

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

April 13, 2009 at 9:00 a.m.

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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 MAY 11, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 27, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 4, 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.

April 13, 2009 at 9:00 a.m.

**MATTERS FOR ARGUMENT**

1. 08-21100-A-7 LARRY/TERRI PETTIBONE HEARING - JOINT MOTION OF  
FWP #1 FIRST NORTHERN BANK OF DIXON, WEST  
AUCTIONS, AND THE BEVERLY GROUP TO  
QUASH SUBPOENAS DATED MARCH 13,  
2009 FOR EXAMINATION AND  
PRODUCTION OF DOCUMENTS  
3-30-09 [103]

**Tentative Ruling:** The motion will be granted.

Creditors First Northern Bank of Dixon, West Auctions, and The Beverly Group move to quash eight subpoenas served upon them by the debtors. The movants contend that the subpoenas were issued without authority because they are unrelated to any motion and/or order authorizing their issuance.

Fed. R. Bankr. P. 2004(a) provides that "[o]n motion of any party in interest, the court may order the examination of any entity." In other words, an order from the court is required for issuance of subpoenas under Fed. R. Bankr. P. 2004.

The court has reviewed the docket and has found no orders permitting the issuance of any subpoenas by the debtors. Accordingly, the motion will be granted and the eight subpoenas by the debtors against the movants will be quashed.

Lastly, the subpoenas also will be quashed to the extent any of them relate to matters that are the subject of a pending adversary proceeding. Such matters are not discoverable via Rule 2004. See Fed. R. Bankr. P. 7026.

2. 08-36404-A-7 NOVA HICKS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-12-09 [35]

**Tentative Ruling:** The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$224 due on March 10, 2009 has not been paid. This represents the last three installments of the debtor's filing fee. The only installment fee paid by the debtor was on December 10, 2008 in the amount of \$75. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

3. 08-36404-A-7 NOVA HICKS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-24-09 [36]

**Tentative Ruling:** This order to show cause will be discharged as duplicative of Docket No. 35.

4. 08-37604-A-7 JOSE/MARTHA MENDOZA  
PPR #2

HEARING - MOTION  
SEEKING AN AWARD OF ATTORNEY  
FEES AND COSTS (\$1,225.00)  
3-10-09 [23]

**Tentative Ruling:** The motion will be denied.

On February 23, 2009, the court granted the movant's motion for relief from stay with respect to a real property in West Sacramento, California. In that ruling, the court provided that:

*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 (9<sup>th</sup> 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 movant filed the instant motion on Tuesday March 10, 2009, 15 days instead of the required 14 days after the conclusion of the February 23 hearing on the motion for relief from stay. This makes the filing of the instant motion untimely. Accordingly, it will be denied.

5. 09-21405-A-7 SERGIO HERBERT

HEARING - MOTION TO  
ABANDON DEBTOR'S BUSINESS  
3-12-09 [16]

**Tentative Ruling:** The motion will be denied.

The debtor moves for abandonment of his handyman business S.H. Construction.

However, the motion 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)."

Also, the motion is not accompanied by a proof of service in violation of Local Bankruptcy Rules 9014-1(e)(3).

Finally, the notice of hearing states that written oppositions are due within 10 days of the hearing on the motion. Assuming this motion was set on 28 days' notice, the notice violates Local Bankruptcy Rule 9014-1(f)(1)(ii), which allows for the filing of written opposition 14 days preceding the hearing. Assuming this motion was set on less than 28 days' notice, the notice violates Local Bankruptcy Rule 9014-1(f)(2)(iii), which does not require written opposition.

6.	08-20206-A-12L DAVID/KELLY NUSS	CONT. HEARING - MOTION TO
	WW #37	AVOID LIEN
	VS. FIRST SELECT CORP., ET AL.	2-3-09 [431]

**Tentative Ruling:** The motion will be denied.

The debtors move the court to avoid the liens of five creditors, First Select Corporation, Innovation Enterprises LLC, LTI LLC, Wilbur-Ellis, and Blakeley & Blakeley, on the debtors' residence in Lodi, California. The last hearing on this motion was on March 9. The court issued the following ruling at that hearing:

*Tentative Ruling: The motion will be denied.*

*The debtors move the court to avoid the liens of five creditors, First Select Corporation, Innovation Enterprises LLC, LTI LLC, Wilbur-Ellis, and Blakeley & Blakeley.*

*LTI and Innovation oppose the motion, arguing that the valuation of the subject real property for purposes of the motion must be as of the petition and not as of the time of the motion. The creditors also contend that the motion violates the terms of the debtors' confirmed chapter 12 plan because the plan allowed their claims as secured claims and promised 100% payment.*

*The debtors respond that the confirmed plan did not waive their rights to contest the liens of LTI and Innovation on exemption-impairment grounds. On the issue of valuation of the property, the debtors request the court to set an evidentiary hearing so they may testify as to the value of their property.*

*The debtors obtained confirmation of their chapter 12 plan on November 18, 2008. The confirmed plan allows the claims of LTI and Innovation as "secured claims" in the amount of \$125,000 each. See November 18, 2008 Order Confirming Plan With Modifications ¶ 21(b). Thus, the debtors may not now seek to alter their claims from secured to unsecured by claiming that they impair a claim of exemption. Once a chapter 12 plan is confirmed, the terms of the plan control the relationship between the debtor and its creditors. See e.g., Great Lakes*

Higher Education Corp. v. Pardee (In re Pardee), 218 B.R. 916, 925 (B.A.P. 9<sup>th</sup> Cir. 1998) (holding that a confirmed plan is res judicata as to all issue that could have or should have been litigated at the confirmation hearing). In other words, the debtors waived their right to strip the security of LTI's and Innovation's claims when they confirmed a plan allowing the claims as secured claims. Accordingly, the motion will be denied as to LTI and Innovation.

The court also agrees with LTI and Innovation that the debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9<sup>th</sup> Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9<sup>th</sup> Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the petition date and not sometime post-petition as the debtors argue. And, the court will not set an evidentiary hearing on the issue of valuation because there is no disputed material factual issue. The debtors have admitted that the value of the property is \$600,000 as of the petition date by listing that value in their schedules. More importantly, the debtors' confirmed chapter 12 plan expressly states that the value of the property as of the petition date is \$600,000. See Exhibit 1 to First Amended Chapter 12 Plan.

Next, without presenting evidence on the present amount of First Select Corporation's lien, the debtors simply "deny" the claim, stating that they have never done business with FSC. The debtors have submitted a preliminary title report identifying the judgment creditor as David R. Ness. Mr. Nuss denies that he is the one to whom the title report refers. But, the court does not have the authority to "avoid" or expunge a lien via a motion. Fed. R. Bankr. P. 7001(2) requires an adversary proceeding to determine the validity, priority, or extent of a lien or other interest in property. Hence, for the court to determine the validity of FSC's lien, the debtors must file an adversary proceeding.

Further, while Mr. Nuss' declaration contends that Blakeley's lien is in the amount of \$30,695.60, the statement is without foundation and inadmissible hearsay. See Fed. R. Evid. 802. The debtor did not explain the basis for his testimony and the preliminary title report attached to his declaration lists Blakeley's claim with an amount of \$59,202.86.

Given the foregoing deficiencies, the court concludes that it does not have sufficient evidence to perform an avoidance analysis. Accordingly, the motion will be denied.

After the hearing on March 9, the debtors filed a supplemental response to the opposition,

- 1) conceding that the real property should be valued at \$600,000,
- 2) contending that, with respect to the LTI and Innovation liens, the requested avoidance does not violate the confirmed chapter 12 plan because Exhibit 7 to the confirmed first amended plan provides that "Debtors avoid all abstracts of judgment on 2214 Sunwest Drive per Section 522(f) to the extent any such abstract impairs an exemption to which the Debtors are entitled,"
- 3) despite the debtors' denial of liability to First Select Corporation (erroneously identified as First Security Corporation in the debtors' supplemental response) and the inconsistent amounts in the record for

Blakeley's lien, their liens should be avoided without a determination of the validity of the liens because there is no equity in the property for satisfaction of the liens.

Initially, upon further review of the first amended plan of August 29, 2008, the Exhibit 7 to the plan, and the November 18, 2009 order confirming the plan with modifications, the court agrees with the debtors that the requested avoidance of the LTI and Innovation liens does not violate the plan. In Exhibit 7, page 26, to the first amended plan of August 29, 2008, the debtors provided for the avoidance of all abstracts of judgment on their residence at 2214 Sunwest Drive. Subsequently, in the November 18, 2008 order confirming the first amended plan, the debtors provided for the allowance of the claims of LTI and Innovation as "secured claims" in the amount of \$125,000 each. See November 18, 2008 Order Confirming Plan With Modifications ¶ 21(b). However, the order also provides that their claims are "to be treated as otherwise provided in the First Amended Plan," meaning that the abstracts of judgment of LTI and Innovation are to be avoided to the extent they impair an exemption of the debtors. See Exhibit 7 to First Amended Plan. In other words, LTI and Innovation have secured claims against the estate, but the liens arising from those claims are allowed to be avoided to the extent they impair a claimed exemption.

With respect to the Blakeley's lien, the court agrees with the debtor that there would be no equity for the satisfaction of that lien. After deducting the first deed claim against the property in the amount of \$304,436, the second deed claim in the amount of \$78,794.11, and the \$75,000 exemption claim against the property has \$141,769.89 in equity for the satisfaction of the liens. According to the debtors' motion, Blakeley's abstract of judgment was recorded on August 3, 2007, making that lien in last priority among the liens in the motion. The liens of LTI and Innovation, which are senior to Blakeley's lien as their abstracts were recorded on June 20, 2006, total \$250,000. This means that there would be no equity in the property for the satisfaction of Blakeley's lien. This ruling makes no other determinations about Blakeley's lien.

As to the lien of FCS, the court disagrees with the debtors that there is no equity in the property for the satisfaction of that lien. According to the debtors' motion, the abstract of judgment of FCS was recorded on December 23, 1999. This makes it the lien in first priority position among the liens the debtors are seeking to avoid, meaning that FCS's lien must be satisfied from any first available equity in the property. The debtors allege that the property would have \$141,569.89 in "excess equity" for the satisfaction of the liens. See Supplemental Response at 5. But, because the court does not have evidence on the present amount of FCS's lien, the court would not know how much of the available equity in the property would be needed to satisfy FCS's lien. And, as a result, the court would not know how much equity, if any, of the available equity would be left over, after satisfaction of FCS's lien, for the subsequent priority liens. In other words, the court cannot proceed with the calculations until it knows the precise amount of FCS's lien. Accordingly, the motion will be denied.

As a final note, in the event the debtors will seek yet another continuance of the motion, this is not the first time the court has advised them about the absence of evidence on the present amount of the liens. The court advised the debtors about the absence of evidence on the amount of FCS's lien in a ruling issued for a January 12, 2009 hearing on a predecessor motion to the instant motion (WW-33) and in the previous March 9 ruling on this motion. The debtors

have had sufficient time to provide the court with this evidence.

7. 08-36006-A-11 ALCHEMY AT R, LLC HEARING - MOTION FOR  
KJW #1 ORDER APPROVING POST-PETITION  
FEES AND EXPENSES OF RECEIVER  
(\$30,604.66)  
2-27-09 [106]

**Tentative Ruling:** The motion will be denied.

Kevin J. Whelan, a state court-appointed receiver seeks approval of post-petition fees and expenses for services rendered from October 31, 2008 through February 23, 2009. The requested compensation includes \$29,855 in fees and \$749.66 in expenses for a total of \$30,604.66. The receiver requests payment out of \$33,152.24 in funds he turned over to the estate, after the denial on December 15, 2008 of the motion to excuse compliance with the turnover requirements of 11 U.S.C. § 543.

The debtor opposes the motion, arguing that (1) the \$33,152.24 in funds the receiver turned over to the estate have been utilized to pay the debtor's operating expenses, and (2) the fees for January and February 2009 should be reduced by 50% because they appear excessive.

However, despite the availability of time sheets in the record, the debtor does not identify particular time entries or expense items that are excessive. The court will not do this for the debtor. If the debtor believes that certain time entries and expense items are excessive, the debtor should have outlined those for the court and explained why it thinks they are excessive.

Further, 11 U.S.C. § 503(b)(3)(E) provides that, after notice and a hearing, the court can allow administrative expenses, other than claims allowed under 11 U.S.C. § 502(f), including the actual, necessary expenses incurred by a custodian superseded under section 543 and compensation for the services of such a custodian. Prior court approval of employment is not necessary for a custodian, superseded under section 543, to be granted compensation under 11 U.S.C. § 503(b)(3)(E). In re Posadas Assocs., 127 B.R. 278, 280 (Bankr. D.N.M. 1991). His fees and expenses are payable as administrative expenses only if they are in connection with work performed after the filing of the petition. See e.g., In re Balport Const. Co., Inc., 123 B.R. 174, 178 (Bankr. S.D.N.Y. 1991). Even though the \$33,152.24 in funds have been already utilized by the debtor, then, the receiver will be given an administrative priority expense claim against the estate.

Nonetheless, the receiver has not been excused under 11 U.S.C. § 543(d) from compliance with the turnover and non-administration provisions of 11 U.S.C. § 543(a)&(b). This bankruptcy case was filed on October 31, 2008 and the court denied a motion to excuse the receiver's compliance with the turnover requirements of section 543 on December 15, 2008. This means the receiver is entitled only to fees incurred in connection with his turnover of property to the debtor, pursuant to the provisions of 11 U.S.C. § 543(a) & (b). But, the motion does not discuss to what extent the requested compensation relates to his compliance with 11 U.S.C. § 543(a) & (b). And, to the extent the requested compensation includes work on the motion to avoid turnover to the debtor or other post-petition work unrelated to the compliance with the turnover, the motion does not address why such compensation is actual and necessary expense for preserving the estate. The receiver has not discussed the actual and necessary aspect of his compensation. 11 U.S.C. § 503(b)(3)(E).

Also, the motion does not contain sufficient discussion of the services performed and the fees incurred for each activity. The court cannot rely on the receiver's final report because it includes services unrelated to his obligations under 11 U.S.C. § 543(a) & (b). Moreover, while the receiver has outlined his fees and costs on monthly basis, he has not outlined them by project or type of service performed. Hence, the court cannot determine whether the requested compensation is reasonable. Given these deficiencies, the motion will be denied.

8. 08-36006-A-11 ALCHEMY AT R, LLC HEARING - MOTION FOR  
KJW #2 ORDER GRANTING RELIEF FROM  
KEVIN WHELAN, VS. STAY FOR RECEIVER TO SEEK  
DISCHARGE IN STATE COURT  
2-27-09 [112]

**Tentative Ruling:** The motion will be granted in part.

Kevin J. Whelan, a state court-appointed receiver with authority for possession, custody, and control of property of the debtor moves the court for relief from the automatic stay allowing him to file his final report and account in state court, seek discharge and termination of the receivership in state court, seek approval of his pre-petition fees and expenses in state court and collect through the state court proceeding any post-petition fees and expenses that cannot be paid as result of a shortfall.

The receiver has turned over to the debtor in possession the property that was in his possession, custody, and control. The receiver's obligations have been fulfilled. This is cause for the granting of relief from stay. The motion will be granted pursuant to section 362(d)(1), allowing the receiver to file his final report and account in state court, seek discharge and termination of the receivership in state court, and seek approval of his pre-petition fees and expenses in state court.

However, the court will not permit the receiver to collect through the state court proceeding any compensation that cannot be paid as result of a shortfall. The receiver's pre and post-petition compensation can be collected only through this proceeding. It is the purpose of the bankruptcy proceeding to administer all claims against the estate. To the extent the state court approves pre-petition compensation, the receiver would have a pre-petition claim against the estate that would be paid along with other pre-petition claims. And, to the extent this court and the state court approve post-petition compensation, the receiver would be entitled to an administrative claim with administrative priority that would be paid along with other administrative claims.

9. 09-20906-A-7 LAWRENCE/EVA CLIFFORD HEARING - MOTION FOR  
RFM #1 RELIEF FROM AUTOMATIC STAY  
CITIZENS AUTOMOBILE FINANCE, VS. 3-17-09 [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, Citizens Automobile Finance, seeks relief from the automatic stay with respect to a 2006 Roadtrek Motorhome. The debtor has indicates that the vehicle has been repossessed or surrendered to the movant. See Statement of Financial Affairs item 5. The court also notes that the trustee filed a report of no distribution on March 23, 2009. 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) 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.

10. 09-22007-A-7 VALERIY KHIMICH HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-16-09 [20]

**Tentative Ruling:** The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$75 due on March 11, 2009 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

11. 09-23507-A-7 MAURILLO AGUILAR HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-11-09 [11]

**Tentative Ruling:** The petition will be dismissed.

The debtor 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 debtor's social security number. 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 (9<sup>th</sup> Cir. 2007). This has prejudiced the creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1).

12. 08-38608-A-7 LUCINDA BAKER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-9-09 [33]

**Tentative Ruling:** The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$80 due on March 4, 2009 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

13. 09-24108-A-7 SHELLIE WAYNE HEARING - MOTION FOR  
ND #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-30-09 [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, Bank of America, seeks relief from the automatic stay as to a real property in Pollock Pines, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$380,655. 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 \$331,655.

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.

14. 09-23210-A-7 RONALD/TERRESA MOORE HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE LLC, VS. 3-27-09 [8]

**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 Rio Linda, California. The property has a value of \$214,500 and it is encumbered by claims totaling approximately \$354,630. The movant's deed is in first priority position and secures a claim of approximately \$294,630.

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.

15. 08-38811-A-7 JOHN/AMY FIELDS HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-16-09 [21]

**Tentative Ruling:** The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Antelope, California.

The debtors have filed an opposition, outlining financial and health hardships their family has undergone since 2004. However, while the court is sympathetic to the debtors' situation, section 362(d)(2) requires the court to grant relief from the automatic stay when the subject property does not have any equity. Also, the opposition was filed on April 1, only 12 days instead of the required 14 days before the hearing. This means that the opposition is late.

The property has a value of \$340,000 and it is encumbered by claims totaling approximately \$371,848. 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 February 26, 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.

16. 09-22212-A-7 OLIVER SMITH HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-3-09 [12]

**Tentative Ruling:** The petition was previously automatically dismissed pursuant to 11 U.S.C. § 521(i)(1). Nonetheless, the court will enter an order confirming such dismissal.

This order to show cause was issued because the debtor failed to file 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 Bankruptcy Rules 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C).

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be

automatically dismissed effective on the 46<sup>th</sup> day." See 11 U.S.C. § 521(i)(1). The 45<sup>th</sup> day was March 27 and the missing documents had not been filed. Thus, the petition was automatically dismissed effective on March 28, the 46<sup>th</sup> day after the petition filing.

The court is authorized to enter an order confirming that the case has been dismissed and it will do so in connection with this order to show cause. See 11 U.S.C. § 521(i)(2).

17. 09-22212-A-7 OLIVER SMITH HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [23]

**Tentative Ruling:** The order to show cause will be discharged as moot as the case was previously automatically dismissed, effective March 28, 2009.

18. 08-26813-A-9 CITY OF VALLEJO, CALIFORNIA HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
ANDY JONES, VS. 2-26-09 [457]

**Tentative Ruling:** Although the movant has given 47 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 debtor, the other creditors, 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, Andy Jones, moves the court to approve a stipulation for the lifting of the automatic stay, permitting the continued prosecution of a pending personal injury state court action where the debtor is a co-defendant. The stipulation provides for the continued prosecution of the action, through judgment, but only to the extent indemnification or insurance is available to satisfy the judgment, if any.

Given that the stipulation lifts the stay only to the extent indemnification or insurance is available to satisfy any judgment, the court concludes that cause exists for the approval of the stipulation and that the stipulation is in the best interest of the estate. The motion will be granted to allow the prosecution of the pending state court action, to the extent described in the stipulation. Without limitation, this excludes the enforcement of any judgments against the debtor or the estate.

The parties shall bear their own fees and costs.

19. 09-22013-A-7 MARK/VICKI ORSILLO  
DO #1  
PREMIERWEST BANK

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-25-09 [55]

**Tentative Ruling:** The motion will be granted.

The movant, Premier West Bank, seeks relief from the automatic stay as to a four real properties in Oroville, California. The movant alleges that the properties are not estate assets and that there is no equity in them.

Initially, the motion will be denied to the extent the movant seeks relief on the basis that the properties are not assets of the estate. The court cannot determine the validity, priority or extent of an interest in property on a motion. Such relief can be accorded only in an adversary proceeding. See Fed. R. Bankr. P. 7001(2), (9).

On the equity issue, the properties have a collective scheduled value of \$440,000, \$110,000 of value for each property. See Schedule A. And, all four properties are subject to a deed held by the movant, securing a claim of approximately \$717,715.48. The movant's deed is the only deed against the properties.

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.

20. 09-22715-A-7 CHERYL BARTON

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-25-09 [18]

**Tentative Ruling:** The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$75 due on March 20, 2009 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

21. 08-21220-A-12L JIM VANTRESS  
WW #11

HEARING - MOTION TO  
SELL ASSETS  
3-13-09 [184]

**Tentative Ruling:** The motion will be granted.

The debtor seeks authorization to sell a cultivator and a scrapper free and clear of liens or interest to the debtor's son, Jim Vantress, Jr. and Paul Squires, for \$6,000 and \$15,000, respectively. The assets are encumbered by a claim held by U.S. Bank, which has agreed to the sale. The debtor requests to pay U.S. Bank the net proceeds from the sale.

11 U.S.C. § 1203 provides that "[s]ubject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation."

A chapter 12 debtor, then, may sell property of the estate, other than in the ordinary course of business, pursuant to 11 U.S.C. § 363(b).

Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The sale will reduce U.S. Bank's claim against the estate, making more funds available to other creditors of the estate. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate. The sale will be approved free and clear of U.S. Bank's liens or interests pursuant to 11 U.S.C. § 363(f)(2), as U.S. Bank has consented to the sale.

22. 09-24020-A-7 AURELIO/MARIA HUFANA  
HRH #1  
FIRST FEDERAL BANK OF CALIFORNIA, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-23-09 [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, First Federal Bank of California, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value

of \$200,000 and it is encumbered by claims totaling approximately \$421,409. The movant's deed is the only deed against the property, securing a claim of approximately \$418,274.

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.

23. 08-37621-A-7 GONZALO SILES HEARING - MOTION FOR  
SKI #1 RELIEF FROM AUTOMATIC STAY  
CHRYSLER FIN'L SVCS., ETC., VS. 3-3-09 [15]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2008 Jeep Liberty.

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 December 1, 2008 and a meeting of creditors was first convened on January 7, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than December 30, 2008. The debtor filed a statement of intention on the petition date, indicating an intent to "retain collateral and continue to make regular payments."

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 vehicle or redeem the vehicle. 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 30, 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 January 21, 2009, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 30, 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.

24.	01-28722-A-7	NORDIC INFORMATION	HEARING - TRUSTEE'S OBJECTION TO
	RJH #22	SYSTEMS, INC.	CLAIM NO. 17 OF HEALTH NET
			2-17-09 [191]

**Tentative Ruling:** The objection will be overruled.

On September 28, 2001, claimant Health Net filed a priority proof of claim in the amount of \$13,439.85 (claim no. 17). The claim is for unpaid premium for the debtor's group employees' health plan. The billing coverage period is from September 1, 2001 through October 1, 2001. The trustee objects to the claim contending that the debtor ceased operations in June of 2001.

However, the only evidence that the debtor ceased operations in June of 2001 is a reference in the objection to statements by Richard Bennett, former counsel of the debtor. There is no declaration from Richard Bennett and there is no other evidence that the debtor ceased operations in June 2001. But, the statements by Richard Bennett are inadmissible hearsay. See Fed. R. Evid. 802. Hence, the objection is not supported by evidence. Accordingly, it will be overruled.

25. 09-20624-A-7 JEANNETTE COLLIER  
WGM #1  
CENTRAL MORTGAGE COMPANY, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-23-09 [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, Central Mortgage Company, seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$500,000 and it is encumbered by claims totaling approximately \$615,642. The movant's deed is in first priority position and secures a claim of approximately \$458,642.

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 February 24, 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.

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 (9<sup>th</sup> 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.

26. 09-22024-A-7 AZZYET HOLDING AND INVESTMENTS, LLC HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 3-5-09 [9]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor failed to file schedules A, B, D, E, F, G and H, the statement of financial affairs, the summary of schedules, and the statement regarding ownership of corporate debtor, as required by Bankruptcy Rules 1007(b) (1), (c) and 11 U.S.C. § 521(a). This is cause for dismissal. See 11 U.S.C. § 707(a) (1).

27. 08-24927-A-11 MAINLAND NURSERY, INC. PP #13 HEARING - SECOND AND FINAL FEE APPLICATION OF JAMES PETERSON FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES AS FINANCIAL CONSULTANT TO THE OFFICIAL UNSECURED CREDITORS' COMMITTEE (\$2,362.75 FEES 3-24-09 [513]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by counsel for the committee of unsecured creditors, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f) (2). 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 application will be granted.

James Peterson, financial consultant for the official committee of unsecured creditors, has filed its second interim and final application for approval of compensation. The requested compensation consists of \$2,362.75 in fees and \$0 in expenses. This application covers the period from September 1, 2008 through February 28, 2009. The court approved the applicant's employment as the committee's consultant on June 9, 2008. In performing its services, the applicant charged an hourly rate of \$105.

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) analyzing and advising the committee about the debtor's operating reports; (2) evaluating and advising the committee about potential plan variations; and (3) preparing and participating in committee meetings.

The court concludes that the compensation is for actual and necessary services rendered to the committee. The compensation will be approved. And, prior interim compensation awards will be ratified on a final basis.

28.	08-24927-A-11 MAINLAND NURSERY, INC. PP #14	HEARING - FIRST INTERIM FEE APPLICATION OF MCCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH AS SPECIAL COUNSEL FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES (\$3,715) 3-24-09 [509]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by special counsel for the debtor and the committee of unsecured creditors, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the committee of unsecured 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 application will be granted.

McCormick, Barstow, Sheppard, Wayte & Carruth, special counsel for both the debtor and the official committee of unsecured creditors, has filed its first interim application for approval of compensation. The requested compensation consists of \$3,715 in fees and \$0.14 in expenses, for a total of \$3,715.14. This application covers the period from December 4, 2008 through February 28, 2009. The court approved the applicant's employment as special counsel to the debtor on February 24, 2009 and approved the applicant's employment as special counsel to the committee on January 26, 2009. In performing its services, the applicant charged hourly rates of \$250 and \$325.

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 preparing a series of objections to claims by former employees of the debtor.

The court concludes that the compensation is for actual and necessary services rendered to the estate and the committee. The compensation will be approved.

As a final note, the court notes that the application erroneously seeks final approval of a prior October 7, 2008 compensation award of \$5,334.75 in fees and \$702,68 in expenses. The court has not been able to locate any such prior compensation award. Also, the "first interim" title of this application makes it evident that no prior award is implicated.

29. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - SECOND AND FINAL FEE APPLICATION OF PARKINSON & PHINNEY FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES AS COUNSEL FOR THE OFFICIAL UNSECURED CREDITORS' COMMITTEE (\$41,890.00 FEES; \$477.87 EXPENSES)  
PP #15 3-24-09 [517]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by counsel for the committee of unsecured creditors, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the committee of unsecured 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 application will be granted.

Parkinson Phinney, attorney for the official committee of unsecured creditors, has filed its second interim and final application for approval of compensation. The requested compensation consists of \$41,890 in fees and \$477.87 in expenses, for a total of \$42,367.87. This application covers the period from September 1, 2008 through February 28, 2009. The court approved the applicant's employment as the committee's attorney on June 9, 2008. In performing its services, the applicant charged hourly rates of \$125 and \$300.

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) analyzing operating reports; (2) reviewing disclosure statement and analyzing liquidation analysis; (3) attending hearings on disclosure statement approval and plan confirmation; (4) negotiating with the debtor's counsel and Farmers and Merchants Bank about plan modification and alternative estate administration scenarios; (5) preparing for and conducting committee meetings; (6) preparing minutes for each committee meeting; (7) monitoring, assessing, and reviewing documents about the sales of the cell tower easement and the Turner residence; (8) attending hearings on the sale of the real properties; (9) analyzing and responding to the Bank's motion for

relief from the automatic stay; (10) researching and negotiating with the debtor and the Bank about the debtor's recovery of attorney's fees for successfully opposing the motion for relief from stay; (11) analyzing Jack Merrill's bankruptcy case; (12) negotiating with the Bank and the trustee in the Jack Merrill case about the abandonment or sale of the Turner residence; (13) preparing employment and compensation applications; (14) preparing an objection to the employees' class action claims; and (15) analyzing priority claims.

The court concludes that the compensation is for actual and necessary services rendered to the committee. The compensation will be approved. And, prior interim compensation will be ratified on a final basis.

30. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - APPLICATION FOR  
WFH #23 SECOND INTERIM AND FINAL ALLOW-  
ANCE OF FEES AND COSTS OF KEMPER  
CPA GROUP LLP (\$1,320.00)  
3-24-09 [495]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by Kemper CPA Group, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the committee of unsecured 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 application will be granted.

Kemper CPA Group LLC, accountant for the debtor in possession, has filed its second interim and final application for approval of compensation. The requested compensation consists of \$1,320 in fees and \$0 in expenses. This application covers the period from November 1, 2008 through February 28, 2009. The court approved the applicant's employment as the debtor's accountant on May 19, 2008. In performing its services, the applicant charged hourly rates of between \$100 and \$250.

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 operating reports; (2) preparing tax returns; and (3) preparing real property tax reports.

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. And, prior interim compensation will be ratified on a final basis.

31. 08-24927-A-11 MAINLAND NURSERY, INC.  
WFH #25

HEARING - APPLICATION FOR  
FINAL ALLOWANCE OF FEES OF  
GREELEY LINDSAY CONSULTANT GROUP  
(\$11,043.00)  
3-24-09 [500]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by Greeley Lindsay Consultant Group, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the committee of unsecured 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 application will be granted.

Greeley Lindsay Consultant Group, consultant for the debtor in possession, has filed its first and final application for approval of compensation through counsel for the debtor. The requested compensation consists of \$11,043 in fees and \$0 in expenses. This application covers the period from April 17, 2008 through February 28, 2009. The court approved the applicant's employment as the debtor's consultant on May 14, 2008. In performing its services, the applicant charged hourly rates of \$200, \$210, and \$225.

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: (1) assisting the debtor in preparing operating reports, reconciling accounts, and responding to the creditor's committee about financial reporting and inventory concerns; (2) advising the debtor on tax-related issues and on winding down its operations; (3) advising the debtor on the sale of the real properties; (4) analyzing listing prices and potential sale prices; (5) assisting the debtor with the auction of its assets; (6) analyzing and advising the debtor about projected distributions under its plan and disclosure statement; and (7) assisting the debtor in the plan negotiations with the creditor's committee and Farmers & Merchants Bank.

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

32. 08-24927-A-11 MAINLAND NURSERY, INC.  
WFH #26

HEARING - APPLICATION FOR  
FINAL ALLOWANCE OF FEES AND  
COSTS OF GONZALES & SISTO, LLP  
(\$3,428.00)  
3-24-09 [504]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by Gonzales & Sisto, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the committee of unsecured 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 application will be granted.

Gonzales & Sisto, accountant for the debtor in possession, has filed its first and final application for approval of compensation through counsel for the debtor. The requested compensation consists of \$3,428 in fees and \$0 in expenses. This application covers the period from June 30, 2008 through September 30, 2008. The court approved the applicant's employment as the debtor's accountant on July 11, 2008. In performing its services, the applicant charged an hourly rate of \$240.

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 the preparation of a liquidation analysis for the debtor's plan and disclosure statements.

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

33. 09-20827-A-7 AMBER GREEN HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-3-09 [19]

**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 February 26, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

34. 09-23327-A-7 NATHANIEL/KATIE PETEE HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-26-09 [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.



37. 08-39237-A-11 GURMEET/GURMINDER BHATIA CONT. STATUS CONFERENCE  
12-29-08 [1]

**Tentative Ruling:** None.

38. 08-39237-A-11 GURMEET/GURMINDER BHATIA CONT. HEARING - MOTION TO  
WAC #2 DISMISS CHAPTER 11 CASE  
2-12-09 [45] O.S.T.

**Tentative Ruling:** The motion will be denied.

The debtors seek dismissal on the basis that they anticipate by the hearing date to be in a position (1) to pay all administrative and unsecured claims in full or pursuant to an agreement and (2) to pay all real estate taxes and certain discounted secured claims, including those of Marconi Corporation and Bay Sierra, or, in the alternative, that they will have reached an agreement with those creditors for forbearance and satisfaction of their claims via refinancing, outside of bankruptcy.

However, until the hearing on the motion, the court will not know whether the debtors are in a position to pay all their creditors, in full or pursuant to an agreement, and will not know what are the terms of the reached agreements. Thus, until the court hears about the outcome of the debtors' negotiations with their creditors, the motion will be denied because it does not contain concrete information about how the debtors will resolve all claims outside of bankruptcy. While the debtors appear to have reached tentative agreements with two of their secured creditors, the motion states nothing about the terms of the agreements and is uncertain about the resolution of claims held by other creditors. The court also notes that the hearing on this motion has been continued already twice, indicating that the debtors still have not resolved all claims.

39. 08-39237-A-11 GURMEET/GURMINDER BHATIA CONT. HEARING - MOTION FOR  
DBP #3 RELIEF FROM AUTOMATIC STAY  
BAYSIERRA FINANCIAL, INC., VS. 2-20-09 [55]

**Tentative Ruling:** The motion will be granted.

The movant, Baysierra Financial, Inc., moves for relief from stay as to a real property in Sacramento, California.

The debtors have filed an opposition, arguing that the movant has produced no evidence in support of its valuation of the property, that there is no third deed of trust against the property, as asserted by the movant, and that the property is necessary to an effective reorganization. The debtors acknowledge that the encumbrances against the property total approximately \$3,150,000. The debtors believe that the property has a value of \$4.6 million. In support of this, they have produced an appraisal valuing the property at \$4.515 million.

The movant has filed a reply objecting to the admission into evidence of the debtors' appraisal and pointing out that the appraisal is outdated.

The debtors' appraisal of the property is not authenticated by a declaration from the appraiser, Pakhtun Shah. The appraisal is inadmissible hearsay. See Fed. R. Evid. 802. Also, the appraisal is dated May 12, 2006, valuing the property approximately as of three years ago. See Declaration of Gurmeet Bhatia ¶ 3. It is common knowledge, though, that real properties nationwide

and particularly in Sacramento, California have dramatically declined in value just within the last three years. Thus, the debtors' appraisal is outdated and is not persuasive on establishing the present market value of the property.

Further, in reviewing the appraisal, the court has noticed that it assumes certain still "proposed" improvements. See Debtors' Exhibit C, Special Assumptions and Limiting Conditions ¶¶ 6, 7. The appraisal assumes that the improvements would be completed and would be completed in a "workman like manner and in-line with estimated costs provided by the [debtors]." But, at the time of preparing the appraisal, the appraiser did not have "a final copy of the proposed improvements design plan." And, the declarations by the debtors do not discuss whether and when the proposed improvements have been actually completed since May 12, 2006. This also makes the debtors' appraisal unpersuasive.

Finally, the debtors' appraisal states that at their request, the appraiser excluded the cost and income approaches to valuation, due to "[t]he current economic conditions of the fuel industry along with a lack of reliable income data from similar leased facilities with multiple mixed-used income streams." See Debtors' Exhibit B, Cover Letter. But, economic conditions, including economic conditions of the fuel industry, have changed dramatically since May 12, 2006. Thus, the decision to exclude the cost and income approaches to valuation is outdated. Hence, the debtors' appraisal is not persuasive on establishing the present market value of the property.

On the other hand, the movant has produced a broker's price opinion, authenticated by a declaration, showing that the property has a value of approximately \$2,650,000. The debtors have admitted that the liens against the property total approximately \$3,150,000. The court concludes then that there is no equity in the property.

While the debtors argue that the property is necessary to an effective reorganization because they must show only a reasonable possibility of a successful reorganization, within a reasonable amount of time, the court has no evidence of necessity to an effective reorganization. The debtors have filed no operating reports from which the court could ascertain the profitability of the property and the court has evidence that the debtors have not made payments to the movant since June 2008, indicating that the property is not sufficiently profitable to fund a plan maintaining regular payments and curing arrearages to the movant. Also, the debtors have less than \$100,000 of unsecured claims. See Summary of Schedules. The lion's share of the claims against the estate, \$4,580,294, are secured claims, including a third deed of trust against the subject property. See Schedule D. The property then is not necessary to an effective reorganization.

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 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 (9<sup>th</sup> 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.

40. 09-23737-A-7 CRAIG/CATHERINE ORR HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. 3-26-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Linden, California. The property has a value of \$450,000 and it is encumbered by claims totaling approximately \$814,200. 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 \$667,200.

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.

41. 09-20140-A-7 SHASTA REGIONAL MEDICAL CONT. HEARING - MOTION FOR  
BLL #1 CENTER, LLC ORDER AUTHORIZING EMPLOYMENT  
OF COUNSEL FOR TRUSTEE  
2-23-09 [46]

**Tentative Ruling:** The motion will be granted subject to the court's review of the new compensation terms discussed at the March 23 hearing on the motion.

This motion was continued from March 23. The court's ruling at that hearing was as follows:

*Tentative Ruling: The motion will be denied.*

*The trustee seeks approval to employ Byron Lynch as counsel for the estate. Mr. Lynch will provide the estate with the following services, without limitation: (1) resolving disputes over ownership interests in estate property; (2) analyzing security agreements and other legal documents concerning the rights of the debtor; (3) securing and preserving medical records; (4) collecting pre-petition accounts receivable; and (5) collecting, valuing and liquidating inventory. The estate seeks to employ Mr. Lynch on a hybrid fee basis, with an hourly rate of \$300 plus 10% of the total gross value of money or property brought into the estate, other than disbursements to secured creditors.*

*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."*

*Mr. Lynch is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. However, the court has no evidence that the proposed terms of compensation are reasonable. Mr. Lynch*

*contends that the hybrid compensation agreement is necessary because the case appears to be administratively insolvent and "there may not be any liquid asset [sic] in the case to compensate an attorney." "[I]f there are liquid assets, they may prove to be inadequate to fully compensate an attorney on either an hourly or contingency fee basis."*

*But, risk of non-payment is not by itself sufficient to warrant employment on terms that may result in windfall compensation. Additionally, there must be some demonstrated nexus and proportionality between Mr. Lynch's potential compensation and his work for the estate. On the evidence at hand, the court cannot conclude that Mr. Lynch's potential compensation is proportional to his work for the estate. In the event Mr. Lynch is allowed compensation at an hourly rate of \$300 plus 10% of the total gross value of money or property brought into the estate, he may potentially receive windfall compensation at a total rate of \$500, \$600 or \$700 per hour. Accordingly, the motion will be denied.*

The court continued the hearing on the motion to April 13 because Mr. Lynch indicated at the March 23 hearing that he will be agreeing to only a contingency compensation arrangement. Hence, subject to the court's review of this new compensation arrangement, the motion will be granted.

42. 09-20140-A-7 SHASTA REGIONAL MEDICAL CONT. HEARING - MOTION FOR  
FWP #1 CENTER, LLC RELIEF FROM AUTOMATIC STAY  
MEDICAL PROPERTIES TRUST, INC., VS. AND FOR AN ORDER EXCUSING RECEIVER  
FROM TURNOVER REQUIREMENTS  
3-9-09 [69]

**Tentative Ruling:** The motion will be denied.

Creditors, Medical Properties Trust, Inc. and its affiliates, move the court for the following relief:

(1) relief from the automatic stay allowing: (i) them to exercise their rights under lease, credit, and security agreements with the debtor (including 10/29 and 10/31 promissory notes); and (ii) an already appointed state court receiver to retake possession of and maintain and control the debtor's bank accounts in order to continue to remit proceeds of accounts receivable to the movants, for the satisfaction of debt owed to the movants; and

(2) excusing the state court receiver from the turnover requirements of section 543(a) and (b).

The movants, through MPT Development Services, Inc., loaned money to the debtor on three separate occasions. The movants, through MPT of Shasta, LP, were also lessors of the hospital facility operated by the debtor.

On September 23, 2008, the movants loaned \$3 million to the debtor to fund working capital costs while the debtor searched for a buyer for the hospital facility it operates. But, after default by the debtor under the lease and credit agreements with the movants, on October 23, 2008 the movants terminated the lease agreement and a management agreement between the debtor and SRMC Management, the manager of the debtor owned at the time by Hospital Partners of America, Inc., an entity in its own bankruptcy proceeding. On October 29, 2008, the debtor requested and the movants loaned it approximately \$1.809 million to meet payroll and other basic operational expenses. On October 31, 2008, the debtor again requested and the movants again loaned it approximately

\$3.227 million to meet payroll and other basic operational expenses. The loans are evidenced by three separate credit and loan agreements (MPT Credit Agreement, 10/29 Promissory Note, 10/31 Promissory Note) and are secured by a security agreement and two amendments to that agreement (Security Agreement, Amended and Restated Security Agreement, Second Amended and Restated Security Agreement).

Even though the debtor ceased operations as of November 1, 2008, it continued to collect on its account receivables. The proceeds from the collections are being deposited in the debtor's bank accounts. In addition to the movants, General Electric Capital Corporation also has a security interest in the receivables. GECC's interest in the receivables is admittedly senior to the interest of the movants. However, the movants allege that the obligation secured by GECC's interest in the receivables has been satisfied in full. On or about December 19, 2008, after the satisfaction of the obligation to GECC, the movants filed a motion in North Carolina state court for the appointment of a receiver, TRO and injunctive relief, requesting GECC to transfer to the movants or the debtor's bank accounts any proceeds from receivables in excess of what is necessary to satisfy the obligation to GECC. On January 7, 2009, the state court appointed a receiver to take possession of, maintain and control all of the debtor's bank accounts.

Although the receiver has remitted approximately \$2.415 million to the movants, they are still owed approximately \$6 million.

11 U.S.C. § 543(d) provides that, after notice and a hearing, the court "(1) may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and (2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditor's that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice."

Initially, the state court has decided the issue of the priority of the movants' interest in the debtor's bank accounts and receivables. The state court expressly found that "[w]ith the satisfaction of [the debtor's] obligations to GECC, MPT now holds a first lien on . . . the funds in [the debtor's] bank accounts (including Wachovia Accounts and an account or accounts being maintained at Bank of America, N.A.), accounts receivable owed to [the debtor], and all proceeds of [the debtor's] accounts receivable." See Exhibit J to Motion ¶ 13.

However, because this case was filed on January 6, 2009, the trustee would be able to avoid any transfers by the debtor made as far back as October 8, 2008. This would include any transfers the debtor made in conjunction with the 10/29 and 10/31 promissory notes. From the record, the court is not clear on how the avoidance of those transfers would impact the movants' interest in the receivables and proceeds in the bank accounts. Until the court hears from the trustee about his position on this issue, the court is inclined to deny relief from stay.

Moreover, the state court order appointing the receiver and making the findings outlined above is void. That order was entered post-petition, in violation of the automatic stay, on January 7, 2009, one day after the filing of the

involuntary petition in this case. The receiver's remittance of the approximately \$2.415 million to the movants also violated the stay. This does not mean that the court would not entertain a motion for granting retroactive relief from the automatic stay.

Turning to section 543, section 543(b) does not apply because the receiver was not appointed 120 days before the petition filing date. The receiver was appointed one day after the filing of the involuntary petition in this case. As to section 543(a), given the potential avoidance claims against the movants, given the still unknown impact of such claims on the movants' security interest and given the lack of a responsible person of the debtor with whom the trustee could confer about these issues, the court concludes that the interests of the creditors of the estate would not be better served by permitting the receiver to continue in possession, custody, and control of the debtor's bank accounts and receivables. Accordingly, the motion will be denied.

43. 09-21442-A-7 MARIA ABARCA HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-18-09 [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 American Mortgage Network, Inc., seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$415,397. The movant's deed is in first priority position and secures a claim of approximately \$359,619.

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 March 11, 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.

44. 09-22642-A-7 RICHARD SPENCER HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. 3-19-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$480,000 and it is encumbered by claims totaling approximately \$587,345. The movant's deed is in first priority position and secures a claim of approximately \$346,670.

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.

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 (9<sup>th</sup> 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.

45. 08-27643-A-7 TRUXEL PROPERTIES, LLC HEARING - MOTION FOR  
FWK #1 RELIEF FROM AUTOMATIC STAY  
JOEMAR, LTD, VS. 3-24-09 [99]

**Tentative Ruling:** The motion will be granted as provided below.

The movant, Joemar, Ltd, seeks relief from the automatic stay as to its interest in a first deed of trust against a lot of land with an unfinished home in Copperopolis, California. The property is not listed in the debtor's schedules or statements. The movant asserts that the property has a value of approximately between \$10,000 and \$20,000. The movant further asserts that the encumbrances against the property total approximately \$440,000. They consist of the movant's first deed against the property, securing a claim of either \$180,000 or \$80,000. The movant's information sheet states that the claim secured by the first deed is in the amount of \$80,000, whereas the motion and supporting declaration state that as of June 25, 2008 the claim was in the amount of \$180,000. In other words, the court has no evidence of the movant's first priority claim. The property is also subject to a second deed, securing a claim in the amount of \$360,000. The second deed is held by four fractional interest holders, 69.44% interest of the movant, 20.54% interest of Edward Pekarsky, 5.55% interest of Aleksander Vorobyov, and 4.16% interest of the debtor.

Initially, the court notes that it has no admissible evidence of the subject property's value. The motion and supporting declaration allege that the property has a value of between \$10,000 and \$20,000. But, the valuation is without foundation and the supporting declaration does not set forth how the declarant, Bob Prescott, acquired personal knowledge of the value of the property. The declaration merely states that "[the movant] values [the property] at between \$10,000 to \$20,000." Declaration of Bob Prescott ¶ 2.

This even suggests that Mr. Prescott may have had nothing to do with valuing the property. Moreover, Mr. Prescott is not a qualified expert witness to render an opinion as to the value of the property. His position as a managing member of the movant does not necessarily qualify him as an expert witness regarding the value of the property. Declaration of Bob Prescott ¶ 1. And, even if he were a qualified expert witness, his declaration states nothing about the basis for the opinion of value.

Turning to the merits of the motion, the debtor's ownership interest in a deed of trust against the subject property is not the same as having an ownership interest in the property. The debtor does not have ownership interest in the property. It has only a 4.16% interest in a second deed of trust against the property. Hence, determining equity in the property, for purposes of section 362(d)(2), is not the proper analysis here.

On the other hand, by having interest in the second deed against the property, the debtor's rights are limited to the state law rights of a junior deed of trust holder, including the right to reinstatement, right to redemption, right to collect rents, right to bid for the property at a foreclosure sale, right to receive notice of a default on a senior lien, and right to take title to property in lieu of foreclosure. For purposes of the automatic stay, then, only actions that would hamper the debtor's junior lienholder rights would violate the automatic stay. Harsh Inv. Corp. v. Bialac (In re Bialac), 712 F.2d 426, 432 (9<sup>th</sup> Cir. 1983).

As the movant holds interest in the first deed against the property, its security interest is senior to that of the debtor. Thus, when the movant forecloses on the property, it would cut off the debtor's pre-foreclosure state law rights. Because this is a chapter 7 case, those rights are not necessary to reorganization.

Also, the court has no evidence that either the estate or the debtor has sufficient funds to exercise the reinstatement or redemption rights. The schedules list no funds on hand. They list only approximately \$119,100 of accounts receivable. The above is cause for the granting of relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to proceed with any foreclosure remedies, as authorized by state law. No other relief is awarded.

No fees and costs are awarded because the movant is not an over secured creditor. See 11 U.S.C. § 506.

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.

46. 09-22744-A-7 JESUS/SONIA ESQUIVIAS HEARING - MOTION FOR  
RDW #1 RELIEF FROM AUTOMATIC STAY  
PATELCO CREDIT UNION, VS. 3-23-09 [11]

**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, Patelco Credit Union, seeks relief from the automatic stay with respect to a 2003 Mercedes Benz C240. The vehicle has a value of \$6,000 and its secured claim is approximately \$23,137. See Schedule B.

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 March 26, 2009. 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.

47. 08-34347-A-11 MBD INC. HEARING - MOTION FOR  
MDP #1 RELIEF FROM AUTOMATIC STAY  
CATERPILLAR FIN'L SVCS. CORP., VS. 3-26-09 [216]

**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, Caterpillar Financial Services Corp., seeks relief from the automatic stay with respect to a telescopic handler equipment. The equipment has a value of \$28,000 in Schedule D and its secured claim is approximately

\$28,647. Additionally, the debtor has not made five post-petition payments to the movant. And, the court has no evidence that the equipment is necessary to an effective reorganization. The debtor's default on payments to the movant tends to show the absence of necessity to an effective reorganization.

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. Further, the movant has no proof of adequate insurance coverage for the equipment or proof that the movant has been named as a loss payee. 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 equipment is being used by the debtor without compensation and is depreciating in value.

48. 08-34347-A-11 MBD, INC.  
WCL #11

CONT. HEARING - DEBTOR'S MOTION  
FOR APPROVAL OF SALE OF REAL  
PROPERTY (LOT 33) FREE AND CLEAR  
OF LIENS  
3-3-09 [180] O.S.T.

**Tentative Ruling:** The motion will be granted.

The debtor in possession moves to modify the order approving the sale of lot 33. The court's prior ruling was as follows.

*The motion will be granted.*

*The debtor in possession moves for the approval of a sale, free and clear of liens and interests, of lot 33 in Chico, California, to Jeffrey Sierra for \$340,000. The lot is subject to two encumbrances, a deed of trust in favor of Tri-Counties Bank, securing a claim of \$270,000, and a mechanics lien in favor of Cook Concrete Products, Inc. in the amount of \$19,225.45. Tri-Counties Bank's claim will be paid in full. Cook's lien is disputed.*

*The debtor seeks approval of payment of a 3% real estate commission and also seeks waiver of the 10-day time period of Fed. R. Bankr. P. 6004(g).*

*11 U.S.C. § 1107(a) provides that a debtor-in-possession has 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 sell property of the estate pursuant to 11 U.S.C. § 363. Section 363(b) allows, then, a debtor in possession to sell property of the estate, other than in the ordinary course of business. The sale must be fair, equitable, and in the best interest of the estate. In re*

Mozer, 302 B.R. 892, 897 (C.D. Cal. 2003).

*Under section 363(f), the debtor may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.*

*The sale will generate sufficient proceeds to pay Tri-Counties' \$270,000 claim. The purchase price of \$340,000 is identical to the scheduled value of the lot. After deduction of all encumbrance and other charges to be paid from escrow, the estate will generate approximately \$34,663. The court concludes that the sale is fair and equitable, and in the best interest of the estate, especially in light of the currently difficult state of the housing market.*

*Given the dispute over Cook's lien and the fact that the purchase price exceeds the aggregate value of the liens, the court will approve the sale free and clear of Cook's lien pursuant to section 363(f)(3) and (4). Further, the court will approve the payment of the real estate commission fees and will waive the 10-day stay of Fed. R. Bankr. P. 6004(g). The motion will be granted on the foregoing terms.*

In this motion, the debtor seeks two changes to the order issued as a result of the prior ruling.

First, the debtor has discovered an additional lien against lot 33, held by Chico West. This lien is in the amount of \$29,145.65. The debtor contends that this lien amount includes the Cook lien of \$19,225.45, referenced in the ruling above.

Second, the debtor seeks to increase the real estate commission from three to four percent because the buyer had his own broker.

Including a reserve of \$35,000 for the Chico West lien and the increase in the brokerage commission, the debtor estimates that it will still net approximately \$10,688.67 from the sale.

Given that the purchase price still exceeds the aggregate liens on the property, the sale will be approved free and clear of the Chico West lien pursuant to section 363(f)(3). The debtor will reserve \$35,000 from the sale proceeds for the potential satisfaction of the Cook and Chico West liens, pending resolution of the parties' dispute over those liens. The requested changes will be made. As in the prior ruling, the court will waive the 10-day stay of Fed. R. Bankr. P. 6004(g). The motion will be granted.

49. 09-24152-A-7 ANNETTE WALTON HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-18-09 [7]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor failed to file a master address list with his petition, as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. Although the debtor filed a master address list

on March 25, 2009, the notice of the commencement of the case was served on the same date. As a result, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

50. 09-22054-A-7 EARL O'NEAL HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-11-09 [15]

**Tentative Ruling:** The petition was previously automatically dismissed pursuant to 11 U.S.C. § 521(i)(1). Nonetheless, the court will enter an order confirming such dismissal.

This order to show cause was issued because the debtor failed to file 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 Bankruptcy Rules 1007(b)(1), (c), 11 U.S.C. § 521(a), and 11 U.S.C. § 707(b)(2)(C).

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46<sup>th</sup> day." See 11 U.S.C. § 521(i)(1). The 45<sup>th</sup> day was March 23 and the missing documents had not been filed. Thus, the petition was automatically dismissed effective on March 24, the 46<sup>th</sup> day after the petition filing.

The court is authorized to enter an order confirming that the case has been dismissed and it will do so in connection with this order to show cause. See 11 U.S.C. § 521(i)(2).

51. 09-22054-A-7 EARL O'NEAL HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [20]

**Final Ruling:** The order to show cause will be discharged as moot because the case was automatically dismissed, effective March 24, 2009.

52. 09-22054-A-7 EARL O'NEAL HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-12-09 [16]

**Final Ruling:** The order to show cause will be discharged as moot because the case was automatically dismissed, effective March 24, 2009.

53. 09-23755-A-7 PATRICIA ESTES

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-11-09 [7]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor failed to file a master address list with his petition, as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. Although the debtor filed a master address list on March 27, 2009, the notice of the commencement of the case was already served on March 14, 2009. As a result, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

54. 08-38356-A-7 CHANTELL PETRALIA

HEARING - OBJECTION TO  
DEBTOR'S CLAIM OF HOLDING  
UNSECURED NONPRIORITY CLAIMS  
3-25-09 [44]

**Tentative Ruling:** The objection will be dismissed.

Creditor Phil & Kathy's Inc., d.b.a. Alliance Wholesale Distributor, objects to the amount of their claim as scheduled by the debtor in Schedule F. Although in Schedule F Alliance's claim is listed in the amount of \$151,754.78, Alliance contends that its claim should be in the amount of \$1,155,121.73.

11 U.S.C. § 501(a) permits Alliance to file its own proof of claim. The listing of claims by the debtor in her schedules is not determinative of the amount or character of the claim, nor does that listing mean that a scheduled claim will be paid as scheduled by the debtor. In the event the trustee discovers assets, Alliance and all other creditors will be advised that they may file proofs of claim. If a claim is filed, the trustee or any other party in interest will have the opportunity to object to the claim. If there is no objection, creditors filing a proof of claim will receive distribution according to the distribution schedule set out in 11 U.S.C. § 726.

In this case, the trustee filed a report of no distribution on February 24, 2009, indicating the absence of non-exempt assets that could be administered for the benefit of creditors. This means that no creditors, including Alliance, will be receiving a distribution.

Objecting to the debtor's scheduling of a claim accomplishes nothing.

55. 08-38356-A-7 CHANTELL PETRALIA  
BK #1

HEARING - OBJECTION TO  
CLAIM OF EXEMPTIONS  
3-17-09 [36]

**Tentative Ruling:** The objection will be sustained in part.

Creditor McKesson Corporation objects to the debtor's claim of exemption of \$490,000 under Cal. Civ. Proc. Code § 703.140(b)(5) in an asset identified as "Department of Health Services Medical (The Medicine Tray)." McKesson argues that the exemption claim amount exceeds the maximum exemption amount allowed by Cal. Civ. Proc. Code § 703.140(b)(5). McKesson further objects to any exemption of interest in an asset "to the extent the asset is not an asset of

the Debtor."

Fed. R. Bankr. P. 4003(b) provides that a party in interest has 30 days after the meeting of creditors or "any amendment to the list or supplemental schedules is filed, whichever is later," to object to a claim of exemption.

McKesson is a party in interest as it holds an approximately \$760,469 claim against the debtor, secured by the debtor's personal property. And, this objection is timely as it was filed on March 17, 2009, 21 days after the February 24 conclusion of the meeting of creditors.

Turning to the merits of the objection, Cal. Civ. Proc. Code § 703.140(b)(5) limits exemption amounts to \$1,100 plus any unused amount of the exemption in Cal. Civ. Proc. Code § 703.140(b)(1), which currently caps exemptions to \$20,725. The total amount a debtor may exempt under Cal. Civ. Proc. Code § 703.140(b)(5) then is \$21,825. Because the \$490,000 exemption claim exceeds that maximum amount, the objection will be sustained.

However, the court will not sustain the objection to any exemption an asset "to the extent the asset is not an asset of the Debtor" because the court may not determine the validity, priority, or extent of an interest in property on a motion. Such determination requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2), (9). Hence, if McKesson wishes to challenge the debtor's assertion of an interest in any property and/or obtain a declaration of the validity, priority, or extent of such interest, McKesson must initiate an adversary proceeding.

The court also notes that the mere fact the debtor has claimed an asset as exempt does not transmute property not owned by the debtor into the debtor's property.

56. 09-21956-A-7 ESTRELLA ALIZAGA HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK FSB, VS. 3-17-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property is listed only in the Statement of Financial Affairs. It has a value of \$255,000 and it is encumbered by claims totaling approximately \$275,834. 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. The court also notes that the trustee filed a report of no distribution on March 16, 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.

57. 09-20957-A-7 DOMINIQUE TORDSEN HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-9-09 [18]

**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 March 2, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

58. 09-21358-A-7 WILLIAM/AMBER FRANCIS HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HOME MTG. SVCING., INC., VS. 3-23-09 [18]

**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, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of \$325,000 and it is encumbered by claims totaling approximately \$516,784. The movant's deed is in first priority position and

secures a claim of approximately \$437,284.

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 March 4, 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.

59. 09-20559-A-7 NICOLAS VARGAS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [39]

**Tentative Ruling:** The petition will be dismissed.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$14 due on March 16, 2009 has not been paid. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

60. 09-20163-A-7 FRANK PAZZANESE AND HEARING - OBJECTION TO  
ELIZABETH CONWAY TRUSTEE'S REPORT OF NO DISTRIBUTION BY 7TH INNING STRETCH, LLC  
3-23-09 [16]

**Tentative Ruling:** The objection will be overruled.

7<sup>th</sup> Inning Stretch, LLC objects to the trustee's report of no distribution because it argues that its \$3,153 claim should be determined nondischargeable.

However, in order for 7<sup>th</sup> Inning to obtain such determination from the court, 7<sup>th</sup> Inning must initiate an adversary proceeding. Fed. R. Bankr. P. 7001(6) requires an adversary proceeding for determinations of the dischargeability of debts.

Further, 7<sup>th</sup> Inning's appearance in this objection is via its Director of Finance, Terri Bailey. But, Local District Rule 83-183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), provides that "corporation[s] or other entities may appear only by an attorney." A review of the California State Bar membership records shows that Mr. Bailey is not an attorney licensed to

practice law in California. Hence, 7<sup>th</sup> Inning cannot make an appearance in this court via Mr. Bailey. The objection will be overruled.

61. 09-22764-A-7 KELLY LUND  
WGM #1  
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-20-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Granite Bay, California. The property has a value of \$575,000 and it is encumbered by claims totaling approximately \$694,202. 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 \$542,688.

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 (9<sup>th</sup> 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.

62. 08-38467-A-7 AARON/HEATHER HAYDEL HEARING - MOTION FOR  
EAT #2 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-27-09 [46]

**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., seeks relief from the automatic stay as to a real property in New Orleans, Louisiana. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$316,362. 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.

63. 08-23769-A-7 RENATO/JULIANA OINEZA HEARING - TRUSTEE'S MOTION FOR  
RJH #3 ORDER ABANDONING A 2004 HONDA  
ACCORD THAT IS PROPERTY OF THE  
BANKRUPTCY ESTATE  
3-19-09 [60]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). 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 to abandon the estate's interest in 2004 Honda Accord. The vehicle is over-encumbered.

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 vehicle has a scheduled value of \$10,000, whereas its secured claim totals \$13,000. See Schedules B and D. Given this, the court concludes that the vehicle is of inconsequential value to the estate. The motion will be granted.

64. 09-23269-A-7 PEARL CARPENTER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [10]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor failed to file 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 Bankruptcy Rules 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

65. 09-24170-A-7 BLAIR NORTHEIMER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [9]

**Tentative Ruling:** The petition will be dismissed.

The debtor 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 debtor's social security number. 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 (9<sup>th</sup> Cir. 2007). This has prejudiced the creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1).

66. 09-23071-A-7 GEORGE CASTELLANOS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-4-09 [5]

**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 March 6, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

67. 09-23071-A-7 GEORGE CASTELLANOS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-16-09 [9]

**Tentative Ruling:** The petition will be dismissed.

This order to show cause was issued because the debtor failed to file 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 Bankruptcy Rules 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

68. 09-20174-A-7 RICHARD/DAINA GLASSON HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-26-09 [43]

**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 Aurora Loan Services, seeks relief from the automatic stay as to a real property in Yuba City, California. The property has a value of \$158,500 and it is encumbered by claims totaling approximately \$271,795. The movant's deed is in first priority position and secures a claim of approximately \$246,126.

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.

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.

69. 09-23877-A-7 CARLOS/ANTONIA PEREZ HEARING - MOTION FOR  
RFM #1 RELIEF FROM AUTOMATIC STAY  
ING BANK, FSB, VS. 3-25-09 [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, ING Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$196,500 and it is encumbered by claims totaling approximately \$441,571. The movant's deed is in first priority position and secures a claim of approximately \$358,571.

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.

70. 08-36878-A-7 AMOS SNELL HEARING - MOTION TO  
08-2695 SW #1 DISMISS FOR FAILURE TO STATE A  
AMOS SNELL CLAIM UPON WHICH RELIEF CAN BE  
GRANTED  
WMC MORTGAGE CORPORATION, ET AL. 3-6-09 [27]

**Tentative Ruling:** The motion will be granted as provided below.

WMC Mortgage, one of the three defendants in this adversary proceeding, moves for dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

However, this motion was filed before the court heard a similar motion by the other two defendants in this proceeding, Litton Loan Servicing and Deutsche Bank National Trust Company, on March 9, 2009. Given the granting of their motion and the granting of a 20-day leave to the plaintiff to amend his complaint, this motion will be granted only to the extent the motion to dismiss by Litton and DBNTC was granted. See Docket Nos. 32 and 36. The court will adopt its ruling on the motion to dismiss by Litton and DBNTC, pending the filing of an amended complaint by the plaintiff. The order granting the prior motion to dismiss was entered on March 17, 2009. This means that the plaintiff's amended complaint is due on April 6, 2009. In the event no amended complaint is filed by April 6, the originally filed complaint will be stricken from the record and the adversary proceeding will be dismissed.

71. 09-23079-A-7 JAMES/DANA JULIAN HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NAT'L TRUST CO., ET A;., VS. 3-18-09 [11]

**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 Ione, California. The property has a value of \$425,000 and it is encumbered by claims totaling approximately \$571,682. 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.

72. 09-23879-A-7     DANILO/MARIA MADRIGALES                     HEARING - MOTION FOR  
WGM #1   RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK, FSB, VS.                     3-23-09 [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 Sacramento, California. The property has a value of \$170,000

and it is encumbered by claims totaling approximately \$298,669. 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 \$242,077.

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.

73. 09-20083-A-7 GARY/IRIS CUDD HEARING - MOTION TO  
CC #1 CONVERT CASE TO CHAPTER 13  
3-26-09 [19]

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

The court has reviewed the record and concludes that the debtors are not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

Schedule I and Amended Schedule J show that the debtors have sufficient disposable income to make the proposed \$1,186 in chapter 13 plan payments. Also, their incomes are regular. Mrs. Cudd has been self employed as a manicurist for 15 years, while Mr. Cudd has been employed in sales with Food Sales West for five years. And, they have noncontingent, liquidated secured debt in the amount of \$571,099.16 and noncontingent, liquidated unsecured debt in the amount of \$86,002. Given the foregoing, the court concludes that the debtors are eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

74. 09-21783-A-7 THOMAS HONEYCUTT HEARING - MOTION FOR  
APN #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, VS. 3-13-09 [20]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2001 Dodge Durango.

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 February 3, 2009 and a meeting of creditors was first convened on March 4, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than March 4. The debtor filed a statement of intention on the petition date, indicating only an intent to "retain and keep payments current."

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 vehicle or redeem the vehicle. 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 March 4, 2009, the date of the 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 March 25, 2009, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on March 4, 2009.

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.

75. 08-33684-A-7 JOHN/JULIE DAVIS HEARING - U.S. TRUSTEE'S MOTION  
UST #3 TO COMPEL PRODUCTION OF SIGNED  
DOCUMENTS  
3-3-09 [50]

**Tentative Ruling:** The motion will be granted on the condition stated below.

The U.S. Trustee moves for an order compelling counsel for the debtors to produce originally-signed documents that were efiled on September 24, 2008 and on February 5, 2009. This motion is the result of the debtors' representations at a hearing on February 9 that they had not signed the documents filed on February 5.

Local Bankruptcy Rule 9004-1(c)(1)(d) requires a registered user to produce originally-signed documents for review upon request by the court.

However, the court has no evidence that the U.S. Trustee has attempted to obtain the documents informally from the debtors' counsel. The court will order production only if the debtors' counsel refuses at the hearing to voluntarily turn over the documents to the U.S. Trustee.

76. 08-34085-A-7 QUYNH HOANG AND HEARING - MOTION FOR  
08-2579 TY GOANG-TRAN CRL #1 RELIEF FROM BANKRUPTCY STAY  
PEOPLE OF THE STATE OF CA., ET A., VS. 3-13-09 [40]  
QUYNH HOANG

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

The movants, People of the State of California *ex rel* The County of Yuba, Cheryl Zillig, Manual Sanchez, Michelle Oliver, Susan Holder, and William and

Jean Hanmore, who are also the plaintiffs in this adversary proceeding, seek relief from the automatic stay with respect to pending state court litigation against the defendants, Quynh Hoang and Ty Goang-Tran, who are also the debtors in the underlying bankruptcy case. The litigation consists of claims for abatement of nuisance, including both public and private nuisance, for breach of contract, for negligence, for intentional infliction of mental distress, for negligent infliction of mental distress, for unfair business practices, and for violations of health and safety laws, mobile home residency laws, public utilities laws and certain civil code provisions. The plaintiffs are seeking damages, injunctive and declaratory relief.

Besides the debtors, the state court litigation includes at least two other named defendants who are not subject to the underlying bankruptcy proceeding. The state court action was filed on August 7, 2008, approximately two months before the filing of the bankruptcy petition on September 30, 2008. The claims pending against the debtors arise from allegations of failure to maintain a mobile home park in Yuba County, California. In the subject adversary proceeding, the movants are seeking the court to declare the debtor's debts arising from the state court litigation nondischargeable pursuant to section 523.

The defendants/debtors have filed an opposition to the motion. The defendants argue that:

- (1) the state court action is void because it was filed after the filing of a bankruptcy petition by Jamie Hoang (case no. 08-29587, filed on July 15, 2008);
- (2) despite the automatic stay, the state court action has been moving forward;
- (3) although at this time the state court complaint does not meet the requirements for nondischargeability of section 523, as alleged in the adversary proceeding, the defendants suspect that the plaintiffs will amend their state court complaint to allege claims that would be nondischargeable; this would violate the recent In re Wardrobe Ninth Circuit decision;
- (4) even if the state court action is adjudicated in favor of the plaintiffs, they would still have to litigate the willful and malicious elements of section 523(a)(6) in the pending adversary proceeding;
- (5) the section 523(a)(7) claim in the adversary proceeding is not appropriately asserted against the individual defendants;
- (6) granting relief from stay does not best serve judicial economy because the defendants would have to retain separate counsel to defend the state court action;
- (7) abstention by this court of not hearing the adversary proceeding until the resolution of the state court action is not appropriate;
- (8) no cause for the granting of relief from stay exists because "many of the [s]tate [c]ourt [claims] are now moot with the appointment of the receiver;"
- (9) the hardships balance in favor of the defendants.

Initially, the opposition is late as it was filed on March 31, 2009, which is 13 and not 14 days before the hearing. Accordingly, the opposition will be stricken as untimely.



funds was a violation of the automatic stay. That is, the Sheriff's continued possession of the funds at the instance of Mr. Volen was an exercise of control over property of the debtor/bankruptcy estate. Accordingly, the Sheriff shall be order to return the levied funds to the debtor.

Additionally, evidence produced by the debtors indicates that Mr. Volen has known of the bankruptcy filing and the automatic stay as early as on or about the petition date, October 14, 2008. This supports a conclusion that Mr. Volen's stay violation was willful, warranting an award of actual damages pursuant to section 362(k)(1). Those damages appear limited to the legal fees associated with the filing and prosecution of this motion. The court awards reasonable fees of \$427.50.

78. 08-36587-A-7 JOVENTINO/MILAGROS BANEZ HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK, FSB, VS. 3-26-09 [28]

**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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Cottonwood, California.

Given the entry of the debtor's discharge on March 16, 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 \$150,000 and it is encumbered by claims totaling approximately \$199,842. 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.

79. 09-21888-A-7 JANICE TOMPKINS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-11-09 [15]

**Tentative Ruling:** The petition will be dismissed.

The debtor filed an master address list on March 6, 2009, but did not pay the full \$26 filing fee. The debtor paid only \$20 of the fee. \$6 of the fee is still outstanding. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

80. 09-23588-A-7 JORGE/CHARO ALBARRAN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-24-09 [8]

**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, Bank of America, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$391,000 and it is encumbered by claims totaling approximately \$711,613. The movant's deed is in first priority position and secures a claim of approximately \$540,434.

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.

81. 08-35790-A-7 THOMAS/GENELLE OWENS HEARING - MOTION FOR  
SF #5 AUTHORITY TO SELL NON-EXEMPT  
EQUITY IN VEHICLE TO DEBTORS  
3-6-09 [50]

**Tentative Ruling:** The motion will be granted.

The trustee seeks authorization to sell non-exempt equity in a 2001 Ford Ranger to the debtors for \$3,500. The debtors have asserted tools of the trade exemptions in two 2001 Ford Ranger vehicles. One has a scheduled value of \$4,340 and is subject to an exemption claim in the amount of \$4,340. The other has a scheduled value of \$4,265 and is subject to an exemption claim in the amount of \$2,410. The trustee has challenged the debtor's ability to exempt the Ford Ranger valued at \$4,265. In order to avoid a dispute over the debtors' entitlement to exemption of the vehicles, the debtors have offered to purchase any non-exempt equity in the vehicle with a value of \$4,265 by paying \$3,500.

The sale is subject to overbids.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. The proposed sale price is approximately what the trustee estimates the estate would receive from an auction or commissioned sale of the vehicle. Hence, the sale will be approved pursuant to section 363(b), as it is in the best interests of the creditors and the estate.

82. 09-21391-A-7 JEFFERY PRICE HEARING - MOTION FOR  
APN #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO FINANCIAL, VS. 3-13-09 [10]

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

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2000 Ford Excursion.

However, as to the debtor, there is no admissible evidence of value for the vehicle. The evidence submitted by the movant is a declaration stating on information and belief that the value of the vehicle is \$7,790. See Declaration of Pam Welters at 2. But, such statements are not admissible evidence because the declarant admits to not having personal knowledge of the information in the statement. The movant also has attached a printout from the Kelly Blue Book website, reflecting a retail value without mileage of \$7,790. The printout is not authenticated by a declaration or an affidavit, meaning that any reference to it is inadmissible hearsay. See Fed. R. Evid. 802. Also, the printout does not appear to take into account the actual mileage of

the vehicle. And, the debtor has listed the value of the vehicle in Schedule B as unknown. The court then has no admissible evidence of value. As a result, it cannot determine whether there is any equity in the vehicle and whether the movant's interest in it is protected. Thus, the motion will be denied as to the debtor.

As to the estate, the trustee filed a report of no distribution on March 25, 2009. This is cause for the granting of relief from stay as to the estate.

Accordingly, the motion will be granted as to the estate 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 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.

83. 08-39094-A-7 VIVENCIO/MERCIA CARAGAY HEARING - MOTION FOR  
TAA #1 EXTENSION OF TIME FOR FILING A  
COMPLAINT OBJECTING TO DISCHARGE  
3-19-09 [20]

**Tentative Ruling:** The motion will be granted.

The trustee seeks a 30-day extension, from March 31 to April 30, 2009, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee seeks the extension because the debtors have not yet turned over to him previously requested documents. Also, neither the debtors, nor their attorney appeared at the last scheduled meeting of creditors on March 16, 2009.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was March 31, 2009. The motion was filed on March 19, 2009. Thus, the motion complies with the temporal requirements of the rule. Given the debtors' failure to turn over to the trustee previously requested documents, the court concludes that there is cause for the extension of time. The motion will be granted and the deadline for filing complaints under section 727(a) by the trustee is extended to April 30, 2009.

84. 09-22796-A-7 JAMES/VALARIE KNOX HEARING - MOTION FOR  
BSN #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-17-09 [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, Bank of America, seeks relief from the automatic stay with respect to a 2005 Sea Ray boat and 2005 Ziemann boat trailer. The property has a value of \$21,540 and its secured claim is approximately \$48,753. See Schedule B.

The court concludes that there is no equity in the property 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, in the statement of intention, the debtor has indicated an intent to surrender the property.

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 property is being used by the debtor without compensation and is depreciating in value.

85. 09-25096-A-7 FRANK/CAROLYN DUNCAN HEARING - MOTION FOR  
HDR #1 DISMISSAL OF CHAPTER 7 PETITION  
3-27-09 [6]

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

The debtors seek dismissal of this case on the basis that they erroneously filed two cases. The other case is Case No. 08-35372, filed on October 24, 2008. The debtors' discharge was entered on April 1, 2009. Given the erroneous filing of the two cases, this case (Case No. 09-25096) will be dismissed. No other relief will be granted.

**FINAL RULINGS BEGIN HERE**

86. 05-21801-A-7 THOMAS/MARIA SOLVESON HEARING - TRUSTEE'S AMENDED  
WSD #21 OBJECTION TO CLAIM OF SOLVESON  
EQUIPMENT ASSIGNEE OF ADK PERMITS  
2-26-09 [277]

**Final Ruling:** This objection to the proof of claim of ADK Permits has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On January 3, 2006, ADK Permits filed a general unsecured proof of claim in the amount of \$38,675.23 (claim no. 46). Attached to the proof of claim are invoices referencing Solveson Crane Company. Debtor Thomas Solveson was a principal of SCC. The trustee objects to the claim on the ground that the debtors have no personal liability for the corporate obligation.

Only SCC is mentioned in the proof of claim and its attachments. Also, ADK no longer holds the claim as it has assigned it to Solveson Equipment. See Docket No. 143. Based on this, the court concludes that the debtors have no personal liability for the claim. The objection will be sustained.

87. 09-21201-A-7 TIMOTHY/SHIRLEY KILLEBREW HEARING - MOTION FOR  
SPA #1 RELIEF FROM AUTOMATIC STAY  
UMPQUA BANK, VS. 3-16-09 [14]

**Final Ruling:** The motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest. The motion will be dismissed without prejudice.

88. 09-21505-A-7 TAWNY PETERSEN HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
CENTRAL MORTGAGE CO, VS. 3-18-09 [15]

**Final Ruling:** The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion states that the motion is being noticed under Local Bankruptcy Rule 9014-1(f)(1), which requires at least 28 days' notice. The notice of hearing requires written opposition at least 14 days before the hearing. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy

Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

89. 09-22505-A-7 SERGE PCHELNIKOV HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MTG., INC., VS. 2-25-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Roseville, California. The property has a value of \$421,000 and it is encumbered by claims totaling approximately \$489,528. The movant holds both the first and third deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$343,141.

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 March 23, 2009. 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 (9<sup>th</sup> 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.

90. 08-37209-A-7 CHARANJIT BAINS HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-11-09 [18]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Roseville, California. The property has a value of \$413,000 and it is encumbered by claims totaling approximately \$442,125. 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 January 9, 2009. And, in the



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 (9<sup>th</sup> 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.

92. 08-36512-A-7 NAI/GEMMA SAETERN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK FSB, VS. 3-10-09 [45]

**Final Ruling:** The motion will be dismissed as moot because the case was previously dismissed on March 10, 2009. Consequently, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(2)(B).

93. 09-21012-A-7 ANGEL/YOLANDA DELGADO  
RCO #1  
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-16-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Woodland, California. The property has a value of \$219,000 and it is encumbered by claims totaling approximately \$434,852. The movant's deed is in first priority position and secures a claim of approximately \$353,601.

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 February 25, 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.

94. 09-22012-A-7 SCOTT/SUSAN WINCHESTER  
PD #1  
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
2-24-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Magalia, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$331,584. The movant's deed is in first priority position and secures a claim of approximately \$228,340.

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.

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 (9<sup>th</sup> 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. 09-20813-A-7 DANIEL MCFARLAND HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AURORA LOAN SERVICES LLC, VS. 3-5-09 [18]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$517,043. 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 \$343,262.

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 (9<sup>th</sup> 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.

96. 09-20813-A-7 DANIEL MCFARLAND HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-16-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Bank of America, seeks relief from the automatic stay as to a real property in El Dorado Hills, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$301,968. The movant's deed is the only deed against the property, securing a claim of approximately \$297,968.

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.

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.

97. 09-22013-A-7 MARK/VICKI ORSILLO HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-3-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Oroville, California. The property has a value of \$110,000 and it is encumbered by claims totaling approximately \$211,466. The movant's deed is in first priority position and secures a claim of approximately \$167,641.

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.

98. 09-22013-A-7 MARK/VICKI ORSILLO HEARING - MOTION FOR  
WGM #2 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. 3-9-09 [36]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

99. 09-22013-A-7 MARK/VICKI ORSILLO HEARING - MOTION FOR  
WGM #3 RELIEF FROM AUTOMATIC STAY  
JPMORGAN CHASE BANK, N.A., VS. 3-9-09 [42]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

100. 09-21915-A-7 VIVIAN FORSCH HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MTG., INC., VS. 2-25-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Hayden, Idaho. The property has a value of \$300,000 and it is encumbered by claims totaling approximately \$327,600. 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 \$210,327.

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 March 13, 2009. 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 (9<sup>th</sup> 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



**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Vallejo, California. The property has a value of \$450,000 and it is encumbered by claims totaling approximately \$539,514. The movant's deed is in first priority position and secures a claim of approximately \$437,514.

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 12, 2009. 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 (9<sup>th</sup> 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.

103. 08-37719-A-7 ANTHONY PO HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HOME MTG. SVCING., INC., VS. 3-9-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Antelope, California.

Given the entry of the debtor's discharge on March 17, 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 \$222,500 and it is encumbered by claims totaling approximately \$388,965. The movant's deed is in first priority position and secures a claim of approximately \$334,039.

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 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.

104. 09-22321-A-7 MARTHA/FERNANDO SIERRA HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-6-09 [13]

**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 Exhibit D with the credit counseling certificates for both debtors and schedules A, D, E and H, as required by Bankruptcy Rules 1007(b)(1)&(3), (c), 11 U.S.C. § 521(a), (b).

However, the debtors filed all missing documents on March 16, 2009. No prejudice has resulted from the delay.

105. 09-22821-A-7 ANTHONY/GAY WILLIAMS HEARING - MOTION FOR  
EGS #1 RELIEF FROM AUTOMATIC STAY  
GUILD MORTGAGE CO.,VS. 3-16-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Guild Mortgage Co., seeks relief from the automatic stay as to a real property in San Jose, California. The property has a value of \$240,000 and it is encumbered by claims totaling approximately \$258,304. The movant's deed is the only deed against the property, securing a claim of approximately \$254,647.



46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Stockton, California. The property has a value of \$125,500 and it is encumbered by claims totaling approximately \$372,369. The movant's deed is in first priority position and secures a claim of approximately \$250,499.

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 March 18, 2009. 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. 08-38325-A-7 LORRIE LOWRY HEARING - MOTION FOR  
MWP #1 RELIEF FROM AUTOMATIC STAY  
DOWNEY SAVINGS & LOAN ASSOC., VS. 3-2-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Downey Savings and Loan Association, seeks relief from the



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.

110. 09-21726-A-7 TOMMY/CHRISTINA BERRY HEARING - MOTION FOR  
PPR #1 RELIEF FROM AUTOMATIC STAY  
METROCITIES MORTGAGE, LLC, VS. 3-11-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Metrocities Mortgage, seeks relief from the automatic stay as to a real property in Palmdale, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$496,528. See Amended Schedule A. The movant's deed is in first priority position, securing a claim of approximately \$405,857.

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 March 18, 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.

111. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - APPLICATION FOR  
WFH #24 SECOND INTERIM AND FINAL ALLOW-  
ANCE OF FEES AND COSTS OF WILKE,  
FLEURY, ET AL. (\$100,644.00 FEES;  
\$12,374.31 EXPENSES)  
3-16-09 [488]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, attorney for the debtor in possession, has filed its second interim and final application for approval of compensation. The requested compensation consists of \$100,644 in fees and \$12,374.31 in expenses, for a total of \$113,018.31. This application covers the period from September 1, 2008 through February 28, 2009. The court approved the applicant's employment as the debtor's attorney on May 14, 2008. In performing its services, the applicant charged hourly rates of \$125, \$150, \$200, \$215, \$250, \$275, \$335, and \$350.

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 winding down of business operations; (2) assisting the debtor in the preparation of operating reports; (3) responding to inquiries from creditors; (4) analyzing the claims against the estate; (5) opposing a relief from stay motion of Farmers & Merchants Bank; (6) preparing and prosecuting a motion to value collateral; (7) assisting the debtor in the sale of an easement for a cell tower, including the negotiation and preparation of a confidentiality agreement; (8) negotiating with the tenant and preparing a lease for the Turner nursery; (9) assisting the debtor with the sale of the 150 W. Turner Road property; (10) preparing a liquidation analysis for the debtor's disclosure statement; (11) revising the disclosure statement; (12) preparing a brief in support of plan confirmation; (13) negotiating the debtor's first amended plan with the committee of unsecured creditors and Farmers & Merchants Bank; and (14) preparing employment and compensation applications.

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 second interim compensation will be approved and both the first and second interim compensation will be ratified on a final basis.

112. 09-22430-A-7 MARIA CANALES  
PD #1  
AMERICA'S SERVICING CO., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-10-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Mountain House, California. The property has a value of \$400,000 and it is encumbered by claims totaling approximately \$754,090. The movant's deed is in first priority position and secures a claim of approximately \$607,803.

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.

113. 08-37931-A-7 LORENA CHAVEZ-EASTER  
PD #1  
WELLS FARGO HOME MTG., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-11-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Elk Grove, California.

Given the entry of the debtor's discharge on March 23, 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 \$250,000 and it is encumbered by claims totaling approximately \$466,104. The movant's deed is in first priority position and secures a claim of approximately \$420,198.

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 16, 2009.

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.

114. 09-20731-A-7 CAROL BOISA  
JKB #1  
HILTON RESORTS CORP., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-5-09 [26]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Hilton Resorts Corporation, seeks relief from the automatic stay as to a timeshare in Las Vegas, Nevada. The timeshare has a scheduled value of \$0.00 and it is encumbered by claims totaling approximately \$13,568. See Schedule B. The movant's claim is the only encumbrance against the timeshare.

The court concludes that there is no equity in the timeshare 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 February 26, 2009.

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 timeshare property following sale. 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 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.

115. 08-39536-A-7 RONNY/AHNA SIMMONS HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NAT'L TRUST CO., VS. 3-10-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Anderson, California. The property has a value of \$249,000 and it is encumbered by claims totaling approximately \$295,774. 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 February 25, 2009. 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.

116. 09-21638-A-7 JUSTIN CARDWELL  
EAT #1  
INDYMAC FEDERAL BANK FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-12-08 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$181,475 and it is encumbered by claims totaling approximately \$360,469. 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 March 12, 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.



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. 08-38443-A-7 TAMELA MOORE HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
LITTON LOAN SERVICING, LP, VS. 2-24-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Litton Loan Servicing, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$187,500 and it is encumbered by claims totaling approximately \$277,991. 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 January 26, 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.

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Mountain House, 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 September 30, 2008, the debtor filed a chapter 13 case (case no. 08-34035-A-13). But, the court dismissed that case on January 6, 2009 due to the debtor's failure to make plan payments. The debtor filed the instant case on February 5, 2009. 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 debtor on March 7, 2009, 30 days after the debtor 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 \$988,000 and it is encumbered by claims totaling approximately \$1,054,866. The movant's deed is in first priority position and secures a claim of approximately \$663,626.

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 March 20, 2009.

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 (9<sup>th</sup> 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.

121.	07-28444-A-7	OCCMEDS BILLING SERVICES WFH #17	HEARING - APPLICATION FOR SECOND INTERIM ALLOWANCE OF FEES AND COSTS OF WILKE, FLEURY, ET AL. (\$71,233.50 FEES; \$1,194.12 EXPENSES) 3-16-09 [373]
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**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, attorney for the chapter 11 debtor, has filed its second interim application for approval of compensation. The requested compensation consists of \$71,233.50 in fees and \$1,194.12 in expenses, for a total of \$72,427.62. This application covers the period from March 1, 2008 through February 28, 2009. The court approved the Applicant's employment as the debtor's attorney on October 24, 2007. In performing its services, the applicant charged hourly rates of \$145, \$200, \$215, \$250, \$275, \$335, and \$350.

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) assisting the debtor in the preparation of operating reports; (3) negotiating a settlement agreement with Bridge Finance; (4) revising the debtor's chapter 11 plan; (5) obtaining approval of the debtor's disclosure statement; (6) assisting the debtor with the rejection of an equipment lease and the response to a motion for the payment of an administrative claim; (7) analyzing potential preference claims and initiating preference litigation against one creditor; and (8) assisting the debtor in the general administration of the case.

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

122. 09-22244-A-7 ALBERTO LOPEZ HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-08 [12]

**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 installment fee in the amount of \$75 due on March 12, 2009 was not paid.

However, the debtor paid the fee on April 1, 2009. No prejudice has resulted from the delay.

123. 09-21645-A-7 MARY TYE HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE LLC, VS. 2-24-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Roseville, California. The property has a value of \$346,000 and it is encumbered by claims totaling approximately \$411,610. The movant's deed is in second priority position and secures a claim of approximately \$82,124.

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 March 9, 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.

124. 07-28846-A-12L CHARLES YURGELEVIC  
SAC #3

HEARING - FIRST INTERIM  
APPLICATION FOR ATTORNEYS' FEES OF  
SCOTT A. COBEN & ASSOCIATES  
(\$1,814.44)  
2-24-09 [79]

**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 chapter 13 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Scott Coben and Associates, attorney for the debtor in possession, has filed

its first interim application for approval of compensation. The order approving the applicant's employment was entered on October 24, 2007. The applicant seeks approval and payment of \$1,814.44 in fees and \$0.00 in expenses. The requested compensation is for the period from October 31, 2007 through November 6, 2008. The applicant charged hourly rates of \$200 and \$100.

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 for and attending meeting of creditors; (2) attending hearings on motions to dismiss and confirm plan; and (3) preparing employment and compensation applications.

The court concludes that the compensation is for actual, necessary, and beneficial services rendered. The compensation will be approved.

125. 08-36148-A-11 COPPERFORD, LLC  
CWC #8

HEARING - MOTION FOR  
EXTENSION OF EXCLUSIVE TIME TO  
FILE PLAN  
3-4-09 [109]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 debtor seeks a 30-day extension of the exclusivity period for filing a plan, from March 4, 2009 to April 3, 2009. Before filing its plan, the debtor wishes to assess filed proofs of claim, whose bar date is March 11, 2009. The debtor also wishes to consult with its real estate broker about the sale of the winery's real property.

For cause, 11 U.S.C. § 1121(d) allows the court to increase the 120-day period of 11 U.S.C. § 1121(c)(2), which provides the exclusivity period for filing a plan by the debtor. In deciding whether cause exists, courts have considered, without limitation, the following factors: (1) the size and complexity of the case; (2) the amount of time that has elapsed in the case; (3) the existence of good faith progress toward reorganization; and (4) progress in negotiations with creditors. See e.g., In re Dow Corning Co., 208 B.R. 661 (Bankr. E.D. Mich. 1997).

This case has been pending for only about five months, since November 4, 2008. And, given the March 11, 2009 claims bar date and given that this is only the first extension of exclusivity, the court concludes that cause exists for the 30-day extension. The motion will be granted.

126. 09-21248-A-7 MICHAEL GLAZIER  
EDH #1  
OCWEN LOAN SERVICING, LLC, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-15-09 [16]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

127. 09-21648-A-7 SHANNI/SAMSAD KUMAR  
JHW #1  
DAIMLER TRUST, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-11-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2007 Mercedes Benz GL450. The vehicle has a value of \$62,000 and the outstanding amount under the lease agreement totals \$62,505. The debtor also has not made three pre-petition and two post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on March 12, 2009.

The court concludes that the above is cause 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 vehicle, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

No fees and costs are awarded because the movant is not an over secured

creditor. See 11 U.S.C. § 506.

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.

128. 09-22848-A-7 VASILIIY/LESYA LEBEDCHIK HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK, FSB, VS. 3-12-09 [8]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

129. 08-39152-A-7 JESUS SERRANO AND HEARING - MOTION FOR  
RCO #1 MARIA VALENCIA RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A., VS. 3-16-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Bank of America, seeks relief from the automatic stay as to a real property in Corning, California. The property has a value of \$162,000 and it is encumbered by claims totaling approximately \$197,569. 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 February 18, 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.

130. 09-22652-A-7 TROY ZIEL HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MTG., INC., VS. 2-27-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Paradise, California. The property has a value of \$129,000 and it is encumbered by claims totaling approximately \$239,787. 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 \$104,946.

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 (9<sup>th</sup> 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.

131.	07-24354-A-7 BHS #4	DAVID SCHWARTZ AND SHELLEY THAYER	HEARING - MOTION BY TRUSTEE'S COUNSEL FOR AN ORDER GRANTING FIRST AND FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES (\$6,817.50 FEES; \$260.41 EXPENSES) 3-9-09 [107]
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**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Law Office of Barry H. Spitzer, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$6,817.50 in fees and \$260.41 in expenses, for a total of \$7,077.91. This application covers the period from June 18, 2007 through March 9, 2009. The court approved the applicant's employment as the trustee's attorney on July 6, 2007. In performing its services, the applicant charged an hourly rate of \$225.

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) analyzing the administration of a jointly owned real property; (2) advising the trustee about the administration of the property; (3) negotiating with the co-owners and a lien-holder; and (4) obtaining court approval of a compromise with the co-owners of the 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.

132. 09-22155-A-7 MATTHEW/MARISSA HOLCK HEARING - MOTION FOR  
JMS #1 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE, LLC, VS. 3-2-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Modesto, California. The property has a value of \$190,000 and it is encumbered by claims totaling approximately \$399,390. The movant's deed is in first priority position and secures a claim of approximately \$346,527.

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 March 10, 2009. 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.

133. 09-21857-A-7 BENJAMIN/STEPHANIE CLARK HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
PHH MORTGAGE CORP., VS. 3-9-09 [9]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

134. 09-22461-A-7 JOHN/TATYANA GOTISHAN HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-5-09 [11]

**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 statistical summary and the summary of schedules.

However, the debtors filed all missing documents on April 2, 2009. No prejudice has resulted from the delay.

135. 09-23461-A-7 ROBERT MARTINSON HEARING - MOTION FOR  
EJS #1 RELIEF FROM AUTOMATIC STAY  
DONALD/BARBARA RYAN, VS. 3-13-09 [7]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 movants, Donald and Barbara Ryan, seek relief from the automatic stay as to two real properties in North Highlands, California. Pre-petition, the movants instituted an unlawful detainer action against the debtor and other parties with respect to the properties. The properties are not listed in Schedule A and, in Schedule G, the debtor has listed a leasehold interest in one of the properties. In Schedule B, the debtor has valued that interest at \$1.

This is a liquidation proceeding and the debtor has no interest in the properties. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movants to proceed with their unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movants prevail, no monetary claim may be collected from the debtor. The movants are limited to recovering possession of the property if such is permitted by the state court.

No fees and costs are awarded because the movants are not an over-secured creditor. See 11 U.S.C. § 506.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

136. 09-22363-A-7 CATHERINE KUNGU HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
CHASE HOME FINANCE LLC, VS. 2-26-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$161,500 and it is encumbered by claims totaling approximately \$232,557. The movant holds both the first and third deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$184,012.

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 March 25, 2009. 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.

137. 09-22764-A-7 KELLY LUND HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-11-09 [11]

**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 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 Bankruptcy Rules 1007(b)(1), (c), 11 U.S.C. § 521(a), and 11 U.S.C. § 707(b)(2)(C).

However, the debtor filed all missing documents on March 17, 2009. No prejudice has resulted from the delay.

138. 09-22964-A-7 JESUS RUEDAS AND HEARING - MOTION FOR  
JMS #1 CINDY VALDIVIA RELIEF FROM AUTOMATIC STAY  
LIME FINANCIAL SERVICES, LTD., VS. 3-6-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Lime Financial Services, seeks relief from the automatic stay as to

a real property in Sacramento, California. The property has a value of \$182,750 and it is encumbered by claims totaling approximately \$292,583. The movant's deed is in first priority position and secures a claim of approximately \$235,417.

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.

139. 09-22964-A-7 JESUS RUEDAS AND HEARING - MOTION FOR  
WGM #1 CINDY VALDIVIA RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK FSB, VS. 3-13-09 [17]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

140. 09-22566-A-7 ARTHUR LEWIS HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MTG., INC., VS. 3-13-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Elverta, California. The property has a value of \$198,000 and it is encumbered by claims totaling approximately \$282,255. The movant holds the first and second deeds against the property, but the motion relates only to the first deed, securing a claim of approximately \$229,111.

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.

141. 08-38467-A-7      AARON/HEATHER HAYDEL      HEARING - MOTION FOR  
PD #2      RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS.      2-23-09 [27]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 New Orleans, Louisiana. The property has a value of \$180,000 and it is encumbered by claims totaling approximately \$203,500. 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. 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.

142. 09-20567-A-7 CAROLYN WILSON HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-19-09 [44]

**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 installment fee in the amount of \$74.75 due on March 16, 2009 was not paid.

However, the debtor paid the fee on March 26, 2009. No prejudice has resulted from the delay.

143. 09-20567-A-7 CAROLYN WILSON HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK, FSB, VS. 3-16-09 [38]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$123,007 and it is encumbered by claims totaling approximately \$206,910. 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 March 4, 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.

144. 09-20567-A-7 CAROLYN WILSON HEARING - MOTION FOR  
EDH #1 RELIEF FROM AUTOMATIC STAY  
HSBC BANK USA, N.A., VS. 3-15-09 [32]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

145. 08-38068-A-7 CHARLES/ALLEGRA TAYLOR  
PD #1  
CHEVY CHASE BANK, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
2-27-09 [56]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Chevy Chase Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$150,000 and it is encumbered by claims totaling approximately \$402,570. 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 February 19, 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.

146. 09-21468-A-7 BEE/MAI VUE  
EAT #1  
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-13-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Paul Financial, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of \$60,000 and it is encumbered by claims totaling approximately \$182,178. 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 March 25, 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.

147. 09-22369-A-7 SURJIT GISH HEARING - MOTION FOR  
JHW #1 RELIEF FROM AUTOMATIC STAY  
CHRYSLER FINANCIAL SVCS., ETC., VS. 3-3-09 [7]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a 2007 Dodge Magnum. The vehicle has a value of \$13,000 and its secured claim is approximately \$28,495.

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 March 23, 2009. 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.

148. 08-37472-A-7 EVANGELINE HAITH  
MDE #1  
LITTON LOAN SERVICING, LP., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-9-09 [32]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Litton Loan Servicing, seeks relief from the automatic stay as to a real property in Vallejo, California.

Given the entry of the debtor's discharge on March 18, 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 \$190,000 and it is encumbered by claims totaling approximately \$448,355. The movant's deed is in second priority position and secures a claim of approximately \$74,835.

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.

149. 08-38573-A-7 JONATHAN MASON HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO HOME MORTGAGE, INC., VS. 2-25-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Vallejo, California. The property has a value of \$145,000 and it is encumbered by claims totaling approximately \$206,266. 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 January 23, 2009. 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.

150. 08-38576-A-7 JEFFREY/LORI VANCE HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK NATION ASSN., VS. 3-3-09 [18]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, U.S. Bank, seeks only relief from the automatic stay as to a real property in Orland, California. The movant purchased the property at a pre-petition foreclosure sale on August 21, 2008. On October 27, the movant served the debtor with a notice to quit. On January 9, 2009, the movant commenced an unlawful detainer proceeding. The debtor filed the instant petition on December 16, 2008.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed under state law to obtain possession of the property, including the refile of an unlawful detainer action against the debtor in state court. The only issue to be determined in state court is entitlement to possession. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted under state law and by the state court.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

151. 09-21579-A-7 CHARLES/SUSAN MORGAN HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
WACHOVIA DEALER SERVICES, INC., VS. 3-27-09 [13]

**Final Ruling:** This motion has been voluntarily dismissed by the moving party. See Docket No. 19.

152. 08-26680-A-7 THEODORE/MARCELLA HONKANEN HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 3-10-09 [28]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Esparto, California.

Given the entry of the debtor's discharge on September 2, 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 \$303,000 and it is encumbered by claims totaling approximately \$443,217. The movant's deed is the only deed against the property, securing a claim of approximately \$439,217.

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 July 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.

153. 08-39180-A-7 ANNETTE JOHNSON HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
NATIONAL CITY MORTGAGE, VS. 3-5-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Portola, California. The property has a value of \$700,000 and it is encumbered by claims totaling approximately \$710,446. 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 February 2, 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.

154. 09-20980-A-7 RYAN JORGENSON AND HEARING - MOTION FOR  
MBJ #1 AMBER KOUCAUTHAKIS RELIEF FROM AUTOMATIC STAY  
SIERRA CENTRAL CREDIT UNION, VS. 3-26-09 [21]

**Final Ruling:** The motion will be dismissed without prejudice because the proof of service documents indicate that the debtors' counsel was served at an incorrect address, 25 Cadillac Drive, Suite 25 Sacramento, CA 95825, whereas the correct address is 25 Cadillac Drive, Suite 112 Sacramento, CA 95825. Accordingly, notice is defective.

155. 08-28182-A-7 GARRY/JEANNETTE SLOAN HEARING - VERIFIED MOTION FOR  
MPD #3 APPROVAL OF ATTORNEY FEES OF  
\$2,000.00 PLUS COSTS OF \$178.22 TO  
ATTORNEY FOR THE BANKRUPTCY  
ESTATE, FIRST AND FINAL REQUEST  
3-5-09 [57]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Michael Dacquisto, attorney for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$2,000 in fees and \$178.22 in expenses, for a total of \$2,178.22. This application covers the period from December 12, 2008 through March 4, 2009. The court approved the applicant's employment as the trustee's attorney on December 17, 2008. The requested compensation is based on a \$2,000 flat fee agreement.

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 obtaining court approval for the sale of two pieces of vacant land in Hayfork, California.

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

156.	09-21784-A-7	SHARON SHARP	HEARING - MOTION FOR
	PD #1		RELIEF FROM AUTOMATIC STAY
	WELLS FARGO HOME MTG., INC., VS.		3-9-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Redding, California. The property has a value of \$198,000 and it is encumbered by claims totaling approximately \$213,060. 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.

157. 09-25085-A-7 HUBERT ROTTEVEEL HEARING - MOTION FOR  
RVD #1 RELIEF FROM AUTOMATIC STAY  
SAM LAMONICA, VS. 3-25-09 [6]

**Final Ruling:** The motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest. The motion will be dismissed without prejudice.

158. 09-21783-A-7 THOMAS HONEYCUTT HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICA'S SERVICING CO., VS. 3-9-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Rancho Cordova, California. The property is not listed in Schedule A, but the movant's claim is listed in Schedule F. The movant has produced evidence that the property has a value of \$139,900 and it is encumbered by claims totaling approximately \$369,572. The movant's deed is in first priority position and secures a claim of approximately \$295,177.

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 March 25, 2009.



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 (9<sup>th</sup> 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.

160. 08-36989-A-7 PAMELA SOCKOLOV HEARING - MOTION FOR  
TAA #1 APPROVAL OF COMPROMISE ETC  
2-26-09 [29]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 the debtor over the debtor's previously undisclosed interest in a bank account with a balance of \$20,878.99, an IRA with a balance of \$72,734 and a real property in Sacramento, California. After the trustee discovered the assets, the debtor amended her schedules claiming the accounts fully exempt. The trustee indicated an intent to object to the claimed exemptions, which resulted into a settlement agreement resolving the estate's interest in the assets. Under the terms of the compromise, the debtor will decrease her exemption claims in the assets, giving the estate approximately 50% interest in the IRA and bank account, of \$37,742.85 and \$10,449.50 respectively.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the costs, uncertainties, 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 (9<sup>th</sup> Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

161. 08-38189-A-7 HORTENCIA/ANTONIO PAREDES HEARING - MOTION FOR  
RCO #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-16-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Sacramento, California.

Given the entry of the debtor's discharge on March 25, 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

\$265,000 and it is encumbered by claims totaling approximately \$502,984. The movant's deed is in first priority position and secures a claim of approximately \$409,303.

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 13, 2009.

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.

162. 08-38289-A-7 ROVIE ARENZANA  
MBB #1  
AMERICA'S WHOLESALE LENDER, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-5-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Elk Grove, California.

Given the entry of the debtor's discharge on March 25, 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 \$291,500 and it is encumbered by claims totaling approximately \$478,575. 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 January 13, 2009.

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.

163. 09-22189-A-7 WILFORD/SUSAN WRIGHT HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
AMERICA'S SERVICING CO., VS. 2-26-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Loomis, California. The property has a value of \$690,000 and it is encumbered by claims totaling approximately \$981,321. The movant's deed is in first priority position and secures a claim of approximately \$901,321.

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.

164. 09-22189-A-7 WILFORD/SUSAN WRIGHT HEARING - MOTION FOR  
JMS #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-10-09 [18]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, seeks relief from the automatic stay as to a real property in Loomis, California. The property has a value of \$690,000 and it is encumbered by claims totaling approximately \$931,860. The movant's deed is in second priority position and secures a claim of approximately \$82,424.

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.

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Paradise, California.

Given the entry of the debtor's discharge on March 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 debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$362,491. The movant's deed is in first priority position and secures a claim of approximately \$327,866.

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 March 11, 2009.

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.

166. 09-22492-A-7 CECIL JACOB  
RSS #1  
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-19-09 [13]

**Final Ruling:** Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by 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. When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b) (9) & (g). Here, the motion was served on the debtor but not the debtor's attorney. Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect. Therefore, service is defective and the motion must be dismissed without prejudice.

167. 08-36793-A-7 PAK/JEAN CHONG  
APN #1  
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-13-09 [32]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Elk Grove, California. The property has a value of \$302,000 and it is encumbered by claims totaling approximately \$364,213. The movant holds both the second and third deeds against the property, but the motion relates only to the second deed, securing a claim of approximately \$163,176.

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 February 10, 2009. 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.

168. 08-36793-A-7 PAK/JEAN CHONG HEARING - MOTION FOR  
VVF #1 RELIEF FROM AUTOMATIC STAY  
HONDA LEASE TRUST, VS. 3-16-09 [38]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2009 Honda Accord. The outstanding balance under the lease agreement is \$21,361. The debtor also has not made three post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on February 10, 2009.

The court concludes that the above is cause 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 vehicle, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

No fees and costs are awarded because the movant is not an over secured creditor. See 11 U.S.C. § 506.

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.

169. 09-20993-A-7 CHANTON LAM HEARING - MOTION FOR  
RSS #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A., VS. 3-11-09 [15]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advised the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However,

because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). Thus, the respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

170. 09-21493-A-7 AIDA BRIONES HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
INDYMAC FEDERAL BANK FSB, VS. 3-10-09 [24]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Orangevale, California. The property has a value of \$384,200 and it is encumbered by claims totaling approximately \$650,509. The movant's deed is in first priority position and secures a claim of approximately \$533,056.

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 March 11, 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.

171. 08-39094-A-7 VIVENCIO/MERCIA CARAGAY HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
3-18-09 [19]

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

This order to show cause was issued because both debtors failed to attend a meeting of creditors scheduled for and held on March 16, 2009.

However, the debtors have filed a response stating that they did not attend the meeting because they did not receive a notice of the meeting. They have indicated that the case will be converted to chapter 13 and that they will be attending the next meeting of creditors, currently scheduled for April 10, 2009. Given this, the order to show cause will be discharged and the case will remain pending.

172. 08-34895-A-7 JAVIER VERDIN AND HEARING - MOTION FOR  
RCO #2 MARIA GUTIERREZ RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 3-16-09 [46]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Pinole, California.

Given the entry of the debtor's discharge on February 4, 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 \$375,300 and it is encumbered by claims totaling approximately \$418,934. 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 19, 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.