UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 12, 2009 at 9:00 a.m.

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS:

IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 9, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 26, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 2, 2009. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING, AND OF THESE DEADLINES.

ITEMS WITH FINAL RULINGS:

THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 08-35404-A-7 DEBRA BEAR
CWS #1

HEARING - OBJECTION TO
CLOSING OF CASE BY DAVEEN WILLIAMS
12-18-08 [21]

Tentative Ruling: The objection will be overruled.

The trustee filed a report of no distribution on November 18. Creditor Daveen Williams objects to closure of the case because he anticipates filing a section 523 complaint. Mr. Daveen requests the court to keep the case open through January 16, 2009, the deadline for filing a complaint pursuant to 11 U.S.C. § 523.

The objection will be overruled because the trustee's report of no distribution has nothing to do with the closing of the case and the entry of a discharge. The report signals only that the trustee has located no assets to administer for the benefit of creditors. Whether or not the report is approved, creditors will have through and including January 16, 2009 to file complaints both under section 523 as well as under 11 U.S.C. § 727. Once that deadline has expired, if no complaints are filed under section 727, a discharge will be entered that is subject to any complaints filed under section 523.

2. 08-20206-A-12L DAVID/KELLY NUSS
WW #33
VS. FIRST SELECT CORPORATION, ET AL.

HEARING - MOTION TO
AVOID LIENS
12-1-08 [381]

Tentative Ruling: The motion will be denied.

The debtors move the court to avoid the liens of five creditors, secured by a real property in Lodi, California. According to a preliminary title report, the property is subject to a lien in the amount of $4,549.67, recorded on or about December 23, 1999, in favor of First Select Corporation, a lien in the amount of $100,831.27, recorded on or about June 20, 2006, in favor of Innovation Enterprises, a lien in the amount of $100,831.27, recorded on or about June 20, 1999, in favor of LTI, LLC, two liens in the amount of $90,688.32 and $133,011.93, recorded on or about October 16, 2006, in favor of Wilbur-Ellis, and a lien in the amount of $59,202.86, recorded on or about August 3, 2007, in favor of Bradley Blakeley.

LTI and Innovation have filed an opposition arguing that the property has sufficient non-exempt equity to satisfy at least some of the liens against it.

The debtors have filed a reply, agreeing with LTI and Innovation.

Initially, the court cannot confirm from the proof of service that the debtors have served the motion on First Select Corporation and that the address at which Wilbur-Ellis was served is correct. The court sees no reference to First Select Corporation on the proof of service. And, the address at which Wilbur-Ellis was served, P.O. Box 45326 San Francisco, CA 94145-0326, is not the address on file with the California Secretary of State, Attn: Jaye G. Stedman, 345 California Street, 27th Floor, San Francisco, CA 94104. Even though the debtors have served David Riegels, counsel for Wilbur-Ellis in the underlying litigation, unless the attorney agreed to accept service in the bankruptcy case, this service is deficient. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Further, according to the motion, the scheduled value of the property is $600,000 as of the date of the petition, whereas the unavoidable liens total approximately $381,430.11 on that same date. The debtors have claimed an exemption in the property in the amount of $75,000. According to the motion, then, this leaves approximately $143,569.89 of non-exempt equity in the property. This means that $143,569.89 is available to satisfy the possibly avoidable liens. See e.g., All Points Capital Corp. v. Meyers (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007).

The court does not have evidence of the amounts owing on each of the possibly avoidable liens as of the petition date. The preliminary title report only shows the amounts owing as of the recordation dates of the abstracts of judgment. Until the court knows what was owed to each lien holder on the petition date, the court cannot determine how much of the nonexempt equity to apportion to each lien holder. The motion will be denied.

3. 08-36806-A-7 DOUGLAS/CHRISTINA YUNK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 12-22-08 [16]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of $300,000 and is encumbered by claims totaling approximately $416,247. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 29, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in

connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

4. 08-36806-A-7 DOUGLAS/CHRISTINA YUNK HEARING - MOTION FOR
RTD #1 RELIEF FROM AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION, VS. 12-24-08 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, The Golden One Credit Union, seeks relief from the automatic stay with respect to a 2006 Pontiac G6. The vehicle has a value of $13,000 and its secured claim is approximately $19,418.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on December 29, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. Also, the movant has no proof of insurance coverage for the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

5. 08-31508-A-7 MATHEW/TRACY SILVEIRA HEARING - MOTION FOR ORDER
JHW #1 CONFIRMING TERMINATION OF STAY
DAIMLERCHRYSLER FIN'L, ETC., VS. 12-4-08 [17]

Tentative Ruling: The motion will be denied.

The movant, Daimlerchrysler Financial Services Americas, seeks confirmation that the automatic stay has expired as to a 2005 Dodge Ram 1500.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on August 18, 2008 and a meeting of creditors was first convened on September 26, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than September 17. Although the debtor filed a statement of intention on the petition date, that statement did not contain any property. The debtor filed an amended statement of intention on September 23, 2008, indicating an intent to "retain" the vehicle, but without indicating an intention to reaffirm or redeem.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention on the petition date, the debtor did not list the vehicle in it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on September 17, 2008, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on September 29, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on September 17, 2008.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

6. 08-32708-A-7 CHARLES/SARAH ORULLIAN

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-15-08 [21]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on October 21, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

7. 08-23311-A-7 RANDY LOEWEN
08-2334 RK #1
COLONIAL PACIFIC LEASING CORP., VS.
RANDY LOEWEN, ET AL.

HEARING - MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION
12-11-08 [16]

Tentative Ruling: The motion will be denied.

The plaintiff, Colonial Pacific Leasing Corp., seeks summary judgment on its 11 U.S.C. § 523(a)(6) and (a)(4) claims against the defendant, Randy Loewen, the debtor in the underlying bankruptcy case. The plaintiff contends that the defendant willfully concealed equipment, the purchase of which was financed by the plaintiff. The plaintiff also argues that the defendant embezzled the equipment. The equipment includes a bobcat track loader, a bobcat trencher, a bobcat auger, a bobcat toolcat, and a bobcat combination bucket, with various accessories.

In September of 2005, the defendant allegedly breached the terms of his agreement with the plaintiff, by failing to make the required installment payments. In September of 2007, the plaintiff obtained a state court judgment for possession of certain equipment and a monetary award in the amount of $47,146.91.

The defendant has filed no response to the motion.

Summary judgement is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no issues of material fact exist. See Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323. Where the movant bears the burden of persuasion

as to the claim, it must point to evidence in the record that satisfies its claim. Id. at 252.

First, the court turns to 11 U.S.C. § 523(a)(6). This section provides for the nondischargeability of debts for willful or malicious injury by the debtor to property of another.

To prevail on its 11 U.S.C. § 523(a)(6) claim, the plaintiff must show that the injury was both willful and malicious. Baldwin v. Kilpatrick (In re Baldwin), 249 F.3d 912, 917 (9th Cir. 2001). The term willful means a deliberate or intentional act. Brown v. Brown (In re Brown), 331 B.R. 243, 250 (Bankr. W.D. Va. 2005). Debts arising from intentional, *i.e.*, willful conduct, are not necessarily malicious for purposes of Section 523(a)(6). A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. Carrillo v. Su (In re Su), 290 F.3d 1140, 1146-47 (9th Cir. 2002) (citing In re Jercich, 238 F.3d 1202, 1209 (9th Cir. 2001)); see also Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005). Determining the intent aspect of a malicious injury is a subjective standard, focusing on the debtor's state of mind. In re Su, 290 F.3d at 1144-46. The debtor must have the subjective intent to harm or the belief that harm is substantially certain. In re Su, 290 F.3d at 1144.

Here, the plaintiff has submitted evidence that the defendant failed to make any payments on the state court judgment and that he has not surrendered the equipment, despite demands for turnover by the plaintiff. The plaintiff alleges that the "[d]efendant was required to maintain control and possession of the [e]quipment [but that] he failed to do so, allowing it to be stolen, damaged, lost or concealed, depriving [the] [p]laintiff of the use and value of the [e]quipment." And, the defendant did not maintain insurance coverage for the equipment, at the time it was "stolen, damaged, lost or concealed." See Jonya Watts Decl. ¶¶ 20, 21.

However, the evidence fails to establish that the defendant deliberately or intentionally caused damage, destruction, or loss to the equipment, or that he concealed the equipment. The declaration of Jonya Watts makess clear that the plaintiff is not certain whether the equipment was stolen, damaged, lost, or concealed. See Jonya Watts Decl. ¶ 20.

Moreover, the declaration of Jonya Watts, which is the only evidence in support of the claims, does not specify a foundation for the witness' personal knowledge for the assertions that the defendant "allow[ed]" the equipment to be "stolen, damaged, lost or concealed." See Jonya Watts Decl. ¶ 20. Hence, those statements by her are not admissible evidence. See Fed. R. Evid. 602. At paragraph 1 of her declaration, Ms. Watts maintains that she is a bankruptcy and litigation specialist with the plaintiff and that she has custody and control of the defendant's records with the plaintiff. As such, Ms. Watts could not have personal knowledge of whether, when, and how the defendant "allow[ed] [the equipment] to be stolen, damaged, lost or concealed."

This same evidence also does not allow the court to infer that the harm sustained by the plaintiff was malicious. The court has no specific evidence about what the defendant did or did not do that led to the plaintiff's harm. Thus, the motion will be denied as to the section 523(a)(6) claim.

Section 523(a)(4) provides that an individual is not discharged "from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." The fiduciary capacity requirement applies only to debts for fraud

or defalcation. Embezzlement and larceny do not require the existence of a fiduciary relationship. See Cal-Micro, Inc. v. Cantrell (In re Cantrell), 329 F.3d 1119, 1125 (9th Cir. 2003); see also Lewis v. Scott (In re Lewis), 97 F.3d 1182, 1185 (9th Cir. 1996); Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton), 942 F.2d 551, 555 (9th Cir. 1991). In the motion, the plaintiff argues that the defendant's actions amount to embezzlement under section 523(a)(4).

Embezzlement requires a showing of: (1) property rightfully in the possession of a non-owner; (2) the non-owner's appropriation of the property to a use other than which the property was entrusted; and (3) circumstances indicating fraud.

But, as discussed above, the court has no specific evidence about what the defendant did or did not do that led to the plaintiff's loss of the equipment. Therefore, the court does not have any evidence to conclude that the defendant appropriated the equipment to a use other than for which the property was entrusted. The court does not have any evidence about what for, if anything, the defendant used the property. The motion will be denied also as to the section 523(a)(4) claim.

8. 08-36411-A-7 ELEANOR BRADLEY
ABG #1
GREEN TREE SERVICING, LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-9-08 [9]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Green Tree Servicing, LLC, seeks relief from the automatic stay with respect to a 1977 mobile home.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on November 10, 2008 and a meeting of creditors was first convened on December 19, 2008. Therefore, a statement of intention that refers to the movant's mobile home and debt was due no later than December 10. The debtor filed a statement of intention on the petition date, but only indicated an intent to "retain" the home.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention on the petition date, the debtor did not indicate an intent to reaffirm the debt secured by the home or redeem the home. The statement merely says that the debtor intends to "retain" the home. And, no reaffirmation agreement or motion to redeem has

been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 10, 2008, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on December 23, 2008, indicating an intent not to administer the mobile home or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 10, 2008.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

9. 08-37515-A-7 MICHELLE AUSTIN
PD #1
CHASE HOME FINANCE LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-17-08 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $222,500 and is encumbered by claims totaling approximately $340,238. The movant's deed is in first priority position and secures a claim of approximately $274,442.

The court concludes that there is no equity in the property and there is no

evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 7, 2009.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

10. 08-37615-A-7 LISA ELLERBECK HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 12-22-08 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Ione, California. The property has a value of $250,000 and is encumbered by claims totaling approximately $285,246. See Statement of Financial Affairs item 5. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, according to the Statement of Financial Affairs, the property has been already surrendered or repossessed. See Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

11. 08-36820-A-7 WILLIE CUDGER HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-17-08 [19]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Hercules, California. The property has a value of $160,000 and is encumbered by claims totaling approximately $390,496. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 12, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

12. 08-33021-A-7 GILYN BAJAR
TJS #1
AMERICAN BROKERS CONDUIT, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-08 [36]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part and dismissed in part.

The movant, American Brokers Conduit, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on January 7, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $282,000 and is encumbered by claims totaling approximately $416,331. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

13. 08-36026-A-7 TONY/BETTY RAMOS
ND #1
WELLS FARGO BANK N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-23-08 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of $230,000 and is encumbered by claims totaling approximately $437,586. The movant's deed is in first priority position and secures a claim of approximately $236,586.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

14. 07-29327-A-7 CAMILLE/PATRICK MCDONNELL
08-2073 JMO #4
AMERICAN EXPRESS BANK, VS.
PATRICK MCDONNELL

HEARING - VERIFIED MOTION FOR ATTORNEYS' FEES AND COSTS ($2,037.50)
11-26-08 [39]

Tentative Ruling: The motion will be denied.

The plaintiff, American Express Bank, moves for an award of attorney's fees and

costs, in the amount of $1,787.50 and $250 respectively, totaling $2,037.50. The court awarded a judgment in favor of the plaintiff after trial.

In federal courts, attorney's fees are not recoverable, unless provided for by a contract or a statute. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 257 (1975). This is known as the American Rule. In bankruptcy cases, though, the general rule until recently was that attorney's fees are not recoverable by creditors for litigating bankruptcy issues. See In re Fobian, 951 F.2d 1149 (9th Cir. 1991) and In re DeRoche, 434 F.3d 1188 (9th Cir. 2006).

However, the Supreme Court overturned the rule of Fobian and DeRoche in Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elec. Co., 549 U.S. 443 (2007). It held that creditors are not precluded from applying for contractually-based attorney's fees merely because the fees had been incurred for the litigation of bankruptcy issues.

Turning to the merits of this motion, the applicant claims that the agreement governing the defendant's use of the plaintiff's account provides for attorney's fees and costs in the collection of the account. This statement is found in the motion, which doubles as a declaration of both attorneys for the plaintiff, Cynthia Groff and John O'Donnell. But, at best, this statement is hearsay and not the best evidence of the written agreement that ostensibly includes an attorney's fee provision, as that written agreement is not part of the record. The court has no persuasive evidence that the plaintiff is contractually entitled to the claimed attorney's fees. Accordingly, the motion will be denied.

15. 08-36332-A-7 CARLOS/ANABELLA GUZMAN
PD #1
JPMORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-08 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $450,000 and is encumbered by claims totaling approximately $1,007,111. The movant's deed is the only deed against the property, securing a claim of approximately $983,706.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit

the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

16. 08-36332-A-7 CARLOS/ANABELLA GUZMAN HEARING - MOTION FOR
MBL #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 12-24-08 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $200,000 and is encumbered by claims totaling approximately $457,140. The movant's deed is the only deed against the property, securing a claim of approximately $436,140.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

17. 08-36736-A-7 KEVIN BRISSON
KAT #1
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-08 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $240,000 and is encumbered by claims totaling approximately $281,866. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

18. 08-37838-A-7 ELVIA NAVARRO

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-10-08 [7]

Tentative Ruling: The petition will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has passed and the notice of the commencement of the case was served on December 12, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

19. 08-28040-A-7 STEPHEN/ALISA TRUMAN

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-23-08 [69]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on December 19, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

20. 08-32746-A-7 RONALD/JULIE EDDLEMON
MFB #1

HEARING - MOTION OF THE CHAPTER 7 TRUSTEE FOR EXTENSION OF DEADLINES
12-15-08 [80]

Tentative Ruling: The motion will be granted.

The trustee seeks a 91-day extension, from December 15, 2008 to March 16, 2009, of the deadline for filing complaints objecting to discharge under 11 U.S.C. § 727. The trustee seeks the extension to further investigate what preliminarily appears to be undisclosed assets.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing 11 U.S.C. § 727 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing 11 U.S.C. § 727 complaints here was December 15, 2008. The instant motion was filed on December 15, 2008. Thus, the motion complies with the temporal requirements of the rule. Given the trustee's pending investigation of the debtors' assets and financial affairs, the court concludes that cause for the extension of the deadline for filing 11 U.S.C. § 727 complaints exists. The motion will be granted and the deadline for filing 11 U.S.C. § 727 complaints extended to March 16, 2009.

21. 08-37346-A-7 REBECCA STUTZMAN
WGM #1
LASALLE BANK N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-24-08 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, LeSalle Bank, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $105,750 and is encumbered by claims totaling approximately $355,340. The movant's deed is in first priority position and secures a claim of approximately $303,820.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

22. 08-34347-A-11 MBD, INC.
WCL #10

HEARING - DEBTOR'S MOTION FOR APPROVAL OF STIPULATION WITH UMPQUA BANK FOR USE OF CASH COLLATERAL
12-23-08 [150]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor in possession, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks an order approving a stipulation between the estate and Umpqua Bank over the debtor's use of the bank's cash collateral, including rents and CAM charges from the debtor's commercial office and warehouse complex, known as the Fleetwood real property, which secures claim(s) held by the bank. Under the terms of the stipulation, the debtor may use the cash collateral only for the purpose of operating and maintaining the property. In exchange for its consent, the bank will receive a replacement lien on post-petition property of the estate. Unless otherwise terminated, the stipulation will be in effect through July 25, 2009.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to move for approval of a compromise or settlement. Hence, on a motion by a debtor-in-possession and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the stipulation. The stipulation will make funds available for the debtor to operate and maintain an income-producing property, in effect preserving it for the benefit of the estate, as well as for the benefit of the bank, on account of its claim(s) that are secured by the property. The stipulation is equitable and fair.

Therefore, the court concludes the stipulation to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

23. 08-35447-A-7 JUAN/EMMA IGISAIAR
EDH #1
HSBC BANK USA, NA., VS.,

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
11-10-08 [7]

Tentative Ruling: Because less that 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is not need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, HSBC Bank USA, seeks relief from the automatic stay with respect to real property in Lathrop, California. The property has a value of $510,000 and is encumbered by claims totaling approximately $572,052.66. The movant's deed is in first priority position and secures a claim of $402,052.66.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in their statement of intention, the debtors have indicated that they intend to surrender the property. The court also notes that the trustee filed a report of no distribution on November 19, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following the sale. No other relief is awarded.

For purposes of Cal. Civil Code § 2923.5, the court determines that this bankruptcy proceeding has been finalized in connection with the note and deed of trust described in the motion.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g is applicable to orders terminating the automatic stay.

24.	08-33450-A-7	JOSE GUILLAN AND GLORIA SOLORIO	HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-18-08 [41]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on December 15, 2008. This is

cause for dismissal. See 11 U.S.C. § 707(a)(1).

25. 08-35651-A-7 LEONARD SCROGGINS
WGM #2
INDYMAC FEDERAL BANK FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-08 [37]

Tentative Ruling: The motion will be denied.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Redding, California. The movant alleges that the property has a value of $102,000 and that it is encumbered by claims totaling approximately $136,307. The movant's deed is the only encumbrance against the property. However, for the value of the property, the movant relies on a declaration that refers to exhibits that are not in the record. See Declaration of Mark Boehle. Hence, the court rejects the movant's valuation of the property.

As to the schedules, the property is not listed there. The court then does not have any evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

26. 08-34352-A-7 ROBY SCOTT
DMG #1
CITIFINANCIAL AUTO CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [15]

Tentative Ruling: The motion will be denied.

The movant, Citifinancial Auto Corp., seeks relief from the automatic stay with respect to a 2005 Chevrolet Colorado. The vehicle is not listed in the petition documents. The movant asserts though that the vehicle has a value of $10,005 and that its secured claim is approximately $19,709. Its valuation is based on a printout from the Kelly Blue Book website, which shows the retail value of the vehicle.

However, the court utilizes the vehicle's wholesale value for purposes of determining equity. The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value because the valuation does not take into account the condition of the vehicle. It assumes that the vehicle is in excellent condition. Moreover, the court has no evidence whatsoever about the condition of the vehicle. The court then has no evidence of value. As a result, the court cannot determine whether there is any equity in the vehicle and whether the movant's interest in it is adequately protected. Therefore, the motion will be denied.

27. 08-38452-A-11 JACKSON FORD-MERCURY, INC.
SW #1
FORD MOTOR CREDIT CO., LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-08 [10]

Tentative Ruling: The motion will be denied.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay to repossess its collateral, which consists of some vehicles and some equipment. The vehicles are eight Ford vehicles with an alleged total value of $226,909.01. The equipment collateral consists of parts, accessories, equipment, furniture and fixtures, with an alleged total value of $149,479. The amount owed by the debtor to the movant, on account of the parties'

wholesale financing and security agreement, totals approximately $551,251.76.

However, the court does not have sufficient evidence on the value of the movant's collateral. In support of its valuation of the vehicles, the movant has produced only the declaration of Robert Steninger, which summarily states that the total value of the vehicles is $226,909.01. The declaration does not value the vehicles. It merely directs the court to Exhibit D which lists the eights vehicles with their VINs and their respective values. And, while the declaration states that the vehicles "are valued at [the debtor's] dealer invoice for the acquisition of the new vehicles," this statement is hearsay and has no foundation. See Fed. R. Evid. 802. The declaration does not disclose who valued the vehicles, how the vehicles were valued, and the source of each assigned value. The statement strongly suggests that Mr. Steninger did not prepare Exhibit D and did not value the vehicles himself. This means that he does not have personal knowledge to testify on value. See Fed. R. Evid. 602. Moreover, assuming the movant overcomes the evidentiary hurdles, the court would reject such a valuation of the vehicles because the debtor is not in the business of selling vehicles at dealer invoice prices. The debtor is in the business of selling vehicles at retail prices, of which the court has no evidence at this time.

As to the equipment, Mr. Steninger's declaration does not value it but only summarily states that its total value is $149,479 and directs the court to Exhibit E, described as the debtor's October 2008 financial statement. While this may be admissible, the court finds it insufficient to establish the value of the debtor's equipment. The statement is outdated by two months, one and one-half months of which is pre-petition. And, Exhibit E indicates that the $149,479 figure represents only the value of parts. The motion states nothing about the value of the debtor's accessories, equipment, furniture and fixtures, which are also part of the movant's collateral. Exhibit E also indicates that the $149,479 figure represents the invoice price of parts. See Movant's Exhibit E, Line 28. As with the vehicles, the debtor is not in the business of selling parts at invoice prices. It is in the business of selling them at retail prices.

Based on the foregoing, the court concludes that it does not have sufficient evidence of value for the movant's collateral. As a result, the court cannot determine whether the vehicles and equipment have any equity or whether the movant's interest in them is adequately protected. Accordingly, the motion will be denied.

28. 08-32156-A-7 JOHNNY/CYNTHIA VICKERS HEARING - DEBTORS' MOTION TO CONVERT FROM CHAPTER 7 CASE TO CASE UNDER CHAPTER 13
12-15-08 [23]

Tentative Ruling: The motion will be granted.

The debtors seek to convert their case from chapter 7 to chapter 13.

Given the Supreme Court's recent decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11

U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 is the requirement that the debtor must have regular income. 11 U.S.C. § 109(e).

Here, the debtors have unsecured debts totaling approximately $86,271 and secured debts totaling approximately $17,961.39. This satisfies 11 U.S.C. § 109(e). And, a review of amended schedules I and J shows that the debtors have a monthly net income of $200, which is sufficient to cover their proposed $200 plan payments. The motion will be granted.

29.	06-23366-A-7 TAA #1	WESTERN PACIFIC STATES CONSTRUCTION, INC.	HEARING - MOTION TO APPROVE RETROACTIVE EMPLOYMENT AND PAYMENT OF ADMINISTRATIVE EXPENSE OF ACCOUNTANT 12-15-08 [22]

Tentative Ruling: The motion will be denied.

The trustee seeks retroactive approval to employ Gonzales & Sisto as an accountant for the estate. The trustee also seeks authority to pay G&S $2,156.10 in fees incurred for the preparation of tax returns. The trustee did not seek and obtain approval of the employment of G&S. The work performed by G&S dates back to October 31, 2008.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

However, the motion will be denied without because the trustee has not addressed the THC Financial Corp. standard for retroactive approval of employment.

When a professional does not obtain prior approval of his or her employment, retroactive approval of the employment may be possible. The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. The following must be shown: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988).

In deciding whether there is a satisfactory explanation for the failure to obtain prior court approval, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Id.

This motion gives the court none of the information necessary to apply the THC Financial standard.

30. 08-37467-A-7 MATTHEW/JENNIFER WERTS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MTG., INC., VS. 12-17-08 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Pollock Pines, California. The property has a value of $206,000 and is encumbered by claims totaling approximately $223,203. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

31. 08-30569-A-7 MOHINDER/INDERJIT LACHHAR HEARING - DEBTORS' MOTION TO
JCK #3 VACATE ORDER OF DISMISSAL
12-10-08 [40]

Tentative Ruling: The motion will be denied.

The court dismissed this case on November 20 pursuant to an order to show cause, heard on November 18, due to the debtors' failure to appear at their continued meeting of creditors on October 9. The motion states that the debtors failed to appear at the October 9 hearing due to a "good faith

misunderstanding," "believing that it was set for a different date."

The debtors appeared at their initial meeting of creditors on September 11. The meeting was continued to October 9. The debtors did not attend the October 9 meeting but attended the continued meeting on November 4, at which time the trustee concluded it. The debtors did not appear at the November 18 hearing on the order to show cause because the trustee had concluded the meeting of creditors on November 4.

The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with FRCivP 56(e)."

32. 08-33870-A-7 DESIREE VINCENT HEARING - MOTION FOR
MBL #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 12-16-08 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $230,000 and is encumbered by claims totaling approximately $286,581. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 30, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

33. 08-34370-A-7 RICHARD PEARSE III

HEARING - OBJECTION TO REPORT OF NO DISTRIBUTION AND MOTION FOR RELIEF OF STAY FOR THE SOLE PURPOSE OF PROCEEDING AGAINST INSURANCE COVERAGE
12-22-08 [18]

Tentative Ruling: The motion for relief from the automatic stay will be granted but the objection to the trustee's report of no distribution will be overruled.

The movant, City of Folsom, seeks relief from the automatic stay to proceed with a settlement agreement with the debtor's insurance carrier, 21st Century Insurance, resolving a personal injury suffered by an employee of the movant. Based on this, the movant also requests the court to sustain its objection to the trustee's report of no distribution.

The settlement agreement will pay $15,000 to the movant in full satisfaction of the personal injury claim against the debtor. The movant will receive another $5,000 from State Farm Insurance, the insurance carrier for another party involved in the accident.

Given that the movant would not seek to enforce any judgment against the debtor and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to consummate the settlement agreement with the debtor's insurance carrier, but not to enforce any judgments against the debtor or the estate.

However, the objection as to the trustee's report of no distribution will be overruled. The court does not see the relevance of the facts supporting the motion for relief from stay to the trustee's report of no distribution. That report indicates that the trustee could locate no assets to liquidate for the benefit of creditors. The movant's right to make a claim against the insurance policy is unaffected by the bankruptcy.

The parties shall bear their own fees and costs.

34. 08-35670-A-7 RYAN/ERIKA BARCLAY
WGM #1
M&I BANK, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-24-08 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need

to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, M&I Bank, seeks relief from the automatic stay as to a real property in Las Vegas, Nevada. The property has a value of $150,000 and is encumbered by claims totaling approximately $206,727. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

35. 08-34171-A-7 BRYAN/MELISA HANNA
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-08 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real

property in Penn Valley, California. The movant has produced evidence that the property has a value of $320,000 and is encumbered by claims totaling approximately $397,375. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 4, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

36. 08-30973-A-7 ELIZABETH/MARGARITO ROBLES HEARING - MOTION TO CONFIRM
JHW #1 TERMINATION OF AUTOMATIC STAY
DAIMLERCHRYSLER FIN'L SVCS, ETC., VS. 12-3-08 [25]

Tentative Ruling: The motion will be denied.

The movant, Daimlerchrysler Financial Services Americas, seeks confirmation that the automatic stay has terminated as to a 2005 Dodge Ram 1500.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on August 7, 2008 and a meeting of creditors was first convened on September 16, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than September 6. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her

intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the September 16 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 16, 2008, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on September 17, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on October 16, 2008.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

37. 08-36775-A-7 ROSE FIGLIA
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-08 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative

ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Weed, California. The property has a value of $140,000 and is encumbered by claims totaling approximately $143,481. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

38. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #1 CLAIM OF DONYAS TREXLER
11-26-08 [50]

Tentative Ruling: The objection will be overruled.

On July 7, 2008, claimant Donyas Trexler filed a priority proof of claim in the amount of $9,300 (claim no. 1). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation, the claimant's last name is the same as the last name of the debtor's owners, and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re

Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs points out that the claimant has the same last name as the name of the debtor's owners, but it does not discuss the significance of this. Combs also contends that the claimant should be paid by the Labor Commissioner because Combs paid the debtor's wage assessment claims, but it does not acknowledge that the claimant is not among the employees listed on the wage and penalty assessment. Moreover, this claimant's unpaid wages may be from project(s) different than the one(s) on which Combs worked.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

39. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #2 CLAIM OF KENNETH TREXLER
11-26-08 [52]

Tentative Ruling: The objection will be overruled.

On July 7, 2008, claimant Kenneth Trexler filed a priority proof of claim in the amount of $8,400 (claim no. 2). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation, the claimant's last name is the same as the last name of the debtor's owners, the claimant was a president of the debtor, and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr.

N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs points out that the claimant was a president of the debtor and has the same last name as the name of the debtor's owners, but it does not discuss the significance of this. Combs also contends that the claimant should be paid by the Labor Commissioner because Combs paid the debtor's wage assessment claims, but it does not acknowledge that the claimant is not among the employees listed on the wage and penalty assessment. Moreover, this claimant's unpaid wages may be from project(s) different than the one(s) on which Combs worked.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

40. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #3 CLAIM OF DAVID TREXLER
11-26-08 [54]

Tentative Ruling: The objection will be overruled.

On July 7, 2008, claimant David Trexler filed a priority proof of claim in the amount of $16,423 (claim no. 3). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation, the claimant's last name is the same as the last name of the debtor's owners, the claimant is a president of the debtor, and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs points out that the claimant is a president of the debtor and has the same last name as the name of the debtor's owners, but it does not discuss the significance of this. Combs also contends that the claimant should be paid by the Labor Commissioner because Combs paid the debtor's wage assessment claims, but it does not acknowledge that the claimant is not among the employees listed on the wage and penalty assessment. Moreover, this claimant's unpaid wages may be from project(s) different than the one(s) on which Combs worked.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

41. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #4 CLAIM OF CODY PRADO
11-26-08 [56]

Tentative Ruling: The objection will be overruled.

On July 9, 2008, claimant Cody Prado filed a priority proof of claim in the amount of $2,974.64 (claim no. 5). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs contends that the claimant should be paid by the Labor Commissioner because Combs paid the debtor's wage assessment claims, but it

does not acknowledge that the claimant is not among the employees listed on the wage and penalty assessment. Moreover, this claimant's unpaid wages may be from project(s) different than the one(s) on which Combs worked.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

42. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #5 CLAIM OF KENNETH TREXLER
11-26-08 [58]

Tentative Ruling: The objection will be overruled.

On July 21, 2008, claimant Kenneth Trexler filed a proof of claim in the amount of $250,000 (claim no. 7). The claim is for an unpaid personal loan.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation, that the claimant's last name is the same as the last name of the debtor's owners, and that the claimant was a president of the debtor. Combs also contends that the debtor's current president and son of the claimant, David Trexler, testified at the meeting of creditors that the "he was not aware of any corporate documents to support the $250,000 personal loan claim."

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs points out that the claimant was a president of the debtor and has the same last name as the name of the debtor's owners, but it does not discuss the significance of this. And, the reference to David Trexler's statements at the meeting of creditors is inadmissible hearsay. See Fed. R. Evid. 802. Moreover, even if the court admits David Trexler's statements, they do not carry sufficient weight to rebut the presumptive validity of the claim. The fact that David Trexler is not aware of documentation for the loan does not mean that the loan was not made or that the claimant is not entitled to a claim

for the loan.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

The court also notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Finally, the address for the claimant in the proof of service, 2605 Lago Lane, is different from the address for the claimant on the proof of claim, 2603 Lago Lane.

The objection will be overruled.

43. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #6 CLAIM OF DANIEL STRAOLZINI
11-26-08 [60]

Tentative Ruling: The objection will be overruled.

On July 21, 2008, claimant Daniel Straolzini filed a priority proof of claim in the amount of $1,584.11 (claim no. 8). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs contends that the claimant should be paid by the Labor Commissioner because Combs paid the debtor's wage assessment claims, but it does not acknowledge that the claimant is not among the employees listed on the wage and penalty assessment. Moreover, this claimant's unpaid wages may be from project(s) different than the one(s) on which Combs worked.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

44. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #7 CLAIM OF TIMOTHY CUMMINS
11-26-08 [62]

Tentative Ruling: The objection will be sustained in part and overruled in part.

On August 1, 2008, claimant Timothy Cummins filed a priority proof of claim in the amount of $2,816 (claim no. 12). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has presented some evidence that the claimant's unpaid wages may have been already collected, at least in part, by the California Labor Commissioner. However, the evidence is not conclusive. The proof of claim is in the amount of $2,816, whereas the amount of the claimant's unpaid wages, excluding penalties, listed in the Commissioner's wage and penalty assessment, is only $1,560.83. This means that the proof of claim likely includes wages earned in project(s) other than the one(s) on which Combs worked or at least other than the one(s) covered by the Commissioner's assessment. Thus, to the extent the proof of claim includes wages covered by the Commissioner's assessment, the objection will be sustained. Such wages have been already collected by the Labor Commissioner. The claimant can recover them from the Labor Commissioner. But, to the extent the proof of claim does not include

wages covered by the assessment, the objection will be overruled.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled.

45. 08-28376-A-7 SUTTER FOAM & COATING, INC. HEARING - OBJECTION TO
RLC #8 CLAIM OF CHARLES BRASIER
11-26-08 [64]

Tentative Ruling: The objection will be sustained in part and overruled in part.

On August 12, 2008, claimant Charles Brasier filed a priority proof of claim in the amount of $2,800 (claim no. 17). The claim is for unpaid wages.

Creditor L.M. Combs Construction, Inc. now objects to the proof of claim, arguing that the claim has no supporting documentation and that the claimant should collect his unpaid wages from the California Labor Commissioner, which had assessed unpaid wages and penalties against the debtor and Combs. Combs had been named on the assessment because it was the general contractor on a project at which the debtor was a subcontractor. Combs eventually paid $19,592.65 on account of the assessment.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Combs has presented some evidence that the claimant's unpaid wages may have been already collected, at least in part, by the California Labor Commissioner. However, the evidence is not conclusive. The proof of claim is in the amount of $2,800, whereas the amount of the claimant's unpaid wages, excluding penalties, listed in the Commissioner's wage and penalty assessment, is only $1,893.60. This means that the proof of claim likely includes wages earned in project(s) other than the one(s) on which Combs worked or at least other than the one(s) covered by the Commissioner's assessment. Thus, to the extent the proof of claim includes wages covered by the Commissioner's assessment, the objection will be sustained. Such wages have been already

collected by the Labor Commissioner. The claimant can recover them from the Labor Commissioner. But, to the extent the proof of claim does not include wages covered by the assessment, the objection will be overruled.

And, while Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation be appended to a proof of claim, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b). Section 502(b) does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier due to the fact that the claim might not be entitled to be presumed as prima facie valid. The objecting party, however, must still come forward with evidence that the claim should be disallowed for one of the reasons specified in section 502(b). This has not been done in this instance.

As a final note, the court notes that the objection does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion/objection be accompanied by a separate notice of hearing.

Accordingly, the objection will be overruled in part and sustained in part.

46. 08-25378-A-7 MICHAEL/RUBA POWELL HEARING - MOTION FOR
KAT #5 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-15-08 [99]

Tentative Ruling: Although the movant has given 28 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part and will be dismissed in part.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Corning, California.

Given the entry of the debtor's discharge on September 10, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the property has a value of $85,000 and is encumbered by claims totaling approximately $94,724. The movant's deed is the only deed against the property, securing a claim of approximately $92,834.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

47. 08-38279-A-7 ALFONSO GUTIERREZ AND MARIA CERVANTES — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-18-08 [8]

Tentative Ruling: The petition will be dismissed.

The debtors failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has passed and the notice of the commencement of the case was served on December 20, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

48. 08-31480-A-7 WILLIAM GLOVER — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-16-08 [28]
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

Tentative Ruling: The motion will be denied in part and dismissed in part.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Roseville, California.

Given the entry of the debtor's discharge on January 6, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant asserts that the property has a value of $265,000, but its valuation consists of a declaration by a person who conducted a "desktop valuation." The court is not familiar with this valuation and because the declarant does not describe the process and method it used to calculate the value of the property, the court rejects the valuation. Moreover, the declaration refers to an exhibit A that is not in the

record. Turning to the schedules, the debtor has listed the property in Amended Schedule A with a value of $750,000. The encumbrances against the property total approximately $647,221. The movant's deed is in first priority position and secures a claim of approximately $403,229. This leaves approximately $102,779 of equity in the property.

Given this equity, relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 1200, 1202 (11th Cir. 1995).

The movant also has an equity cushion of approximately $346,770. This equity cushion is sufficient to adequately protect the movant's interest in the property until the case is closed. See 11 U.S.C. § 362(c)(1) & (c)(2)(A). At that point, the automatic stay will expire as a matter of law. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

The parties shall bear their own fees and costs.

49. 08-37881-A-7 JOHN/ANNE CANADA

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-11-08 [7]

Tentative Ruling: The petition will be dismissed.

The debtors did not file a Statement of Social Security Number with the petition. As a result, when creditors were served with notice of the commencement of the case, the court was unable to advise them of the debtors' social security numbers. Thus, the quality of notice has been substantially reduced and perhaps nullified. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007). This has prejudiced the creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1).

50. 06-23284-A-7 WILBUR/JULIE HEATH
HM #2

HEARING - MOTION BY TRUSTEE FOR APPROVAL OF SETTLEMENT AND COMPROMISE WITH WELLS FARGO BANK
12-12-08 [48]

Tentative Ruling: Although the movant has given 31 days' notice of the hearing, the court will deem the motion to be brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) because the notice of hearing does not require written opposition before the hearing and invites oppositions to be presented at the hearing. Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or

opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and Wells Fargo Bank, resolving a 90-day preference claim based on the transfer of $29,061 to the bank's predecessor in interest, Placer Sierra Bank. Under the terms of the compromise, the bank will pay $23,000 to the estate in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake and the costs, risks and delay of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

51. 08-35785-A-7 PAUL/ANGELINA SILVAS HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FIN'L CALIF., INC., VS. 12-22-08 [14]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Financial California, Inc., seeks relief from the automatic stay as to a real property in Antelope, California. The property has

a value of $120,000 and is encumbered by claims totaling approximately $277,990. The movant's deed is in first priority position, securing a claim of approximately $263,690.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

52. 08-36086-A-7 THOMAS KEYS

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-10-08 [14]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on December 8, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

53. 08-36186-A-7 JAMES RATZLAFF AND LAN LE
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-08 [19]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for GSR Mortgage Loan Trust 2007, seeks relief from the automatic stay as to a real property in Discovery Bay, California. The property has a value of $425,000 and is encumbered by claims totaling approximately $554,635. The movant's deed is in first priority position and secures a claim of approximately $499,603.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

54. 08-28487-A-11 ROOM SOURCE, LLC
GC #1

HEARING - FIRST INTERIM APPLICATION FOR FEES & EXPENSES OF ACCOUNTANT FOR DEBTOR- IN-POSSESSION ($12,102.50 FEES; $12.60 EXPENSES)
12-22-08 [302]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor in possession, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The application will be granted.

Gabrielson & Company, accountant for the debtor in possession, has filed its first interim application for approval of compensation. The requested compensation consists of $12,102.50 in fees and $12.60 in expenses, for a total of $12,115.10. This application covers the period from September 12 through December 17, 2008. The court approved the applicant's employment as the debtor's accountant on September 24, 2008. In performing its services, the

applicant charged an hourly rate of $235.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) reviewing and analyzing accounting reports from the liquidators; (2) assisting the debtor in the preparation of monthly operating reports; (3) reviewing fees and expenses charged by the liquidators; and (4) preparing its employment and compensation application documentation.

The court concludes that the compensation is for beneficial, actual, and necessary services rendered to the debtor in possession in connection with its administration of this estate. The compensation will be approved.

55. 08-31787-A-7 ALFONSO/MARIA RAMIREZ HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-9-08 [37]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on December 4, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

56. 08-35587-A-7 PATTY HAMILTON HEARING - DEBTOR'S MOTION TO CONVERT TO CHAPTER 13
JLB #2 12-2-08 [19]

Tentative Ruling: The motion will be granted.

The debtor seeks to convert her case from chapter 7 to chapter 13. The debtor asserts that she originally intended to file a chapter 13 petition, but mistakenly filed a chapter 7 petition.

Creditors Paul and Yolande Kemp oppose the motion, arguing that the court should not allow conversion to chapter 13 because of bad faith. In support of its assertion of bad faith, the creditors contend that the debtor: (1) did not refinance or sell a real property within "reasonable time," as ordered by state court; (2) listed the property for sale and its value in Schedule A at $350,000, whereas the property has a value of $260,000; (3) has been delaying the state court action in order to prevent re-vesting of the property back to the creditors; (4) has failed to pay the property's taxes; (5) is unable to confirm a chapter 13 plan on her disclosed income; and (6) has misrepresented the amount of the mortgage payments on the property.

The debtor has filed a reply, explaining the background to the state court litigation and asserting that the property was not listed for sale until after June 23, 2007 because she had to obtain a court order for the Kemps to transfer the property to her.

From the record, it appears that the parties were engaged in state court litigation when they entered into a settlement agreement, which required the creditors to deed the property at issue to the debtor, who in turn was required to sell it or refinance the property's first deed of trust. The state court retained jurisdiction over the enforcement of the agreement.

In deciding whether bad faith exists, courts should consider the totality of the circumstances. In re Eisen, 14 F.3d 469, 470 (9th Cir. 1994). This includes factors such as misrepresented facts in the bankruptcy petition, unfair manipulation of the Bankruptcy Code, preemption of the chapter 7 trustee's administration of the case, or otherwise inequitable circumstances surrounding the petition filing and egregious behavior. In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999).

The court finds no grounds for bad faith here. The debtor's failure to make pre-petition payments to the Kemps or to pay the property's taxes is not bad faith by itself. If it were, all bankruptcy filings would be in bad faith. Naturally, debtors file for bankruptcy because they are not making payments to their creditors. Next, the debtor's failure to sell or refinance the property cannot be bad faith, given the difficult state of the housing and credit markets. Further, to the extent the Kemps are accusing the debtor of breaching their settlement of the state court litigation, the Kemps are free to move for relief from the automatic stay and prosecute the agreement in state court, regardless of whether the debtor is in chapter 7 or chapter 13. The state court is the one that approved the settlement agreement and retained jurisdiction of its enforcement. The alleged breach of the settlement, though, is not sufficient to warrant a conclusion of bad faith.

As to the value of the property, a debtor's opinion of value in the schedules is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The debtor has valued the property in question at $350,000, whereas the Kemps are asserting that its value is approximately $260,000. But, even if the court were to agree with the Kemps' valuation, this is not bad faith because the debtor is entitled to her opinion as to the value of the property in which she resides. Finally, the Kemps have not discussed how conversion to chapter 13 would prejudice them over a chapter 7 proceeding. In other words, the Kemps have not shown how the conversion request is for an improper purpose or is in bad faith. They have not shown egregious behavior amounting to bad faith. As noted above, the Kemps are free to move for relief from stay, whether in a chapter 13 or chapter 7 proceeding.

Turning to the motion, given the Supreme Court's recent decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

The court has reviewed the motion and supporting papers, as well as the debtor's schedules. As noted earlier, the court has no evidence that the debtor is seeking the conversion for an improper purpose or in bad faith. Also, there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

Lastly, among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $336,900 and noncontingent, liquidated, secured debts of less than $1,010,650. 11 U.S.C. § 109(e).

Here, the debtor has unsecured debts totaling approximately $33,937 and secured debts totaling approximately $306,071. This satisfies 11 U.S.C. § 109(e).

Schedules I and J show that the debtor has sufficient disposable income to make the proposed $92 in chapter 13 plan payments. The debtor's income is regular as it consists of disability and rental (roommate) income. Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as mandated by Marrama. The motion will be granted.

57. 08-36988-A-7 JAVIER/ELVIRA MONDRAGON HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-19-08 [13]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on December 16, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

58. 08-35489-A-7 TAMAR ELVICK HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-2-08 [11]
JHW #1
AMERICREDIT FIN'L SVCS., INC., VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Americredit Financial Services, Inc., seeks relief from the automatic stay with respect to a 2000 Mercedes Benz SLK230.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on October 27, 2008 and a meeting of creditors was first convened on Decemvber 1, 2008. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than November 26. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to reaffirm the debt secured by

the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the December 1, 2008 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 31, 2008, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on December 3, 2008, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 31, 2008.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

59. 08-37989-A-7 MANDALE/SANDRA JOHNSON
WGM #1
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-08 [7]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of $320,000 and is encumbered by claims totaling approximately $474,665. The movant's deed is in first priority position and secures a claim of approximately $415,026.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

60. 08-38189-A-7 HORTENCIA/ANTONIO PAREDES HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
LASALLE BANK N.A., VS. 12-29-08 [7]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, LaSalle Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $180,000 and is encumbered by claims totaling approximately $370,141. The movant's deed is in first priority position and secures a claim of approximately $333,980.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed

of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

61.	06-21891-A-7 08-2023 SUSAN SMITH, VS. BONNIE PISHOS, ET AL.	THOMAS PISHOS DNL #15	HEARING - MOTION FOR APPOINTMENT OF RECEIVER TO TAKE CHARGE OF HUNTING LODGE NOTES & PROCEEDS 12-11-08 [255]

Tentative Ruling: The motion will be granted.

The plaintiff, Susan Smith, who is also the trustee in the underlying bankruptcy case, moves the court to appoint a receiver to preserve two Hunting Lodge promissory notes, with a value of $243,000 as of March 12, 2008. The notes are secured by the Hunting Lodge property, located in Grayling, Michigan, which was sold on June 16, 2004 by Thomas Pishos, the debtor in the underlying bankruptcy case, and his former wife Bonnie Pishos, to Heritage Ranch Holdings, LLC. The notes at issue represent two of the three original notes carried back by Thomas and Bonnie Pishos, financing in part HRH's purchase of the property.

On or about September 15, 2005, the debtor transferred his interest in the notes to Bonnie Pishos, as part of their stipulation for judgment of legal separation. The judgment was entered in Sacramento County Superior Court on March 29, 2006. HRH made its last payment on account of the notes on May 1, 2008. That payment was applied to the March and April 2008 installments. Despite being a payee under the notes though, Bonnie Pishos has declined to prosecute enforcement of the notes.

Bonnie Pishos has filed a response, objecting to the appointment of a receiver. She disputes the trustee's assertions that: (i) the debtor was insolvent at the time the notes were transferred, (ii) the transfer was made with the intent to hinder, delay or defraud, (iii) the debtor did not receive reasonably equivalent value. She argues that the property division between the debtor and her, at the time of their separation, was in his favor.

Fed. R. Civ. P. 64(a), made applicable here via Fed. R. Bankr. P. 7064, provides that "[a]t the commencement and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies."

Although Fed. R. Civ. P. 66, which makes the Federal Rules of Civil Procedure applicable to receiver actions, is not incorporated in the Federal Rules of Bankruptcy Procedure, no federal statute prohibits the appointment of a receiver in adversary proceedings brought in the context of a bankruptcy case. Moreover, Fed. R. Civ. P. 64(a), which is incorporated in the Federal Rules of Bankruptcy Procedure, expressly allows state law remedies involving the "seizing a person or property." See Fed. R. Bankr. P. 7064.

Turning to California state law, then, Cal. Civ. Code § 3439.07(a)(3)(B) provides that, in a fraudulent conveyance action, subject to applicable principles of equity and in accordance with applicable rules of civil procedure, a creditor may obtain the appointment of a receiver to take charge of the assets transferred or its proceeds. The appointment of a receiver is largely in the discretion of the court. The standard is whether the party seeking the appointment has at least a probable right or interest in the property sought to be placed in receivership, and the property is in danger of loss, removal, or material injury. See Maggiora v. Palo Alto Inn, Inc., 249 Cal. App. 2d 706, 710-712 (1967). But, the court is not required to determine the ultimate issues in the action. A showing of probable interest in the property is sufficient to warrant the appointment of a receiver. Id.

Turning to the merits of the plaintiff's fraudulent conveyance claim, in Counts IV and V of the third amended complaint, she has asserted fraudulent conveyance claims pursuant to Cal. Civ. Code §§ 3439.04 and 3439.05, respectively. Under Cal. Civ. Code § 3439.04, the plaintiff is required to show the following:

(1) a transfer was made or obligation was incurred by the debtor;

(2) it was made with the actual intent to hinder, delay, or defraud any creditor of the debtor;

(3) it was made without receiving reasonably equivalent value; and

(4A) the debtor engaged or was about to engage in a business or a transaction for which his remaining assets were unreasonably small in relation to the business or transaction; or

(4B) the debtor intended to incur, or believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

In determining actual intent under Cal. Civ. Code § 3439.04(1)(a), consideration may be given that to: (1) whether the transfer was to an insider, (2) whether the debtor retained possession or control of property after the transfer, (3) whether the transfer was concealed, (4) whether before the transfer was made the debtor had been sued or threatened to be sued, (5) whether the transfer was of substantially all of the debtor's assets; (6) whether the debtor absconded, (7) whether the debtor removed or concealed assets, (8) whether value of consideration received by the debtor was reasonably equivalent to the value of the asset transferred, (9) whether the debtor was insolvent or became insolvent shortly after the transfer, (10) whether the transfer occurred shortly before or shortly after a substantial debt was incurred, and (11) whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor. See Cal. Civ. Code § 3439.04(b)(1)-(11).

A review of the evidence produced by the plaintiff shows that the debtor and Bonnie Pishos executed on or about September 15, 2005 a stipulation for judgment of legal separation, by which the debtor agreed to transfer his interest in the Hunting Lodge notes to Bonnie Pishos. The debtor executed the stipulation only three days after he was informed that GE was attempting to attach other property in California based on its Washington state court judgment against him. GE had personally served the debtor with its notice of entry of sister-state-court judgment. Further, the debtor transferred the property to Bonnie Pishos as part of a transfer of all his property, save

approximately $10,962, and as part of his assumption of approximately $714,931 in community debt (*without counting GE's $500,000 debt, which had attached to the Highway 88 property by the time the legal separation judgment was entered*), while Bonnie Pishos received approximately $451,600 in unencumbered assets (*assigning a value of $0 to the Highway 88 property, given GE's undersecured lien*) and assumed no liabilities. The Hunting Lodge notes accounted for $393,000 of the approximately $451,600 in unencumbered assets received by Bonnie Pishos.

Hence, the plaintiff has established a probable interest in the notes. The debtor transferred the Hunting Lodge notes to Bonnie Pishos with the probability of actual intent to hinder, delay, or defraud his creditors and with the probability that the transfer was made without the debtor receiving reasonably equivalent value. The evidence also shows a probability that the debtor intended to incur, or believed or reasonably should have believed that he would incur debts beyond his ability to pay them as they became due. The debtor may not reasonably expect to pay off $714,931 in liabilities, when he is receiving only $10,962 in assets. Finally, the plaintiff has demonstrated that the repayment of the notes is in danger of a loss. The last installment paid by HRH on account of the notes was April 2008. HRH is now eight months delinquent under the notes. Therefore, the court concludes that the appointment of a receiver is warranted. The motion will be granted.

62. 08-37094-A-7 RICKY/SHARI YOUNGER
JRR #1

HEARING - DEBTORS' MOTION FOR ORDER COMPELLING TRUSTEE TO ABANDON BUSINESS AS A BURDENSOME ASSET
12-2-08 [14]

Tentative Ruling: The debtors move for an order compelling the trustee to abandon the estate's interest in the debtors' assisted living business. The debtors presently have two clients. The motion alleges that "[t]he debtor's [*sic*] feel that there is no value to the business other than to themselves."

However, the motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with FRCivP 56(e)."

63. 08-36396-A-7 ARTHUR MILLER, JR.

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-10-08 [27]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file an Exhibit D with the credit counseling certificate, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Interim Rule 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b)(2)(C).

Even though the debtor filed many of the missing documents on December 17, 2008, he still has not filed his Exhibit D with the credit counseling

certificate and the chapter 7 statement of current monthly income and means test calculation. The debtor filed the chapter 13 statement of current monthly income and calculation of commitment period and disposable income. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

64. 08-36396-A-7 ARTHUR MILLER, JR. HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-15-08 [30]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to attend a meeting of creditors scheduled for and held on December 8, 2008. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

65. 08-36396-A-7 ARTHUR MILLER, JR. CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-2-08 [16]
PD #1
AMERICA'S SERVICING CO., VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, America's Servicing Co., seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of $250,000 and is encumbered by claims totaling approximately $441,007. See Schedule A. The movant's deed is in first priority position, securing a claim of $376,119.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

66. 08-36396-A-7 ARTHUR MILLER, JR.
DSW #2

HEARING - DEBTOR'S MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-22-08 [33]

Tentative Ruling: The motion will be denied.

The debtor seeks to convert his case from chapter 7 to chapter 13.

Given the Supreme Court's recent decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $336,900 and noncontingent, liquidated, secured debts of less than $1,010,650. 11 U.S.C. § 109(e).

Here, the debtor has noncontingent, liquidated and undisputed unsecured debts totaling approximately $3,949 and secured debts totaling approximately $2,116,093.73. The debtor has marked approximately $1,237,910.81 of his secured debt as contingent debt, leaving only approximately $878,182.92 as noncontingent, liquidated secured debt. However, the debtor has produced no evidence on what are the contingencies of his alleged contingent debt.

Many debtors are under the misapprehension that guaranteed debt necessarily means contingent debt. But, when a guaranty is not contingent under state law, the debt is not contingent for chapter 13 eligibility purposes. See Keith Lundin, Chapter 13 Bankruptcy, § 15.3 (3rd ed. 2002). Therefore, it is state law and the language of the guaranty that determine proper characterization. Id.; see Citizens' Trust & Savings Bank b. Bryant, 53 Cal. App. 735, 736-37 (1921) (holding that a mortgage guaranty is unconditional because it did not require the creditor to exhaust the security before enforcing the guaranty, even though the default of the principal debtor was required before enforcement of the guaranty).

Further, a review of schedules I and J shows that the debtor has a monthly net income of $1,429.26. But, on Schedule I, the debtor reports $3,500 in income from the operation of his real estate investment business and $150 from "seasonal coaching." Given the current state of the housing market and the vast depreciation of real estate, the court cannot determine just based on Schedule I whether the debtor's business operation income is regular income for purposes of 11 U.S.C. § 109(e). The same applies to the $150 in "seasonal coaching" income. If the income is seasonal, the income cannot be considered regular income for purposes of 11 U.S.C. § 109(e). Without more evidence on the above points, then, the court cannot determine whether the debtor is

eligible for chapter 13 relief. Accordingly, the motion will be denied.

67. 08-34397-A-7 WILLIE CHEATHON HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-22-08 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Mather, California. The property has a value of $455,000 and is encumbered by claims totaling approximately $599,384. The movant's deed is in first priority position and secures a claim of approximately $493,384.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

68. 08-35997-A-7 CRAIG GARRETT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-16-08 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee,

the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for CitiMortgage, seeks relief from the automatic stay as to a real property in Corning, California. The property has a value of $280,000 and is encumbered by claims totaling approximately $325,758. The movant's deed is in first priority position and secures a claim of approximately $227,038.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the

amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

69. 08-36798-A-7 HERLINDA GRAJEDA HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-17-08 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $200,000 and is encumbered by claims totaling approximately $358,993. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 23, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

70. 08-37598-A-7 JOHN/JEANETTE COOPER HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE LLC, VS. 12-16-08 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $200,000 and is encumbered by claims totaling approximately $360,761. The movant's deed is in first priority position and secures a claim of approximately $272,320.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

71. 08-37598-A-7 JOHN/JEANETTE COOPER HEARING - MOTION FOR
RFM #1 RELIEF FROM AUTOMATIC STAY
CITIZENS BANK OF RHODE ISLAND, VS. 12-24-08 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Citizens Bank of Rhode Island, seeks relief from the automatic stay with respect to a 1987 Defever Yacht, described in the petition documents as a 1985 DeFever P.O. The yacht has a value of $240,000 and its secured claim is approximately $282,662. See Amended Statement of Financial Affairs item 5.

The court concludes that there is no equity in the yacht and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, the yacht was repossessed or was surrendered on or about December 2, 2008. See Amended Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant has possession of the yacht and it is depreciating in value.

THE FINAL RULINGS BEGIN HERE

72. 08-35906-A-7 DANILO/ELSA YADAO
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-15-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of $349,500 and is encumbered by claims totaling approximately $498,008. The movant's deed is in first priority position and secures a claim of approximately $439,008.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 12, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

73. 08-36506-A-7 ARMANDO/NORMA GONZALEZ
PD #1
NATIONAL CITY MORTGAGE CO., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-10-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, National City Mortgage Co., seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of $305,000 and is encumbered by claims totaling approximately $495,425. The movant's deed is in first priority position and secures a claim of approximately $490,606.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 22, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

74. 08-36806-A-7 DOUGLAS/CHRISTINA YUNK HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-10-08 [10]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtors failed to file an attorney's disclosure statement, Exhibit D with the credit counseling certificate for the debtor, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Interim Rule 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b), and 11 U.S.C. § 707(b)(2)(C).

However, the debtors filed all missing documents on December 11, 2008. No prejudice has resulted from the delay.

75. 08-30609-A-7 RANDALL/SHARLENE KNIGHT
DMG #2
CITIFINANCIAL AUTO CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-08 [44]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Citifinancial Auto Corp., seeks relief from the automatic stay with respect to a 2007 Toyota Camry Hybrid.

Given the entry of the debtor's discharge on November 21, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The vehicle was surrendered pre-petition, on July 30, 2008. See Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

76. 08-37309-A-7 SANDRA REPETTI

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
12-15-08 [10]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor failed to file an attorney's disclosure statement, as required by Fed. R. Bankr. P. 2016(b) and 11 U.S.C. § 329(a).

However, the debtor filed the statement on December 29, 2008. No prejudice has resulted from the delay.

77. 08-33110-A-7 ALEXANDER SOMERA
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on December 29, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $140,000 and is encumbered by claims totaling approximately $261,659. The movant's deed is the only deed against the property, securing a claim of approximately $261,219.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 22, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

78. 08-36710-A-7 ADAM/CATHERINE LIGHTFOOT HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 12-5-08 [9]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of $255,000 and is encumbered by claims totaling approximately $395,838. The movant's deed is in second priority position and secures a claim of approximately $77,567.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 9, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

79. 08-28811-A-7 SUSAN GIBBS HEARING - TRUSTEE'S MOTION FOR
JRR #1 APPROVAL OF COMPROMISE
12-11-08 [15]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th

Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and American Express, settling the estate's preference claim against American Express. Under the terms of the compromise, American Express will pay $1,930 to the estate in full satisfaction of the alleged preferential payment in the amount of $2,269.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake, the potential for a subsequent new value defense, and the costs, delay and risks of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

80. 08-31511-A-7 SCOTT KINSELLA
TJS #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-9-08 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a 1997 Baja speed boat. The boat has a value of $49,500 and its secured claim is approximately $49,319. This leaves approximately $181 of equity in the boat.

The debtor has not made two pre-petition and three post-petition payments to the movant. Also, the movant has alleged that it "has not been provided with proof of adequate and continuous insurance" for the boat. Given the foregoing and given the minimal equity in the boat, the trustee is unlikely to assert any

interest in the boat. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. Based on the above, the court concludes that cause exists for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the loan documentation provided by the movant is illegible, the court awards no fees or costs.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's boat is being used by the debtor without compensation and is depreciating in value.

81. 08-36512-A-7 NAI/GEMMA SAETERN — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-17-08 [18]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of $70 due on December 11, 2008 was not paid.

However, the debtor paid the installment fee on December 30, 2008. No prejudice has resulted from the delay.

82. 08-34413-A-7 SUSANA GAMEZ — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-5-08 [17]
PD #1
WELLS FARGO HOME MORTGAGE, INC., VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of $131,000 and is encumbered by claims totaling approximately $344,745. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 14, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

83. 08-35219-A-7 JUSTIN/HEATHER RUNYAN
PD #1
NATIONAL CITY MORTGAGE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $303,000 and is encumbered by claims totaling approximately $404,848. The movant's deed is in second priority position and secures a claim of approximately $41,848.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in

connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

84. 08-37122-A-7 CHARLES/ALISA SMITH HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-12-08 [8]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in El Dorado Hills, California. The property has a value of $413,000 and is encumbered by claims totaling approximately $510,323. The movant's deed is in first priority position and secures a claim of approximately $429,823.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 23, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

85. 08-33423-A-7 GIL/MILAGROS NORIEL HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO., VS. 12-11-08 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, National City Mortgage Co., seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on December 30, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $174,000 and is encumbered by claims totaling approximately $294,032. The movant's deed is in first priority position and secures a claim of approximately $262,306. The property has a scheduled value of $17,400, which appears to be in error, given the encumbrances.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 20, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

86. 08-35923-A-7 TERESA HAMPTON
KAT #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-08 [14]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for LaSalle Bank, seeks relief from the automatic stay as to a real property in Redding, California. The property has a value of $360,840 and is encumbered by claims totaling approximately $458,855. The movant's deed is in first priority position and secures a claim of approximately $411,855.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

87. 08-28625-A-7 MIGUEL/MARTHA GUTIERREZ
MAR #3

HEARING - TRUSTEE'S MOTION FOR ORDER APPROVING ABANDONMENT OF REAL PROPERTIES
12-15-08 [127]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-

1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee seeks to abandon the estate's interest in two real properties, an office building and a commercial lot, both in located in Vallejo, California. The properties do not have equity that may be realized for the estate.

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing. The office building has a value of $600,000, whereas its encumbrances total approximately $738,000. The lot has a value of $150,000 and its encumbrances also total approximately $150,000. The properties are also uninsured. Given this, the court concludes that the properties are of inconsequential value to the estate. The motion will be granted.

88. 08-31625-A-7 PHANMANY/SEN XAYSANA
KAT #1
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-08 [20]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on December 1, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $280,000 and is encumbered by claims totaling approximately $492,385. The movant's deed is in first priority position and secures a claim of approximately $422,385.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 24, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. §

362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

89. 08-24927-A-11 MAINLAND NURSERY, INC.
WFH #23

HEARING - APPLICATION FOR ALLOWANCE OF FEES AND COSTS OF KEMPER CPA GROUP LLP ($10,171.25)
12-12-08 [360]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the official committee of unsecured creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The application will be granted.

Kemper CPA Group LLC, accountant for the debtor in possession, has filed its first interim application for approval of compensation. The requested compensation consists of $9,944 in fees and $227.25 in costs and interest, for a total of $10,171.25. This application covers the period from April 30, 2008 through October 30, 2008. The court approved the applicant's employment as the debtor's accountant attorney on May 19, 2008. In performing its services, the applicant charged hourly rates of between $100 and $230.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) assisting the debtor in the preparation of the monthly operating reports; (2) preparing tax returns; (3) preparing real property tax reports; and (4) advising the debtor about miscellaneous tax and financial matters, including the adjustment of financial statements, depreciation calculations, and advice on post-petition tax consequences.

The court concludes that the compensation is for actual and necessary services rendered to the debtor in possession in connection with its administration of the bankruptcy estate. The compensation will be approved.

90. 07-31228-A-7 EDWARDO BRETADO HEARING - MOTION FOR
MBB #2 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, INC., VS. 12-8-08 [59]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $145,000 and is encumbered by claims totaling approximately $260,883. The movant's deed is in first priority position and secures a claim of approximately $210,968.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 7, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

91. 08-32128-A-7 LARRY/LYDIA MARTHUSHEV HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 12-10-08 [14]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Shasta Lake, California.

Given the entry of the debtor's discharge on January 7, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $185,000 and is encumbered by claims totaling approximately $255,463. The movant's deed is in first priority position and secures a claim of approximately $230,463.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 22, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

92. 07-28629-A-7 CINDY CARRASCO
KWS #2

HEARING - APPLICATION OF THE WHITTAL-SCHERFEE LAW OFFICE FOR FIRST INTERIM AND FINAL ALLOWANCE OF ATTORNEYS' FEES AND COSTS ($1,180.00 FEES; $9.30 COSTS) 12-12-08 [45]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving

party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The application will be approved.

Whittall-Scherfee Law Office, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of $1,180 in fees and $9.30 in expenses, for a total of $1,189.30. This application covers the period from February 7, 2008 through December 10, 2008. The court approved the applicant's employment as the trustee's attorney on February 13, 2008. In performing its services, the applicant charged an hourly rate of $295.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) investigating a claim against the transferee of a vehicle; (2) preparing a demand letter and a complaint for the recovery of the vehicle; and (3) preparing employment and compensation applications.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

93. 08-33831-A-7 RICHARD/VALERIE CONDIE
MBB #1
AMERICA'S WHOLESALE LENDER, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, America's Wholesale Lender, seeks relief from the automatic stay as to a real property in Rescue, California.

Given the entry of the debtor's discharge on January 7, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $490,000 and is encumbered by claims totaling approximately $683,047. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can

administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 3, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

94. 08-32232-A-7 ELENA MARTIN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 12-10-08 [23]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Clearwater, Florida.

Given the entry of the debtor's discharge on December 17, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $350,000 and is encumbered by claims totaling approximately $450,885. The movant's deed is in first priority position and secures a claim of approximately $323,381.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 10, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

95. 08-34735-A-7 ARTURO/MARIA CAMPOS
PD #1
GMAC MORTGAGE, LLC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-08 [14]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii)

is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Vacaville, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11), after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor, but not the estate, on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On July 2, 2008, the debtors filed a chapter 13 case (case no. 08-28940). But, the case was automatically dismissed on August 18, 2008, pursuant to section 521(i). See Docket No. 27 in Case No. 08-28940. The debtors filed the instant case on October 14, 2008. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under section 362(c)(3)(B) have been timely filed. Based on this, the court will confirm that the automatic stay in the instant case, with respect to the subject property, expired as to the debtors on November 13, 2008, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A).

As to the estate, the analysis is different. The property has a value of $460,000 and is encumbered by claims totaling approximately $661,894. The movant's deed is in first priority position and secures a claim of approximately $611,100.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 20, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

96. 08-37336-A-7 MICHAEL/BLANCA LABA HEARING - MOTION FOR
KSR #1 RELIEF FROM AUTOMATIC STAY
LAWRENCE/ANNETTE TARIEL, VS. 12-19-08 [15]

Final Ruling: The motion will be dismissed without prejudice.

The proof of service accompanying the motion shows that the motion was not served on the debtors.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service to the debtor's attorney to the exclusion of the debtor. To the contrary, Rule 7004(b)(9) and (g) specifically requires service on both the debtors and their attorney. Accordingly, service is defective.

97. 08-37336-A-7 MICHAEL/BLANCA LABA HEARING - MOTION FOR
KSR #2 RELIEF FROM AUTOMATIC STAY
LAWRENCE/ANNETTE TARIEL, VS. 12-19-08 [22]

Final Ruling: The motion will be dismissed without prejudice.

The proof of service accompanying the motion shows that the motion was not served on the debtors.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service to the debtor's attorney to the exclusion of the debtor. To the contrary, Rule 7004(b)(9) and (g) specifically requires service on both the debtors and their attorney. Accordingly, service is defective.

98. 08-35437-A-7 IGNANCIO/MARIA MORALES HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-12-08 [14]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Carmichael, California. The movant has produced evidence that the property has a value of $198,000 and is encumbered by claims totaling approximately $287,247. The movant's deed is in first priority position and secures a claim of approximately $187,247.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

99. 08-37338-A-7 JEFFERSON PERPETUA
PD #1
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-08 [8]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $156,000 and is encumbered by claims totaling approximately $274,951. The movant's deed is in first priority position and secures a claim of approximately $146,851.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 5, 2009.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

100. 08-35239-A-7 CHRYSTAL HANNAH
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-08 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Highlands Ranch, California. The property has a value of $204,000 and is encumbered by claims totaling approximately $241,475. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $174,475.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the

movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

101. 08-36941-A-7 ERIC/TAMMY LEE — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 12-10-08 [9]

Final Ruling: The court converted this case to chapter 13 on January 6, 2008. Accordingly, the court will continue the hearing on this order to show cause to this court's January 20, 2009, 9:00 a.m. chapter 13 calendar.

102. 08-33342-A-7 JOSE/VERONICA MADRIGAL — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-5-08 [20]
MBB #1
COUNTRYWIDE BANK, FSB, VS.

Final Ruling: The motion will be dismissed because the proof of service shows that the debtors were served at an incorrect address, P.O. Box 998 Boyes Hot Springs, CA 95476, whereas the correct new address, as of October 31, 2008, is 7 Rancho Drive Sonoma, CA 95476.

103. 08-34442-A-7 KURT POEHLEMAN — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 12-8-08 [21]
PD #2
GMAC MORTGAGE, LLC, VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of $380,000 and is encumbered by claims totaling approximately $452,993. The movant's deed is in first priority position and secures a claim of approximately $299,512.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 14, 2008. And, in the

statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

104. 08-35042-A-7 VIVIAN RICHARDSON
JMS #1
RESMAE MORTGAGE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-5-08

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The

failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Resmae Mortgage Corp., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $169,000 and is encumbered by claims totaling approximately $215,348. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 25, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

105. 08-32646-A-7 BRYAN/KELLY RAINEY
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [16]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from

the automatic stay as to a real property in Manteca, California.

Given the entry of the debtor's discharge on December 24, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $319,000 and is encumbered by claims totaling approximately $568,543. The movant's deed is in first priority position and secures a claim of approximately $503,543.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 17, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

106. 08-35047-A-7 DELILAH/VINCENSOR PEREZ
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-9-08 [29]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Suisun City, California. The property has a value of $389,000 and is encumbered by claims totaling approximately $776,225. The movant's deed is in first priority position and secures a claim of

approximately $577,405.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

107. 08-35047-A-7 DELILAH/VINCENSOR PEREZ
PD #2
AMERICA'S SERVICING COMPANY, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [23]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, America's Servicing Co., seeks relief from the automatic stay as to a real property in Yuma, Arizona. The property has a value of $380,000 and is encumbered by claims totaling approximately $402,536. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $324,686.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

108. 08-32350-A-7 ERIC/MONICA SARAGOZA
RCO #1
BANK OF AMERICA, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-12-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Elk Grove, California.

Given the entry of the debtor's discharge on December 12, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $268,500 and is encumbered by claims totaling approximately $418,151. The movant's deed is in second priority position and secures a claim of approximately $80,664.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 8, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

109. 08-34450-A-7 BRENDA BROWN
MBB #1
AMERICA'S WHOLESALE LENDER, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [22]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, America's Wholesale Lender, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of $240,000 and is encumbered by claims totaling approximately $335,079. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

110. 08-32351-A-7 STEVE HERNANDEZ
MBB #1
COUNTRYWIDE BANK, FSB, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Countrywide Bank, seeks relief from the automatic stay as to a real property in Roseville, California.

Given the entry of the debtor's discharge on December 30, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the property has a value of $145,000 and is encumbered by claims totaling approximately $309,058. The movant's deed is in first priority position and secures a claim of approximately $278,058.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 8, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

111. 08-28253-A-7 RICARDO/SANTA ANA BATRES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MTG. CO., VS. 12-5-08 [47]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, National City Mortgage Co., seeks relief from the automatic stay as to a real property in Manteca, California.

Given the entry of the debtor's discharge on December 5, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $300,000 and is encumbered by claims totaling approximately $371,393. The movant's deed is in first priority position and secures a claim of approximately $194,393.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 30, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The

order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

112. 08-36053-A-7 BORISAV/RADMILA MILANOVIC HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
CLARION MORTGAGE CAPITAL, INC., VS. 12-15-08 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Clarion Mortgage Capital, Inc., seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of $250,000 and is encumbered by claims totaling approximately $355,394. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 12, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

113. 02-22054-A-7 DAVID COOPER
MHK #8

HEARING - MOTION BY MEEGAN, HANSCHU & KASSENBROCK FOR FIRST AND FINAL ALLOWANCE OF COMPENSATION AS COUNSEL FOR THE TRUSTEE ($28,638.50 FEES; $1,215.62 EXPENSES)
12-11-08 [161]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Meegan, Hanschu & Kassenbrock, counsel for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of $28,638.50 in fees and $1,215.62 in expenses, for a total of $29,854.12. This application covers the period from June 23, 2005 through December 5, 2008. The court approved the applicant's employment as counsel for the trustee on July 21, 2005. In performing its services, the applicant charged hourly rates of $210 and $90.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation: (1) preparing employment and compensation applications; (2) discussing the nature and extent of the estate's interest in property with counsel for the debtor and Stephanie Cooper; (3) responding to inquiries from creditors about the administration of the case; (4) monitoring the status of the marital dissolution action; (5) monitoring the status of and making appearances in Stephanie Cooper's chapter 13 proceeding; (6) preparing and prosecuting a motion to convert or dismiss Stephanie Cooper's bankruptcy case; (7) conducting legal research on the administration of the estates of married debtors; (8) preparing and prosecuting a motion to sell the estate's interest in a commercial property; and (9) preparing and prosecuting a motion

to amend the order to sell the commercial property.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

114. 02-22054-A-7 DAVID COOPER
MHK #9

HEARING - TRUSTEE'S MOTION FOR FIRST AND FINAL ALLOWANCE OF COMPENSATION TO ACCOUNTANT FOR THE TRUSTEE ($3,025.50 FEES; $4.80 EXP.)
12-11-08 [156]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Gonzales & Sisto, accountant for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of $3,303.30 in fees. This application covers the period from October 27, 2006 through May 13, 2008. The court approved the applicant's employment as accountant for the trustee on July 24, 2006. In performing its services, the applicant charged hourly rates of $215, $225, and $235.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicant's services included, without limitation, estimating tax bases and liabilities for three real properties and preparing tax returns.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

115. 08-22855-A-7 VICENTE/MARIA FUENTES
MBB #1
AMERICA'S WHOLESALE LENDER, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [25]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, America's Wholesale Lender, seeks relief from the automatic stay as to a real property in Gridley, California.

Given the entry of the debtor's discharge on July 15, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $310,000 and is encumbered by claims totaling approximately $314,806. The movant's deed is in first priority position and secures a claim of approximately $252,806.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the

movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

116. 08-34157-A-7 DARREN WILDER
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
11-24-08 [12]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in West Sacramento, California. The property has a value of $450,000 and is encumbered by claims totaling approximately $540,551. The movant's deed is in first priority position and secures a claim of approximately $456,782.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 8, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

117. 08-35459-A-7 ELIZABETH HEETER
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-08 [16]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in Orangevale, California. The property has a value of $233,500 and is encumbered by claims totaling approximately $316,342. The movant's deed is in first priority position and secures a claim of approximately $252,820.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 26, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

118. 08-33767-A-7 JAMIE SWEENEY
APN #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-12-08 [14]

Final Ruling: This motion for relief from the automatic stay has been set for

hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of $240,000 and is encumbered by claims totaling approximately $331,844. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $241,126.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 3, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

119. 08-31971-A-7 PERRY STOCKWELL
MBB #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-08 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in West Sacramento, California.

Given the entry of the debtor's discharge on December 8, 2008, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $198,500 and is encumbered by claims totaling approximately $359,963. The movant's deed is in first priority position and secures a claim of approximately $326,264.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 1, 2008.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

120. 08-35572-A-7 ALFREDO/AMALIA MARTINEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, VS. 12-9-08 [17]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of $285,000 and is encumbered by claims totaling approximately $492,817. The movant's deed is

the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 9, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

121. 08-36673-A-7 EDGARD SALAZAR
APN #1
WELLS FARGO FINANCIAL, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-08 [9]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2006 Toyota Tacoma. The vehicle has a value of $17,000 and its secured claim is approximately $30,086.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on December 24, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to

applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

122. 08-36674-A-7 ERIC/AMBER AKINS
PD #1
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
11-24-08 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of $224,000 and is encumbered by claims totaling approximately $236,770. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

123. 08-33778-A-7 TRENTON/CARISA TAVAI HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 12-11-08 [17]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $157,000 and is encumbered by claims totaling approximately $275,500. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

124. 08-28682-A-7 LUIS/ARACELI GUTIERREZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-9-08 [47]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtors failed to file the statement of current monthly income and means test calculation, as required by

11 U.S.C. § 707(b)(2)(C).

However, the debtors filed the missing documents on December 31, 2008. No prejudice has resulted from the delay.

125. 08-36880-A-7 EDWARD/MYLENE LEE
PD #1
WELLS FARGO HOME MORTGAGE, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-08 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $320,000 and is encumbered by claims totaling approximately $532,221. The movant holds the three deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $418,221.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 17, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

126. 08-35984-A-7 THEODORE/SHANNON WOODS
PD #1
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-9-08 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The

failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $189,500 and is encumbered by claims totaling approximately $397,435. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $357,735.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 12, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

127. 08-37184-A-7 MOHAMMED SHAHID
PD #1
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-08 [9]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Alexandria, Virginia. The property has a value of $325,000 and is encumbered by claims totaling approximately $352,782. The movant's deed is in first priority position and secures a claim of approximately $204,522.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 31, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

128. 08-21585-A-7 MARIA GALVEZ
PD #1
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-4-08 [48]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of $363,000 and is encumbered by claims totaling approximately $514,202. The movant's deed is in first priority position and secures a claim of approximately $493,243.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 10, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

129. 08-36186-A-7 JAMES RATZLAFF AND LAN LE
MBB #1
COUNTRYWIDE HOME LOANS, INC., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-12-08 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Countrywide Home Loans, Inc., seeks relief from the automatic stay as to a real property in South Lake Tahoe, California. The property has a value of $275,000 and is encumbered by claims totaling approximately $292,735. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $260,555.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

130. 08-36889-A-7 AUSTREBERTO AGUILAR
PD #1
CHASE HOME FINANCE, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-08 [8]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $190,000 and is encumbered by claims totaling approximately $314,417. The movant's deed is in first priority position and secures a claim of approximately $289,412.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

131. 08-36690-A-7 SAFWAN ABOUKHADIJEH/ HEARING - MOTION FOR
PD #1 FATIMA ISMAEL RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 12-4-08 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of $326,000 and is encumbered by claims totaling approximately $571,259. The movant holds both the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately $461,932.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

132. 08-35593-A-7 JOSEPH/ANGELA BARNETT HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 12-24-08 [10]

Final Ruling: This motion has been voluntarily dismissed by the moving party.

133. 08-36694-A-7 JOSE/THERESITA GODINEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICA'S SERVICING CO., VS. 12-9-08 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, America's Servicing Co., seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of $544,500 and is encumbered by claims totaling approximately $939,290. The movant's deed is in first priority position and secures a claim of approximately $774,886.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 24, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

134. 08-35196-A-7 MARCUS LUCERO HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 12-5-08 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $196,500 and is encumbered by claims totaling approximately $332,839. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

135. 08-35397-A-7 TONI LUDOLPH HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
GREENPOINT MTG. FUNDING, INC., VS. 11-26-08 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Greenpoint Mortgage Funding, Inc., seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of $202,500 and is encumbered by claims totaling approximately $408,823. The movant's deed is in first priority position and secures a claim of

approximately $330,407.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 18, 2008. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

136. 08-36598-A-7 SILHADI/JAMILA ALAMI
PD #1
EMC MORTGAGE CORP., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-08 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, EMC Mortgage, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of $253,500 and is encumbered by claims totaling approximately $520,830. The movant's deed is in first priority position and secures a claim of approximately $469,912.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 24, 2008.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

137. 08-32899-A-7 FELIX/CECILIA RAMIREZ
APN #1
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-08 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Vallejo, California.

Given the entry of the debtors' discharge on January 5, 2009, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtors, the motion will be dismissed as moot.

As to the estate the analysis is different. The trustee filed a report of no distribution on October 22, 2008. This is cause for the granting of relief from stay.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.