE
PPR #1
GREENPOINT MORTGAGE
FUNDING, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-18-08 [[17](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (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 1743 Delouch Drive, Lincoln, CA 95648 (APN 009-210-024) (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 \$305,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$382,354.10. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make five (5) mortgage payments. The debtors have filed a statement of intent to surrender the Property. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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

The court will issue a minute order.

19. [08-33926](#)-B-7 STEVEN DEOLLAS, JR. HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 11-21-08 [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 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 5 Estuary Court, Sacramento, CA 95831 (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 \$298,556.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$313,830.65. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make twenty-three (23) 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).

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

20. [08-35427](#)-B-7 KAREN TODD HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 11-20-08 [9]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (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 331 Quadra Drive, Rio Linda, CA 95673 (APN 214-0233-006) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$190,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$296,149.05. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make ten (10) mortgage payments. The debtor has filed a statement of intent to surrender the Property. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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

The court will issue a minute order.

21. [08-33940](#)-B-7 PAVEL KOROBOV
MBB #1
AMERICA'S WHOLESALE LENDER, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [[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 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 3723 California Avenue, Carmichael, CA 95608 (APN 260-0321-004) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$249,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$321,614.45. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make seven (7) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because 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.

22. [07-30041](#)-B-7 RANDALL/CINDY CHAMBERS
RAR #2
TRI COUNTIES BANK, VS.

HEARING - MOTION TO
APPROVE STIPULATION FOR RELIEF
FROM THE AUTOMATIC STAY RE:
3694 LOCUST ROAD, COTTONWOOD,
CALIFORNIA
11-25-08 [[211](#)]

Tentative Ruling: The motion is denied without prejudice for procedural defects.

The movant failed to serve this motion on the debtors as required by Fed. R. Bankr. P. 7004. The proof of service indicates that the debtors were not served at their current address of record.

The court will issue a minute order.

23. [07-30041](#)-B-7 RANDALL/CINDY CHAMBERS HEARING - MOTION TO
RAR #2 APPROVE STIPULATION FOR RELIEF
TRI COUNTIES BANK, VS. FROM THE AUTOMATIC STAY RE:
11629 SONORA TRAIL, REDDING, CA
11-25-08 [[209](#)]

Tentative Ruling: The motion is denied without prejudice for procedural defects.

The movant failed to serve this motion on the debtors as required by Fed. R. Bankr. P. 7004. The proof of service indicates that the debtors were not served at their current address of record.

The court will issue a minute order.

24. [08-26845](#)-B-7 CHRISTOPHER HERAS CONT. HEARING - MOTION FOR
JMO #2 RELIEF FROM AUTOMATIC STAY
KULDIP GOYLE, VS. 10-15-08 [[47](#)]

CONT. FROM 11-18-07

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the 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 2621 Beaumont Street, Sacramento, CA 95815 (APN 263-0172-008) (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 \$145,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$311,013.60. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make twelve (12) mortgage payments. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

25. [08-34646](#)-B-7 MANUEL RAMIREZ
DMG #1
CITIFINANCIAL AUTO CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-20-08 [[12](#)]

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

The motion is denied as moot. The automatic stay terminated as to the collateral, a 2001 Toyota Tundra (VIN 5TBRT34131S186756) (the "Collateral"), at 12:01 a.m. on October 25, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor filed a statement of intention with respect to 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 debtor stated that he would surrender the vehicle (Dkt. 1 at 40). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Here, the motion is moot because the debtor had until Thursday, December 18, 2008 to perform his stated intention by surrendering the Collateral to movant. There is no evidence that he did so. Thus, as the Collateral is personal property, the automatic stay terminated at 12:01 a.m. on December 19, 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.

26. [08-34548](#)-B-7 AHTERA DUNN
MET #1
BANK OF THE WEST, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-12-08 [[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 the movant to obtain possession of its collateral, a 2005 Nissan Titan (VIN 1N6AA07835N512739) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the value of the Collateral is \$11,375.00. Movant holds a lien on the Collateral in the amount of \$23,273.76. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation in this chapter 7 case. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. Movant also alleges without dispute that debtor has not made four (4) payments. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

27. [08-34849](#)-B-7 GERARD/DALISAY SILVERIO HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME 11-24-08 [[28](#)]
LOANS, 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 17991 Rusty Plow Lane, Lathrop, CA 95330 (APN 191-410-04) (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 \$317,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$559,299.17. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intent to surrender the Property. Movant also alleges without dispute that the debtors have failed to make twelve (12) mortgage payments. The lack of written opposition by the trustee further 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.

28. [08-35450](#)-B-7 DAVID/KATHERINE HAKALA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 11-18-08 [[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 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 5376 Woodfield Drive, Carmel, Indiana 46033 (APN 16-10-21-00-01-012-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. 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 \$276,176.61. Considering the junior lien of \$82,220.49, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intent to surrender the Property. Movant also alleges without dispute that the debtors have failed to make ten (10) mortgage payments. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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

The court will issue a minute order.

29. [08-35552](#)-B-7 FELIPE/MARIA HIPOL HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP., VS. 11-13-08 [[7](#)]

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

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2007 Honda Accord (VIN HGCM72697A017848) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the Collateral is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$17,000.00. Movant holds a lien on the Collateral in the amount of \$23,487.01. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation. The lack of opposition and report of no distribution by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtor has not made six (6) payments. Debtor has filed a statement of intent to surrender the Collateral. Movant alleges without dispute that debtor has voluntarily surrendered the Collateral to movant on an unspecified date. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

30. 08-33353-B-7 VALERIE GALLOWAY HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S WHOLESALE 11-17-08 [[14](#)]
LENDER, 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 2746 Laurel Drive, Fairfield, CA 94533 (APN 162-093-040) (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 \$317,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$350,118.78. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without

dispute that the debtor has failed to make fourteen (14) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

31. [08-24557](#)-B-7 PETE/MARBE AGMATA CONT. HEARING - MOTION FOR
MSS #1 RELIEF FROM AUTOMATIC STAY
MONTEREY COUNTY BANK, VS. 5-19-08 [20]

CONT. FROM 11-18-08, 9-16-08,
6-24-08

Tentative Ruling: This matter continued from November 18, 2008 without a briefing schedule. The trustee's supplemental response was due on or before December 16, 2008 (Dkt. 114). The trustee filed a supplemental response one day late on December 17, 2008.

The motion is denied without prejudice or continued with the consent of movant to February 3, 2009 at 9:30 a.m. The trustee's supplemental response shows that a sale that will pay movant in full is in prospect. The sale price is \$945,000.00 and movant's first deed of trust is approximately \$522,000.00. The equity cushion is adequate to protect the movant's interest pending the continued hearing. Pistole, et al. v. Mellor (In re Mellor), 734 F.2d 1396 (9th Cir. 1984).

The court will issue a minute order.

32. [08-32358](#)-B-7 DON NGUYEN HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DCFS USA LLC, VS. 11-17-08 [20]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2003 Mercedes Benz E320 (VIN WDBUF65J53A346515) (the "Collateral"), at 12:01 a.m. on October 3, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor filed a statement of intention with respect to this item of personal property within the deadline established by 11 U.S.C. § 521(a)(2) and [Interim 2006] Federal Rule of Bankruptcy Procedure 1007(b)(2). The debtor stated that the Collateral "is claimed as exempt." (Dkt. 1 at 37). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the

34. 08-21665-B-11 PAUL/LESLIE PLATNER
PD #1
AURORA LOAN SERVICES, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [112]

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, because the Plaintiffs are in pro se, 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)(2) in order to permit the movant to foreclose on the real property located at 12354 Dogwood Road, Grass Valley, CA 95945 (APN 06-830-61) and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. The 10-day 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 subject real property has a value of \$742,000.00. Movant alleges that the property is encumbered by a perfected deed of trust or mortgage in favor of movant which secures a claim of \$680,012.59. Considering the junior lien of \$142,000.00, debtors do not have an equity in the property. See Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984) ("equity" refers to the difference between the value of the property and all encumbrances upon it"). The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity.

Once lack of equity is established, the burden is on the debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

The debtors have not filed an opposition to this motion. Thus, debtors have not shown that the Property is necessary to an effective reorganization.

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.

35. [08-26468](#)-B-11 EL DORADO HILLS SELF- CONT. HEARING - MOTION FOR
CWS #2 STORAGE, LLC RELIEF FROM AUTOMATIC STAY
CB HOLDINGS, INC., VS. 11-4-08 [[202](#)]

CONT. FROM 11-18-08

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

On December 10, 2008, counsel for CB Holdings, Inc. and El Dorado Hills Self-Storage, LLC filed a stipulation in which the parties agreed to continue this matter to the court's January 20, 2009 calendar. An order granting the stipulation and continuing this matter to the court's January 20, 2009 calendar was entered on December 16, 2008. This matter is therefore dropped from this calendar.

36. [08-33768](#)-B-7 DELMAR/KRISPIN ROUSE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 11-18-08 [[13](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (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 11104 E. Avenue, Hesperia, CA 92345 (APN 0399-042-25-0-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$240,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$361,366.98. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make ten (10) mortgage payments. The 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 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.

37. [08-33271](#)-B-7 FRANK/LETICIA RAMIREZ HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [[30](#)]

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 2904 Appling Circle, Stockton, CA 95209 (APN 078-280-29) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$250,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$113,906.85. Considering the senior lien of \$291,392.35, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make seven (7) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because 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.

38. [08-32476](#)-B-11 SHASTA APARTMENTS, LLC HEARING - MOTION FOR
LBE #2 RELIEF FROM AUTOMATIC STAY
ROBERT WHITEHEAD, ET AL., VS. 11-25-08 [[44](#)]

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

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to foreclose on the real property consisting of 58 acres near Poplar Street & State Highway 151 in Shasta Lake, CA (APNs 006-040-024, 006-040-025, 006-040-026, 006-040-027) (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. Movant's request for a restraining order is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$1,310,000.00. Movant alleges that the Property is encumbered by a perfected deed of trust or mortgage in favor of movant which secures a claim of \$1,423,600.00. Considering these figures, debtor does not have an equity in the property. See Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984) ("equity" refers to the difference between the value of the property and all encumbrances upon it"). The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity.

Once lack of equity is established, the burden is on the debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

The debtor has not filed an opposition to this motion. Thus, debtor has not shown that the Property is necessary to an effective reorganization.

Injunctive relief requires an adversary proceeding. F.R.Bankr.P. 7001(7).

The court will issue a minute order.

39. 08-31081-B-7 TROY/AMY MOLENNOR HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE MORTGAGE 11-25-08 [20]
VENTURES, LLC, VS.

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

The motion is granted in part and denied 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 2366 Locust Street,

Sutter, CA 95982 (APN 14-194-015), (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The debtors received a discharge on November 24, 2008. The automatic stay ended as to the debtors on that date. 11 U.S.C. § 362(c)(2)(C).

Movant alleges without dispute that the Property has a value of \$290,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$266,596.79. Considering the junior lien of \$64,857.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The lack of 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 as to the estate.

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.

40. [08-32387](#)-B-7 ROBERT/KAREN BAIRD HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 11-21-08 [[14](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 5301 Tiburon Way, Sacramento, CA 95841 (APN 220-0071-040-0000) (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 \$191,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$251,997.68. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without

dispute that the debtors have failed to make three (3) mortgage payments. The 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 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.

41. [08-35487](#)-B-7 GABRIEL/OLIVIER SANCHEZ HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER FINANCIAL 11-19-08 [8]
SERVICES AMERICAS LLC, VS.

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

The motion is denied as moot. The automatic stay terminated with respect to the collateral, a 2004 Dodge Ram 1500 (VIN 1D7HA18D74J206404) (the "Collateral"), at 12:01 a.m. on Thursday, November 27, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors did not file a statement of intention with respect to the Collateral within the time allowed by law. The debtors had until Wednesday, November 26, 2008, 30 days after filing their voluntary petition, to file a statement of intention that addressed the Collateral. Because they did not timely file such a statement of intention, and because the Collateral is personal property, the automatic stay terminated at 12:01 a.m. on Thursday, November 27, 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 movant already has the relief it seeks by this motion.

The court will issue a minute order.

42. [08-26388](#)-B-11 JOHN O'SULLIVAN CONT. HEARING - MOTION FOR
PSK #2 RELIEF FROM AUTOMATIC STAY
OXFORD MORTGAGE FUNDS, LP AND 10-20-08 [[77](#)]
OXFORD MORTGAGE FUND II, LP., VS.

CONT. FROM 11-18-08

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

The motion is denied without prejudice for procedural defects.

Pursuant to the applicable provisions of Fed. R. Bankr. P. 4001(a)(1), in a chapter 11 case, a motion for relief from the automatic stay must be served on the creditors committee, or if none is appointed, the creditors included on the list filed pursuant to Rule 1007(d). The proof of service on this motion (Dkt. 91) indicates that some, but not all, of the creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(d) were served with this motion on November 21, 2008. The court notes that debtor filed a list of the 20 largest unsecured creditors on June 17, 2008 (Dkt. 19 at 1-2). Based on the foregoing, there is no presumption of service on the 20 largest unsecured creditors, as required.

The court will issue a minute order.

43. [08-26388](#)-B-11 JOHN O'SULLIVAN HEARING - MOTION FOR
PSK #2 RELIEF FROM AUTOMATIC STAY
OXFORD MORTGAGE 11-21-08 [[86](#)]
FUNDS, L.P., ET AL., VS.

Disposition Without Oral Argument: This matter was calendared in error as it is a duplicate of matter number 42 on this calendar. Both matters refer to the same movant and same docket control number. Matter number 43 has been decided elsewhere on this calendar. This matter is dropped from the calendar.

44. [08-32291](#)-B-7 MICHAEL/KELLY NEVIUS HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO., VS. 11-18-08 [[23](#)]

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

The motion is granted in part and denied 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 778 Cashmere Avenue, Lehigh Acres, Florida 33936, (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 stay of Fed.R.Bankr.P. 4001(a) (3) is waived. Except as so ordered, the motion is denied.

The debtors received a discharge on December 16, 2008. The automatic stay ended as to the debtors on that date. 11 U.S.C. § 362(c) (2) (C).

Movant alleges without dispute that the Property has a value of \$105,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$198,720.36. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make ten (10) mortgage payments. The lack of opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay as to the estate.

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

45. [08-33892](#)-B-7 XUAN LE HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 11-25-08 [[37](#)]
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 13982 Maximos Drive, Houston, TX 77083 (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 \$105,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$132,063.44.

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

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

46. [08-33892](#)-B-7 XUAN LE
MBB #2
DEUTSCHE BANK NATIONAL
TRUST COMPANY, ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [30]

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 1665 Avondale Drive, Roseville, CA 95748 (APN 484-030-049) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards fees and costs equal to the lesser of \$675 or the amount actually billed plus costs of \$150. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$480,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$451,117.99. Considering the junior lien of \$154,381.27, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make ten (10) mortgage payments. The lack of written opposition by the trustee further shows that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

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

The court will issue a minute order.

47. [06-23695](#)-B-7 STEVEN/TERRI SCOTT
MDE #1
LITTON LOAN SERVICING, LP, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-24-08 [[90](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 2004 Bastona Drive, Elk Grove, CA 95758 (APN 119-1860-015-0000) (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 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 \$325,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$436,996.88. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make sixteen (16) 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.

48. [08-33995](#)-B-7 JOHNNY/CAROL GARCIA
RCO #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-17-08 [[13](#)]

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

6040 Mio Court, Rio Linda, CA 95673 (APN 214-0252-010-0000) (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 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 \$165,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$286,310.99. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make four (4) mortgage payments. The 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 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.

49. [08-33198](#)-B-7 MARCOS/CATHERINE ALMENDARIZ HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 11-25-08 [\[20\]](#)
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 655 Blanefield Court, Folsom, CA 95630 (APN 072-1610-048) (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 \$308,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$305,841.28. Considering the junior lien of \$51,474.39, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. The 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. [08-26571](#)-B-7 DANIEL/JENNIFER BLUM HEARING - MOTION FOR
[08-2474](#) DEFAULT JUDGMENT
FIA CARD SERVICES, N.A., VS. 11-24-08 [12]

DANIEL BLUM

DISCHARGED 9-3-08

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

The motion is granted in part and denied in part. Default judgment will be rendered against debtor Daniel Blum in the amount of \$3,049.94, including contractual and additional interest to the date of entry of judgment, which judgment will be nondischargeable under 11 U.S.C. § 523(a)(2)(A). The court awards no fees. The court awards costs of \$150.00, representing the filing fee for the adversary complaint. Except to that extent, the motion is denied.

Plaintiff FIA Card Services, N.A. ("Plaintiff") seeks entry of a default judgment against debtor Daniel Blum ("Defendant"). Plaintiff commenced the adversary proceeding by filing a complaint against Defendant on August 25, 2008. Defendant did not answer the complaint, and on October 27, 2008 his default was entered. Plaintiff now seeks entry of default judgment against Defendant in the amount of \$3,049.94 (including contractual and additional interest) and requests that the judgment be declared nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(C).

The facts alleged without dispute in the complaint (Dkt. 1) include the following. Plaintiff granted defendant's debtors an extension of credit in the form of a credit card account. Defendant created a balance due and owing in the amount of \$3,364.26 including interest as of the petition date. Defendant incurred \$3,049.94 in cash advances/convenience check charges/retail charges against the credit card account between February 20, 2008 and May 15, 2008 without the intent to repay the charges.

Based on the facts alleged in the complaint, a judgment of nondischargeability under 11 U.S.C. § 523(a)(2)(A) is appropriate in this case. Under § 523(a)(2)(A), any debt "for money, property, services, or an extension, renewal, or refinancing of credit, the extent obtained by-- []false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition," is excepted from discharge. Here, Plaintiff alleges without dispute that it extended credit to Defendant in the form of a credit card on or around February 2008. By accepting the extension of credit, Defendant represented his intent to repay the amounts charged.

Plaintiff's allegation that defendant in fact incurred the debt without the intention to repay is admitted under F.R.Bankr. P. 7008 and F.R.Civ.P. 8(b)(6). Defendant's representations of intent to repay were therefore false. Finally, Plaintiff alleges without dispute that it justifiably relied on Defendant's representation and has been damaged in the total amount of \$3,049.94 (including contractual and additional interest) as a result.

The Plaintiff's request for attorney's fees is denied. The Plaintiff has neither cited to nor evaluated any legal authority demonstrating that it is entitled to attorney's fees. Plaintiff has not provided evidence of the fees incurred.

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

51. [08-32203](#)-B-7 MICHAEL/IRMA ADAMS HEARING - MOTION
MAR #1 FOR SALE OF PERSONAL PROPERTY
OF THE ESTATE
11-12-08 [[27](#)]

Tentative Ruling: The failure of any party in interest to file 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, Part II(a) and (c). Nevertheless, because other parties may be interested in purchasing the property, the court will issue a tentative ruling.

The estate has an interest in personal property, including a 2004 Ford Thunderbird (VIN 1FAHP60A54Y106628) (the "Property"). The trustee alleges without dispute that, to his knowledge, there are no liens or encumbrances on the Property. The trustee seeks to sell the estate's interest in the Property, subject to any and all lien and interests that may exist, to Rose Import Motors, or to an overbidder for an amount approved at the hearing, for \$10,000.00.

Pursuant to 11 U.S.C. § 363(b)(1), the motion is granted to the extent set forth herein, and the trustee is authorized to sell the Property in an "as-is" and "where-is" condition, and subject to any and all lien and interests that may exist, to Rose Import Motors for \$10,000.00. The proceeds of the sale shall be administered for the benefit of the estate. The ten day stay of Bankruptcy Rule 6004(g) is waived.

The trustee's overbidding procedures are approved, except that an overbidder may qualify by delivering to the trustee or trustee's counsel no later than 9:15 a.m. on December 23, 2008 a cashier's check for \$10,500.00.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

52. [98-30208](#)-B-7 FREDERICO/JOSEFINA VALLAR HEARING - MOTION
TAA #2 TO APPROVE ADMINISTRATIVE
EXPENSE OF ACCOUNTANT
(\$1,180.80)
11-13-08 [[16](#)]

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

This matter is continued to January 20, 2009 at 9:30 am.

This motion was not served upon debtors or debtors' counsel at their addresses of record in derogation of Fed. R. Bankr. P. 2002(a)(6). On or before Tuesday, December 23, 2008, the trustee shall serve debtors and debtors' counsel with the motion, its supporting documentation, and the notice of continued hearing. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the trustee fails to do any of the foregoing, the motion will be denied without prejudice for improper service.

The court will issue a minute order.

53. [04-31126](#)-B-11 SPECIALIZED CLUTCH & HEARING - MOTION
LAJ #2 BRAKE OF STOCKTON, INC. FOR DETERMINATION OF STATUS
AS PARTY IN INTEREST
11-21-08 [[419](#)]

CASE CLOSED 9-21-07

Tentative Ruling: None.

54. [04-31126](#)-B-11 SPECIALIZED CLUTCH & HEARING - MOTION
LAJ #3 BRAKE OF STOCKTON, INC. TO RE-CONSTITUTE CREDITORS
COMMITTEE AND APPOINT COUNSEL
FOR CREDITORS COMMITTEE
11-21-08 [[428](#)]

CASE CLOSED 9-21-07

Tentative Ruling: None.

55. [08-31844](#)-B-7 MATTHEW SANDERS
ADS #2

CONT. HEARING - MOTION
FOR REDEMPTION OF
PERSONAL PROPERTY
10-20-08 [[18](#)]

CONT. FROM 11-18-08

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

The motion is granted pursuant to 11 U.S.C. § 722. The debtors are authorized to redeem their 2000 Ford Ranger Pickup (VIN 1FTYR14V9YPB61664) from SAFE Credit Union for \$100.00. The 2000 Ford Ranger Pickup qualifies as personal property used for personal family or household use, and it has been deemed abandoned pursuant to 11 U.S.C. § 554(c) by order entered on November 25, 2008 (Dkt. 32). Payment of the redemption amount shall be received by creditor on or before December 30, 2008.

The court will issue a minute order.

56. [08-30545](#)-B-7 RAYMOND/KIRSTEN MATTOS
[08-2590](#)
CHASE BANK USA, N.A., VS.

STATUS CONFERENCE
10-31-08 [[1](#)]

RAYMOND MATTOS

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

On December 16, 2008, counsel for Chase Bank USA, N.A., plaintiffs, and Raymond G. Mattos, defendant/debtor, filed a stipulation which resolves this matter. On December 22, 2008, judgment pursuant to the stipulation was entered (Dkt. 9). This matter is therefore dropped from this calendar.

57. [08-33754](#)-B-7 IRINEO GUZMAN
RVS #1

HEARING - MOTION
TO COMPEL TRUSTEE TO ABANDON
PROPERTY OF ESTATE
11-13-08 [[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 denied without prejudice.

The debtor has failed to adequately demonstrate that the property is property of the estate or, if it is, that it is burdensome to the estate or is of inconsequential value and benefit to the estate under 11 U.S.C. § 554(b). The debtor lists several items of property that apparently belong to a partnership, Los Potros II Partnership. The debtor may own an interest in the partnership that is property of the estate, but he does not own the property of the partnership. The debtor can only seeks abandonment of property of the estate under 11 U.S.C. § 554(b). Furthermore, even if the property were property of the estate, the debtor does not provide evidence of value, liens, etc. Simply alleging that the values on Schedule C are accurate is not enough.

The court will issue a minute order.

58. [04-29060](#)-B-7 MICHAEL/LEONE CAREY HEARING - MOTION
[08-2538](#) KDL #1 TO DISMISS
MICHAEL CAREY, ET AL., VS. 11-20-08 [[23](#)]

PAUL ENJALRAN, ET AL.

DISCHARGED 8-9-05

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the plaintiffs 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). However, because the plaintiff debtors are pro se, the court will issue a tentative ruling.

The motion is granted. The complaint is dismissed with prejudice.

By this motion Defendant United States ("Defendant"), named in the complaint as one of its agencies, the Internal Revenue Service, seeks to dismiss the adversary proceeding under Fed. R. Civ. P. 12(b)(6), made applicable here by Fed. R. Bankr. P. 7012, on the ground that the complaint, filed by plaintiffs debtors Michael T. Carey and Leone R. Carey ("Plaintiffs") on September 30, 2008, fails to state a claim upon which relief may be granted. The gravamen of the plaintiffs' complaint is that the United States through the Internal Revenue Service violated the discharge injunction of 11 U.S.C. § 524.

The United States' argues for dismissal primarily because the debtors have failed to allege that this court has jurisdiction to entertain a suit against the United States, citing the doctrine of sovereign immunity. The United States is correct. This adversary complaint has been filed against the United States as sovereign, as the judgment sought by the debtors would be paid out of the public treasury or domain, and would interfere with public administration. See James Wm. Moore, et. al. MOORE'S FEDERAL PRACTICE, § 105.21[1] (3rd Ed. 2000), citing Dugan v. Rank, 372 U.S. 609, 620 (1963). And "[t]he United States, as sovereign, 'is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to

entertain the suit.'" United States v. Testan, 424 U.S. 392, 399 (1976), quoting United States v. Sherwood, 312 U.S. 584, 586 (1941). The United States' consent to suit is conferred by Congress through a general or special act that waives sovereign immunity and must be clearly given. See United States v. Griffin, 303 U.S. 226, 238-39 (1938); Lavitt v United States, 177 F.2d 627 (2nd Cir. 1949). As Professor Moore further explains:

[W]aiver must be found in particular statutes that grant specific rights of action against the United States. The party who institutes a claim against the United States, whether by way of an original complaint or a counterclaim, has the burden of alleging an act of Congress that authorizes the court to entertain that specific claim.

James Wm. Moore, et. al., MOORE'S FEDERAL PRACTICE, § 105.21[1] (3rd Ed. 2000), citing Malone v. Bowdoin, 369 U.S. 643, 645, 648 (1962).

Thus, for the debtors to maintain an action against the United States in this court, the debtors must allege an applicable waiver of the United States' sovereign immunity. They have failed to do so here. The complaint sets forth no specific statute or other act that clearly and expressly waives the United States' immunity. As a result, the complaint fails to set forth a claim upon which relief may be granted and it must be dismissed.

Alternatively, the Ninth Circuit has held that there is no private right of action for money damages for violation of the discharge injunction of 11 U.S.C. § 524. See In re Chaussee, No. 08-1114-PaJuKa (B.A.P. 9th Cir. 2008); Walls v. Wells Fargo Bank, 276 F.3d 502 (9th Cir. 2002). This court is bound by those decisions. Accordingly, the complaint for damages for an alleged violation of the discharge injunction of 11 U.S.C. § 524 fails to state a claim upon which relief can be granted.

As to the arguments contained in Plaintiffs' opposition, the instant motion need not be treated as one filed under Fed. R. Civ. P. 56 pursuant to Fed. R. Civ. P. 12(d) because Defendant has not presented matters outside the pleading. Because the motion need not be treated as one filed under Fed. R. Civ. P. 56 and because the motion was filed pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiffs' assertion that the motion must fail for lack of evidence is unavailing here. As the court previously stated, "[t]he purpose of motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is to test the legal sufficiency of a plaintiff's claims for relief." Scheuer v. Rhodes, 416 U.S. at 232 (emphasis added). Finally, Plaintiffs' contention that Defendant has failed to respond to the complaint is incorrect. Plaintiffs ignore the fact that Defendant filed the instant motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), which motion must be made before pleading if a responsive pleading is allowed.

The court will issue a minute order granting the motion. Defendant shall submit a separate judgment that complies with F. R. Bankr. P. 9021.

59. [04-26357](#)-B-13J LARRY/NANCY TEVIS

[08-2004](#)

LARRY TEVIS, ET AL., VS.

DEPARTMENT OF VETERANS
AFFAIRS, ET AL.

CONT. FROM 11-18-08

CONT. HEARING - MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM FOR WHICH RELIEF CAN
BE GRANTED AND/OR IN THE
ALTERNATIVE, MOTION FOR A MORE
DEFINITE STATEMENT
10-15-08 [[299](#)]

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

The matter is continued to February 3, 2009 at 9:30 a.m.

Plaintiffs' motion to disqualify has been scheduled for hearing on January 20, 2009. The court has concluded that this matter cannot be resolved until plaintiffs' motion to disqualify the assigned judge from presiding over the bankruptcy case and this related adversary proceeding is decided.

The court will issue a minute order.

60. [04-26357](#)-B-13J LARRY/NANCY TEVIS

[08-2004](#)

WFH #2

LARRY/NANCY TEVIS, VS.

CAL VET STATE OF
CALIFORNIA, ET AL.

CONT. FROM 11-18-08

CONT. HEARING - MOTION
BY DANIEL L. EGAN TO DISMISS
SECOND AMENDED COMPLAINT
10-8-08 [[289](#)]

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

The matter is continued to February 3, 2009 at 9:30 a.m.

Plaintiffs' motion to disqualify has been scheduled for hearing on January 20, 2009. The court has concluded that this matter cannot be resolved until plaintiffs' motion to disqualify the assigned judge from presiding over the bankruptcy case and this related adversary proceeding is decided.

The court will issue a minute order.

61. [04-26357](#)-B-13J LARRY/NANCY TEVIS
[08-2004](#) MFB #3
LARRY/NANCY TEVIS, VS.
DEPT. OF VETERANS AFFAIRS, ET AL.
CONT. HEARING - TRUSTEE'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT, OR IN THE
ALTERNATIVE REQUEST FOR A
MORE DEFINITIVE STATEMENT
10-21-08 [[306](#)]

CONT. FROM 11-18-08

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

The matter is continued to February 3, 2009 at 9:30 a.m.

Plaintiffs' motion to disqualify has been scheduled for hearing on January 20, 2009. The court has concluded that this matter cannot be resolved until plaintiffs' motion to disqualify the assigned judge from presiding over the bankruptcy case and this related adversary proceeding is decided.

The court will issue a minute order.

62. [04-26357](#)-B-13J LARRY/NANCY TEVIS
[08-2004](#) MHA #2
LARRY TEVIS, ET AL., VS.
DEPARTMENT OF VETERANS
AFFAIRS, ET AL.
CONT. HEARING - MOTION OF
FIRST AMERICAN TITLE CO. TO
DISMISS SECOND AMENDED COMPLAINT
FOR FAILURE TO STATE A CLAIM ON
WHICH RELIEF CAN BE GRANTED OR,
IN THE ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT
10-14-08 [[294](#)]

CONT. FROM 11-18-08

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

The matter is continued to February 3, 2009 at 9:30 a.m.

Plaintiffs' motion to disqualify has been scheduled for hearing on January 20, 2009. The court has concluded that this matter cannot be resolved until plaintiffs' motion to disqualify the assigned judge from presiding over the bankruptcy case and this related adversary proceeding is decided.

The court will issue a minute order.

63. [08-33168](#)-B-7 RODERICK BRIMHALL
MFB #1
HEARING - TRUSTEE'S
OBJECTION TO DEBTOR'S
CLAIMS OF EXEMPTION
11-21-08 [[18](#)]

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

64. [06-22976](#)-B-7 KEVIN ARCHBOLD
BLL #28

CONT. HEARING - MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS PURSUANT TO SUBPOENA
ISSUED FOLLOWING COURT ORDER
9-8-08 [[413](#)]

DISCHARGED 10-18-08
CONT. FROM 11-18-08,10-14-08

Tentative Ruling: This matter continued most recently from November 18, 2008 without a briefing schedule pursuant to a stipulation and order entered on November 6, 2008. Nothing further has been filed in this matter. In this instance, the court issues the following tentative ruling.

The motion is granted to the extent set forth herein. North State Grocery, Inc. ("NSG") shall submit to an examination and produce the documents described in the order authorizing the trustee to issue a subpoena to compel production of documents and witnesses pursuant to Fed. R. Bankr. P. 2004 (Dkt. 402) which was served on counsel for NSG on June 19, 2008 (Dkt. 415 at 14) (the "Subpoena"). NSG's examination and production in response to the Subpoena shall comply in all respects with the requirements of Fed. R. Bankr. P. 2004 and/or Fed. R. Civ. P. 45, made applicable to this case by Fed. R. Bankr. P. 9016. The chapter 7 trustee is awarded reasonable fees of \$500.00 incurred in bringing this motion. Said fees shall be paid by NSG to the chapter 7 trustee no later than December 31, 2008.

By this motion the chapter 7 trustee ("Trustee") seeks an order directing NSG to allow the Trustee or his counsel to examine any file which contains documents relating to the purchase of real property located at 1871 Highway 299 East, Burney, Shasta County, California and documents which refer to or relate to the purchase, sale, or transfer of an Off-Sale General Liquor License, No. 21-260243 (the "License") to debtor Kevin Archbold dba Burney Market Place and/or to Smart & Final Foods. The Trustee also seeks to obtain an order compelling the examination of a person to be identified by NSG as the person most knowledge about the facts, events, and circumstances contained in any such file. The foregoing requests were served on counsel for NSG, Shawn Tilmon McCammon, and on Richard Morgan via personal delivery on June 19, 2008. The Trustee alleges without dispute that on numerous occasions between May 20, 2008 and July 31, 2008, counsel for Trustee attempted to conduct the examination and to obtain the requested information without court action through phone calls and written correspondence. The Trustee alleges without dispute that, aside from representatives for NSG having submitted certain correspondence to the Trustee in opposition to the Trustee's requests, the Trustee has not received any response to his requests from NSG. Accordingly, the Trustee is entitled to an order compelling NSG to produce the requested documents pursuant to Fed. R. Bankr. P. 9016, incorporating Fed. R. Civ. P. 45. In addition, the Trustee is also entitled to an order compelling the examination of a person to be identified by NSG as the person most knowledgeable about the facts, events, and circumstances contained in the documents produced pursuant to Fed. R. Bankr. P. 9016, incorporating Fed. R. Civ. P. 45.

The Trustee has also shown through the motion that he has incurred

attorney's fees of \$500.00 in bringing this motion. These fees are reasonable expenses incurred in bringing this motion. The Trustee has shown that NSG failed without adequate excuse, after having been served with the Subpoena, to obey the Subpoena. Therefore, pursuant to Fed. R. Bankr. P. 9016, incorporating Fed. R. Civ. P. 45, the Trustee is entitled to an award of expenses in the amount of \$500.00.

Counsel for the Trustee shall submit an order that conforms to the court's ruling. The order shall contain a statement that if the NSG fails to comply with the order compelling production and examination, the court may impose additional sanctions.

65. [08-25176](#)-B-7 DANIEL SOUSA HEARING - MOTION
[08-2432](#) FOR ORDER DISQUALIFYING OPPOSING
BRASHER'S SACRAMENTO COUNSEL
AUTO AUCTION, INC., VS. 11-10-08 [14]
DANIEL SOUSA

Tentative Ruling: The court deems this motion filed under LBR 9014-1(f)(2) because the notice of hearing fails to advise potential respondents whether written opposition is required. Because attorney Lawrence Miles ("Miles"), counsel for plaintiff in this adversary proceeding, has filed a written response, the court issues the following tentative ruling.

The motion is denied.

Defendant Daniel Sousa ("Defendant") has failed to show that he is entitled to the requested relief. The motion is supported only by Defendant's unsigned declaration. Because the declaration is unsigned, the motion is not supported by evidence. A nearly identical motion was denied in state court. (Dkt. 21 at 4). The only new allegations in this motion pertain to Miles' alleged advice to Defendant to file a bankruptcy case and Miles' alleged request for a \$5,000 retainer. Miles specifically denies these allegations, and his denial is credible in view of his long relationship with plaintiff, his statement that he has not practiced bankruptcy law for more than five years and his statement that he represents creditors.

In addition to the absence of evidence in violation of LBR 9014-1(d)(6), the motion contains several other procedural defects. First, defendant has used an improper procedure to notice this motion. The court has deemed this motion filed under LBR 9014-1(f)(2), but the reduced notice procedure of LBR 9014-1(f)(2) "shall not be used for a motion filed in connection with an adversary proceeding." LBR 9014-1(f)(2)(i). Second, the motion fails to comply with LBR 9014-1(d)(1) (requiring that all pleadings and documents conform with the Court's Guidelines for Preparation of Documents, which requires, in relevant part, that motions, notices, declarations, and proofs of service be filed as separate documents). Here, defendant simply filed the notice of hearing, supporting declaration, and memorandum of points and authorities as one document. Third, the motion fails to comply with LBR 9014-1(c)(2) (requiring that a docket control number be included on all motions filed in adversary proceedings). Fourth, defendant failed to file a certificate of service with the motion, as required by LBR 9014-1(e)(2).

Violation of the Local Bankruptcy Rules is alone grounds to deny the motion. LBR 1001-1(g) and 9014-1(1).

The court will issue a minute order.

66. [06-22379](#)-B-7 AINSWORTH LESLIE HEARING - MOTION
[06-2333](#) WAC #2 BY DEFENDANT AINSWORTH LESLIE
COOPERATIVE CENTER FEDERAL TO DISMISS ADVERSARY PROCEEDING
CREDIT UNION, VS. 11-17-08 [[141](#)]
AINSWORTH LESLIE

DISCHARGED 10-18-06

Tentative Ruling: None.

67. [08-37701](#)-B-11 PATRIOT INVESTMENTS, LLC HEARING - ORDER TO
SHOW CAUSE RE DISMISSAL
12-3-08 [[6](#)]

Tentative Ruling: None.

68. [08-33503](#)-B-7 STEVEN ANDREWS HEARING - MOTION
HSM #1 TO TERMINATE AND VACATE
STERLING SAVINGS BANK, VS. AUTOMATIC STAY
11-26-08 [[25](#)]

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.

69. [08-34903](#)-B-7 CHAD/DANNA DUNIVAN HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 12-3-08 [[12](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated with respect to the collateral, a 2003 Chevrolet Trailblazer (VIN 1GNES16S636214515) (the "Collateral") at 12:01 a.m. on December 20, 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 has filed a motion seeking relief from the automatic stay as to the Collateral. The debtors filed a statement of intention with respect to this item of personal property within the deadline established by 11 U.S.C. § 521(a)(2) and [Interim 2006] Federal Rule of Bankruptcy Procedure 1007(b)(2). The debtors indicated an intent to reaffirm their obligation to movant regarding the Collateral. (Dkt. 1 at 43). However,

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

Pursuant to 11 U.S.C. § 521(a)(2)(B), debtors had until Friday, December 19, 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 December 20, 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.

70. 08-35606-B-7 JOSHUA/ERIN BOYD HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 12-3-08 [[12](#)]

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 Collateral, the court issues the following tentative ruling.

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2003 GMC Yukon (VIN 1GKFK66U23J246164) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the Collateral is being used by the debtors without compensation and is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$17,000.00. Movant holds a lien on the Collateral in the amount of \$27,042.99. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation. The lack of opposition and report of no distribution by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtors have not made two (2) payments. Debtors have filed a statement of intent to surrender the Collateral. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

71. [08-23207](#)-B-7 DANIEL/PATRICIA SCHWEITZER HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 11-26-08 [[126](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on December 11, 2008 and is removed from the calendar.

72. [08-22608](#)-B-7 GERALD BRAXMEYER HEARING - MOTION FOR
JWC #1 RELIEF FROM AUTOMATIC STAY
FIRST FEDERAL BANK ON REAL PROPERTY
OF CALIFORNIA, VS. 12-1-08 [[110](#)]

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 8711 Kelsey Drive, Elk Grove, CA 95624 (APN 125-0410-003-0000) (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 \$230,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$264,794.22. Considering the junior lien of \$93,764.00, 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 fifteen (15) mortgage payments. 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.

73. [99-28409](#)-B-7 JERRY POWERS HEARING - MOTION TO
BRR #1 APPROVE COMPROMISE OF
CONTROVERSY
12-3-08 [[86](#)]

DISCHARGED 9-23-99

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.

74. [08-27310](#)-B-7 STRIPER COVE/WASCO, LLC HEARING - APPLICATION
DNL #2 TO EMPLOY DESMOND, NOLAN,
LIVAICH & CUMMINGHAM PURSUANT
TO AN HOURLY FEE AGREEMENT
12-1-08 [[29](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on December 10, 2008 and is removed from the calendar.

75. [08-33218](#)-B-7 GRETA JORDAN CONT. HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 10-31-08 [[19](#)]
SYSTEMS, INC., VS.

CONT. FROM 12-9-08

Tentative Ruling: This matter continued from December 9, 2008 without a briefing schedule. In this instance, the court issues the following tentative ruling.

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(2) in order to permit movant to foreclose on the real property located at 8035 Deer Lake Drive, Sacramento, CA 95823 (APN 119-0390-049) (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 \$120,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$235,415.91. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case.

In addition to the foregoing, movant alleges that debtor has failed to make four (4) mortgage payments due from July, 2008 through October, 2008. As to this assertion, debtor opposes the motion, arguing that debtor has indeed tendered the allegedly delinquent payments to movant and that movant has improperly applied the payments on the Property to property located at 9360 Waddell Lane, Elk Grove, California. Debtor's argument is supported by debtor's declaration and a copy of debtor's online bill pay history, showing monthly payments of \$1,365.84 to movant from August, 2008 through November, 2008. Debtor did not provide a bill pay history for the July, 2008 payment. Even if debtor's assertions are

true, debtor's response fails to show that relief under 11 U.S.C. § 362(d)(2) is inappropriate. Debtor's response fails to dispute that there is no equity in the Property or that the Property is not necessary to an effective reorganization. Accordingly, debtor's response fails to establish that the motion should be denied.

The court will issue a minute order.

76. [08-33523](#)-B-11 AHMAD/DARCI JAYOUSI HEARING - VERIFIED
WSD #2 MOTION BY DEBTORS IN POSSESSION
TO REJECT CERTAIN EXECUTORY
CONTRACTS AND LEASES
11-26-08 [[41](#)]

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

77. [08-36724](#)-B-7 BRYAN WICHMAN HEARING - MOTION FOR
RTD #1 RELIEF FROM AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION, VS. 12-2-08 [[7](#)]

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

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2003 Dodge Durango (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the Collateral is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$7,900.00. Movant holds a lien on the Collateral in the amount of \$15,010.28. There is no equity in the Collateral, and it is not necessary for an effective reorganization or rehabilitation. The lack of opposition by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtor has not made five (5) payments. Debtor has filed a statement of intent to surrender the Collateral. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

78. [08-35127](#)-B-7 MELVIN/PAMELA FORREST HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT CO., VS. 11-26-08 [[15](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on December 18, 2008 and is removed from the calendar.

79. [08-30929](#)-B-7 MAURICE/PATRICIA DUNN HEARING - MOTION TO
WTL #1 APPROVE STIPULATION FOR
HERITAGE BANK OF COMME RCE, VS.RELIEF FROM AUTOMATIC STAY
11-26-08 [[32](#)]

DISCHARGED 12-5-08

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

80. [08-34729](#)-B-7 RICHARD SANDERS, SR. HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTGLQ INVESTORS, L.P., VS. 12-9-08 [[14](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because 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 785 Teal Way, Williams, CA 95987 (APN 005-340-005) (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 \$307,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$329,302.86. Considering the junior lien of \$48,174.00, 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. 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.

81. [08-34930](#)-B-7 RYAN/KELLIE BELCASTRO HEARING - MOTION FOR
PJR #1 RELIEF FROM AUTOMATIC STAY
TRI COUNTIES BANK, VS. 12-9-08 [[15](#)]

Disposition Without Oral Argument: This matter was filed in error as it is a duplicate of matter number 82 on this calendar. Both matters refer to the same movant, same real property, same trust deed, and same docket control number. Matter number 82 has been decided elsewhere on this calendar. This motion is, therefore, denied as moot.

82. [08-34930](#)-B-7 RYAN/KELLIE BELCASTRO HEARING - MOTION FOR
PJR #1 RELIEF FROM AUTOMATIC STAY
TRI COUNTIES BANK, VS. 12-9-08 [[21](#)]

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 20221 Sombrero Court, Redding, CA 96002 (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 \$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 \$228,657.65. Considering the junior lien of \$97,662.12, 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 opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

83. [08-32532](#)-B-7 ANTHONY DOVE HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST COMPANY, VS. 11-5-08 [[12](#)]

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 324 Willis Avenue, Rio Linda, CA 95673 (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 \$154,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$231,432.36. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make nine (9) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of 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.

84. [08-34832](#)-B-7 CHUN KIM HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CAHSE BANK, N.A., VS. 12-3-08 [[22](#)]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2008 Mercedes CLS (VIN WDDDJ77XX8A119096) (the "Collateral"), at 12:01 a.m. on December 13, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor filed a statement of intention with respect to this item of personal property within the deadline established by 11 U.S.C. § 521(a) (2) and [Interim 2006] Federal Rule of Bankruptcy Procedure 1007(b) (2). The debtor indicated an intent to surrender the Collateral. (Dkt. 1 at 33). However, in order to avoid an automatic termination of the automatic stay under Section 362(h) (1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a) (2) (B), debtor had until Friday, December 12, 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 December 13, 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.

85. [08-35035](#)-B-7 BRENDA BURNS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 11-26-08 [[13](#)]
SYSTEMS, INC., VS.

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

86. [08-31840](#)-B-7 CLINTON MYERS HEARING - MOTION FOR
DO #1 RELIEF FROM AUTOMATIC STAY
PREMIERWEST BANK, VS. 12-4-08 [[116](#)]

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

87. [08-31840](#)-B-7 CLINTON MYERS CONT. HEARING - COUNTER-
MLG #2 MOTION FOR ABANDONMENT OF
OTHER ESTATE PROPERTY
11-25-08 [[101](#)]

CONT. FROM 12-9-08

Tentative Ruling: None.

88. [08-35041](#)-B-7 RAYMOND/DONNA RAMIEREZ HEARING - MOTION OF
HM #1 JOHN ROBERTS TO EMPLOY COUNSEL
FOR CHAPTER 7 TRUSTEE
12-3-08 [[18](#)]

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

89. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD HEARING - DEBTOR'S
HLC #16 MOTION FOR APPROVAL OF
12-3-08 [[322](#)]

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.

90. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD CONT. HEARING - OBJECTION TO
HLC #11 CLAIM NO. 15 OF CENTEX HOMES
10-21-08 [[250](#)]

CONT. FROM 12-9-08

Tentative Ruling: None.

91. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD HEARING - SECOND
HLC #14 INTERIM APPLICATION FOR
COMPENSATION BY ATTORNEY FOR
CHAPTER 11 DEBTOR (\$84,630.00
FEES; \$2,486.09 EXPENSES)
12-3-08 [[318](#)]

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.

92. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD HEARING - FIRST INTERIM
HLC #15 APPLICATION FOR COMPENSATION
BY SPECIAL LITIGATION COUNSEL
FOR CHAPTER 11 DEBTOR
(\$20,034.34)
12-3-08 [[330](#)]

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

93. [08-36846](#)-B-7 ASCENCION RANGEL
JWC #1
GENERAL ELECTRIC CAPITAL
CORPORATION, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
(PERSONAL PROPERTY)
12-9-08 [8]

Tentative Ruling: The motion is denied as moot. The automatic stay terminated as to the collateral, a 2002 Utility Refrigerated Trailer (Serial No. 1UYV525362U744648) (the "Collateral"), at 12:01 a.m. on December 19, 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 movant has filed a motion seeking relief from the automatic stay as to the Collateral. The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2) and Federal Rule of Bankruptcy Procedure 1019(1)(B). However, in order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

Pursuant to 11 U.S.C. § 521(a)(2), the debtor had until December 18, 2008 to file a statement of intention that stated with respect to the Collateral one of the intentions specified in the statute. Because she did not file a compliant statement of intention timely and because the collateral at issue here is personal property, the automatic stay terminated as to the Collateral at 12:01 a.m. on December 19, 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 movant already has the relief it seeks by this motion.

The court will issue a minute order.

94. [08-37447](#)-B-7 CAROL DOWNEN
GW #1

HEARING - MOTION TO
DISMISS DUPLICATE CHAPTER 7
FILED ERROR
12-5-08 [7]

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

95. [08-34148](#)-B-7 TIMOTHY/SHAY STRAUWALD
KAT #1
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-2-08 [[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 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 8819 Sharkey Avenue, Elk Grove, CA 95624 (APN 125-0440-009-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$150,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$234,365.66. Considering the junior lien of \$56,801.30, 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 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.

96. [08-35652](#)-B-7 KUSUM/ANIL KUMAR
WGM #1
INDYMAC BANK, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
12-5-08 [[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 8212 Deloach Way, Elk Grove, CA 95624 (APN 115-1910-063) (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 \$251,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$379,077.71. Considering the junior lien of \$66,815.01, 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 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.

97. [08-36360](#)-B-7 LORENA GAMMAD
PD #1
WELLS FARGO HOME
MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-1-08 [[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 10164 Van Brocklin Way, Elk Grove, CA 95757 (APN 132-1590-033-0000) (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 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 \$338,169.40. Considering the junior lien of \$79,292.79, 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. 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.

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

The court will issue a minute order.

98. [08-34065](#)-B-7 DOUGLAS LAWRIE HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, VS. 12-5-08 [[15](#)]

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 2638 Park West Drive, Lodi, CA 95242 (APN 029-240-02) (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 \$249,372.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$408,128.08. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make nine (9) mortgage payments. 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.

99. [08-26468](#)-B-11 EL DORADO HILLS SELF- HEARING - DEBTOR'S
FWP #8 STORAGE, LLC THIRD MOTION SEEKING APPROVAL
FOR ITS PROPOSED USE OF CASH
COLLATERAL AND TO GRANT
REPLACEMENT LIENS AS ADEQUATE
PROTECTION TO SECURED CREDITORS
12-8-08 [[254](#)]

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.

100. [08-31268](#)-B-7 ROBERT/MARY LUERA HEARING - MOTION FOR
MKB #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 12-4-08 [[53](#)]

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.

101. [08-20569](#)-B-11 DUNMORE HOMES, INC. CONT. HEARING - SECOND AND FINAL
ALM #1 APPLICATION OF ALVAREZ & MARSAL
NORTH AMERICA, LLC, AND ALVAREZ
& MARSAL SECURITIES, LLC FOR
APPROVAL OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES AS
FINANCIAL ADVISOR AND INVEST-
MENT BANKER TO THE DEBTOR AND
DEBTOR IN POSSESSION, ET AL.
CONT. FROM 12-9-08 11-17-08 [[982](#)]

Disposition Without Oral Argument: This matter continued from December 9, 2008 to allow movant to file a certificate of service, another declaration of no objection, and a proposed order in accordance with the amended and restated interim order establishing procedures entered on February 15, 2008. Movant timely complied.

This matter is dropped from the calendar. This matter was unopposed and has been resolved by order entered on December 16, 2008.

102. [08-36072](#)-B-7 MASHEEA ZACKERY HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. ON REAL PROPERTY
12-3-08 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because 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 1837 Platte Road, Stockton, CA 95206 (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 \$157,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$310,473.46.

Considering the junior lien of \$68,000.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make ten (10) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of opposition 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.

103. [08-35373](#)-B-7 APRIL CULPEPPER HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER 12-3-08 [[11](#)]
SERVICES, INC., VS.

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

The motion is granted to the extent set forth herein. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2007 BMW 525i (VIN WBANE53527CW59456) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the Collateral is being used by the debtor without compensation and is depreciating in value. Except as so ordered, the motion is denied.

Movant claims without dispute that the value of the Collateral is \$19,000.00. Movant holds a lien on the Collateral in the amount of \$27,913.46. There is no equity in the Collateral and it is not necessary for an effective reorganization or rehabilitation. The lack of opposition and report of no distribution by the trustee shows that the trustee cannot administer the Collateral for the benefit of creditors. Movant also alleges without dispute that debtor has not made two (2) payments. Debtor has filed a statement of intention indicating an intent to surrender the Collateral. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

104. [08-31476](#)-B-7 SARAH CERING
TJS #1
LITTON LOAN SERVICING, L.P., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-25-08 [[28](#)]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (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 10341 Marlaw Way, Elk Grove, CA 95757 (APN 132-1630-001) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$286,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$330,884.05. Considering the junior lien of \$79,997.74, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make two (2) mortgage payments. The lack of written opposition and report of no distribution by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

105. [08-33177](#)-B-7 JOHN/SHARON SHEEHAN
DC #1
LENA SANDERS, VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-18-08 [[17](#)]

CONT. FROM 12-9-08

Tentative Ruling: This matter continued from December 9, 2008 to allow movant to serve the debtors with the motion and supporting documents on or before December 9, 2008. Movant timely filed a proof of service on December 10, 2008 (Dkt. 29) and a notice of continued hearing on December 9, 2008 (Dkt. 24). This matter remains in its preliminary posture as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

106. [08-34077](#)-B-7 LUIS/MARIA DELGADO
LAZ #1
CITIMORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-4-08 [[16](#)]

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

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 713 Peach Circle, Orland, CA 95973 (APN 045-100-108-0) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$250,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$243,400.00. Considering the junior lien of \$30,614.00, 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 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.

107. [08-32280](#)-B-11 HEAVEN INVESTMENT HOLDING
RAP #1 CORP.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
TO PERMIT CONTINUATION OF
STATE COURT ACTION AND RECOVERY
FROM DEBTOR'S INSURER
11-18-08 [[102](#)]

CONT. FROM 12-9-08

Tentative Ruling: This matter continued from December 9, 2008 to allow movant to serve all creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(d) on or before December 9, 2008. Movant timely complied and filed a notice of continued hearing and proof of service on December 9, 2008. This matter remains in its preliminary posture as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

108. [08-34083](#)-B-7 BRYAN/PHUONG TRAN
WGM #2
AMERICAN HOME
MORTGAGE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-5-08 [[22](#)]

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 1221 Barclay Wood Drive, Ruskin, FL 33570 (APN 56352-0164) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Property has a value of \$218,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$187,916.95. Considering the junior lien of \$61,840.00, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make seven (7) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of opposition by the trustee show that the trustee cannot administer the Property for the benefit of creditors. These facts constitute cause for relief from the automatic stay.

Because 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.

109. [08-35787](#)-B-7 MARTIN/REYNA FERNANDEZ
KAT #1
INDYMAC FEDERAL BANK FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-2-08 [[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 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

1405 Henley Parkway, Patterson, CA 95363 (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 \$234,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$406,819.59. Considering the junior lien of \$94,361.00, 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 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.

110. [08-34191](#)-B-7 JOHN/SANDRA AZEVEDO HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL 12-4-08 [[17](#)]
BANK FSB, 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 1401 Surf Way, Reno, NV 89503 (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 \$280,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$258,564.56. Considering the junior lien of \$44,588.77, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtors have failed to make nine (9) mortgage payments. Debtors have filed a statement of intent to surrender the Property. The lack of opposition 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.

111. [08-35891](#)-B-7 CHALEE BILBO

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
12-4-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on Tuesday, December 16, 2008. The debtor failed to timely file all of the documents required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

112. [08-26392](#)-B-7 SHERRY CARR
PD #2

HEARING - MOTION FOR
ORDER AUTHORIZING EXAMINATION
OF SHERRY CARR
11-26-08 [[101](#)]

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.

113. [08-33292](#)-B-7 MARK/YVONNE HAYES
APN #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
RE: ITS INTEREST IN REAL
PROPERTY
11-26-08 [[14](#)]

Disposition Without Oral Argument: As this motion for relief was filed and served only twenty-seven days before the hearing, and the debtors have filed a statement of intent to surrender the Property, pursuant to Fed. R. Bankr. P. 9006(c)(1), the court shortens time by one day to hear this motion under the LBR 9014-1(f)(1) procedure. 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 752 Goldcoast Drive, Fairfield, California (APN 0168-282-070) (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 \$197,500.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$285,502.47.

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 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.

The court will issue a minute order.

114. [08-28893](#)-B-7 GERARDO RUIZ AND HEARING - MOTION FOR
EAT #1 SUSANA PENA RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 12-2-08 [[51](#)]
SYSTEMS, INC., VS.

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

115. [08-36294](#)-B-7 JANET LAFOUNTAIN HEARING - MOTION FOR
EGS #1 RELIEF FROM AUTOMATIC STAY
GUILD MORTGAGE CO., VS. ON REAL PROPERTY
12-5-08 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, because 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 6517 Greenback Lane, # 1, Citrus Heights, CA 95621 (APN 229-0375-009-0001) (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 \$60,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of movant. That security interest secures a claim of \$153,316.89. Considering these figures, there is no equity in the Property, and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. Movant also alleges without dispute that the debtor has failed to make five (5) mortgage payments. Debtor has filed a statement of intent to surrender the Property. The lack of opposition 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.

116. [05-21390](#)-B-7 ESTRELLA/JAMES KINCAID

CONT. HEARING - VERIFIED MOTION
TO VACATE ORDER DENYING URGENT
RENEWED MOTION TO DISQUALIFY
JUDGE
7-10-08 [[864](#)]

CONT. FROM 9-30-08

Tentative Ruling: None.

117. [05-21390](#)-B-7 ESTRELLA/JAMES KINCAID

CONT. HEARING - VERIFIED MOTION
DENYING ORDER DENYING - MOTION
TO VACATE SEPTEMBER 27, 2007
ORDER DENYING MOTION TO
RECONSIDER ORDER DENYING
DEBTORS' MOTION FOR A STAY
PENDING APPEAR AND, IN THE
ALTERNATIVE, RECUSAL OF JUDGE
7-10-08 [[863](#)]

CONT. FROM 9-30-08

Tentative Ruling: None.

118. [05-21390](#)-B-7 JAMES/ESTRELLA KINCAID

HEARING - VERIFIED MOTION
TO VACATE ORDERS "897 CIVIL
MIN. ORDER GRANTING (799)
MOTION/APPLICATION FOR COM-
PENSATION" ORDER "895 CIVIL
MIN. ORDER OVERRULING (762)
OPPOSITION/OBJECTION" AND ORDER
893 CIVIL MIN ORDER OVERRULING
(761) OPPOSITION/OR REJECTION
9-25-08 [[902](#)]

Tentative Ruling: None.

119. [05-21390](#)-B-7 JAMES/ESTRELLA KINCAID

HEARING - SUPPLEMENTAL
MOTION TO VACATE ORDER 897 -
CIVIL MINUTE ORDER GRANTING
MOTION FOR COMPENSATION
9-25-08 [[904](#)]

Tentative Ruling: None.

120. [05-21390](#)-B-7 JAMES/ESTRELLA KINCAID

HEARING - SECOND MOTION
TO VACATE ORDERS "895 -
CIVIL MINUTE ORDER OVERRULING
OPPOSITION/OBJECTION " AND
"893 - CIVIL MINUTE ORDER
OVERRULING OPPOSITION/OBJECTION"
9-25-08 [[905](#)]

Tentative Ruling: None.

121. [08-20569](#)-B-11 DUNMORE HOMES, INC.
PSZ #24

CONT. HEARING - OMNIBUS
OBJECTION NO. 5 TO LATE CLAIMS
PURSUANT TO RULE 3007
11-7-08 [[948](#)]

CONT. FROM 12-9-08

Tentative Ruling: None.