

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 27, 2009 at 9:00 a.m.

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

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

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 26, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 12, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 19, 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 27, 2009 a.m.

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MATTERS FOR ARGUMENT

1. 09-22300-A-7 ROBERT/HAIDEE COOPER HEARING - MOTION FOR
HRH #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FIN'L CALIF., INC., VS. 4-13-09 [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, Wells Fargo Financial California, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$380,192. The movant's deed is in first priority position and secures a claim of approximately \$353,201.

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 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.

2. 09-21201-A-7 TIMOTHY/SHIRLEY KILLEBREW HEARING - MOTION FOR
SPA #1 RELIEF FROM AUTOMATIC STAY
UMPQUA BANK, VS. 4-13-09 [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, Umpqua Bank, seeks relief from the automatic stay as to a real property in Alta, California. The property has a value of \$351,400 and it is encumbered by claims totaling approximately \$376,549. The movant's deed is the only deed against the property, securing a claim of approximately \$369,414.

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. 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.

3. 08-35803-A-7 WESLEY RICE
WGM #1
JPMORGAN CHASE BANK, NA, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-09 [64]

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 Stockton, California. The property has a value of \$223,000 and it is encumbered by claims totaling approximately \$392,723. The movant's deed is in first priority position and secures a claim of approximately \$309,360.

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.

4. 08-39303-A-7 OWEN SULLIVAN
WWG #1

HEARING - MOTION FOR
ORDER APPROVING STIPULATION RE
EXTENSION OF DEADLINES TO DETER-
MINE DISCHARGEABILITY OF DEBTS
4-7-09 [23]

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

Creditor Alma Janus moves for approval of a stipulation with the debtor for a 62-day extension, from April 7 to June 8, 2009, of the deadlines for filing complaints objecting to discharge and determining the dischargeability of debts pursuant to 11 U.S.C. §§ 523 and 727. The extension is for the benefit of all

parties in interest. Alma Janus was not scheduled as a creditor and was not served with the notice of bankruptcy until about March 18, 2009.

Given the debtor's consent to the terms of the stipulation, the court will approve it and extend the deadline for filing complaints objecting to discharge and determining the dischargeability of debts as to Alma Janus. However, the court discerns no cause to extend the deadline for any other party in interest. The extension shall be through June 8, 2009.

5. 09-25203-A-7 ROBERT ROBICHAUD HEARING - MOTION FOR
RDW #1 RELIEF FROM AUTOMATIC STAY
AMERICAN GENERAL FIN'L SVCS., INC., VS. 4-10-09 [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, American General Financial Services, Inc., seeks relief from the automatic stay with respect to a 2005 Terry Travel Fifth Wheel. The vehicle has a value of \$32,000 and its secured claim is approximately \$49,862.

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. 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.

6. 08-37604-A-7 JOSE/MARTHA MENDOZA CONT. HEARING - MOTION
PPR #2 SEEKING AN AWARD OF ATTORNEY
FEES AND COSTS (\$1,225.00)
3-10-09 [23]

Tentative Ruling: The motion will be denied.

The original hearing on this motion was on April 13. The court issued the following ruling at that hearing.

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 (9th Cir. 1998).

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

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

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

The 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.

At the April 13 hearing on the motion, the court continued it to April 27 to provide the movant with opportunity to submit evidence on excusable neglect for filing the motion one day after the deadline prescribed in the court's ruling on the underlying motion for relief. The movant filed an amended supplemental declaration in support of the motion on April 20.

However, the declaration does not establish excusable neglect. It simply states that the movant "mistakenly filed the [m]otion one day" late and that "[i]t certainly was not [the movant's] intention to file the [m]otion one day late." In other words, the movant admits carelessness or neglect in calendaring the filing of the motion. Yet, it offers no evidence to show that the neglect was excusable. The court has no facts in the amended supplemental declaration about why the movant miscalendered the filing of the motion. The movant has not established that its neglect was excusable. Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (holding that relief from order under Rule 60(b) should not be given to a party whose failure to appear at a hearing was due to a mistake bordering on carelessness or was due to carelessness). Therefore, the motion will be denied.

7. 09-24706-A-7 RUTH BROUSSARD HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-25-09 [6]

Tentative Ruling: The case 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 27, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

8. 09-21207-A-7 JEFFREY/PATRICIA BIANCHINI HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-15-09 [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 Bank of America, seeks relief from the automatic stay as to a real property in Rio Linda, California. The property has a value of \$170,500 and it is encumbered by claims totaling approximately \$259,949. 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 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.

9. 09-21708-A-7 SCOTT/JEANNIE GODARD HEARING - MOTION FOR
AJP #1 DISMISSAL OR CONSOLIDATE THIS
CASE WITH CASE No. 09-21707
3-27-09 [13]

Tentative Ruling: The motion will be dismissed because it is not accompanied with a proof of service in violation of Local Bankruptcy Rule 9014-1(e)(1), (2).

10. 09-22412-A-7 JOSE/BERTHA FRIAS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS. 4-15-09 [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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$140,000 and it is encumbered by claims totaling approximately \$312,214. 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 23, 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.

11. 09-22715-A-7 CHERYL BARTON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-30-09 [21]

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 27, 2009. This is cause for dismissal. See 11 U.S.C. §§ 343, 707(a)(1).

12. 09-21019-A-7 LUCINDA BAUER, VS. CONT. HEARING - AMENDED MOTION FOR
ORDER AVOIDING NONPOSSESSORY,
NORTHEAST NEBRASKA NONPURCHASE-MONEY SECURITY
FEDERAL CREDIT UNION INTEREST IN EXEMPT AUTOMOBILE
3-31-09 [60]

Tentative Ruling: The motion will be denied.

The debtor moves to avoid a nonpossessory, nonpurchase money security interest in a 2003 BMW X5 held by Northeast Nebraska Federal Credit Union to secure its claim of approximately \$23,193.59. See Schedule D. In this amended motion, the debtor alleges that the vehicle qualifies as a prescribed health aid that is necessary for the vocational rehabilitation of her chronic health condition. See 11 U.S.C. § 522(f)(1)(B)(iii). The debtor also argues that the vehicle is a tool of her trade, the practice of law.

NNFCU opposes the motion, arguing that the lien is not a security interest in any tool of the trade or a professionally prescribed health aid. 11 U.S.C. § 522(f)(1)(b)(ii), (iii).

Section 522(f) provides that "(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is - . . . (B) a nonpossessory, nonpurchase-money security interest in any -

(I) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor."

First, the debtor alleges that the vehicle is a tool of her trade within the meaning of section 522(f)(1)(B)(ii). She argues that the vehicle is used as a tool of her trade as an attorney because it is used for travel "back and forth to court, to depositions, to discovery-related locations, to client and prospective-client meetings, and to facilities, as well as for the transportation of case files, tools, implements, materials, books, and equipment necessary to [her] profession."

The court disagrees that the debtor's vehicle in this case is a tool of the trade within the meaning of section 522(f)(1)(B)(ii). The debtor is a self-employed attorney with 13.5 years of experience. See Schedule I. Her vehicle is not a truck or a tractor, but is rather a luxury BMW SUV. And, while she uses the vehicle in her employment, that does not necessarily make it a tool of her trade. See In re McNutt, 87 B.R. 84, 87 (B.A.P. 9th Cir. 1988) (defining the test as whether the vehicle is used and is necessary to a debtor for his work, trade or occupation). While the debtor may need a vehicle, a BMW SUV is not necessary for her practice of law. An older coupe or sedan vehicle also can satisfy the debtor's necessity of transportation.

Moreover, the debtor reports only \$208.33 in average monthly income from her practice of law and reports \$4,238.50 as "net operating loss" and \$7,093.83 in average monthly expenses. See Schedules I & J. With such nominal operating income, the court finds it extremely difficult to believe that the debtor's business use of the vehicle amounts to even 10%. Hence, on the facts at hand, the court concludes that the vehicle is not necessary to the debtor's practice of law for purposes of section 522(f)(1)(B)(ii).

Second, the court also disagrees that the vehicle is a prescribed health aid within the meaning of section 522(f)(1)(B)(iii).

The evidence produced by the debtor to establish her medical condition is largely inadmissible hearsay, it is unauthenticated, and some of it is approximately 12 to 14 years old. The debtor has submitted exhibits in support of her motion, including (1) a rehabilitation progress report dated May 23, 1995 for a patient named Lucinda Meyer, prepared by Dr. Lisa Merritt; (2) a stipulation and order re: vocational rehabilitation dated August 2, 1996; (3) a compromise and release from the California Department of Industrial Relations dated August 2, 1996; (4) a printout from the Internet from the MayoClinic.com titled Myofascial pain syndrome and dated March 30, 2009; (5) the debtor's August 7, 1997 complaint to determine the dischargeability of student loans; (6) a printout from Carmax.com about 2004 BMW X5 vehicles, dated March 30, 2009; (7) an unidentified brochure on features about BMW vehicle generally; (8) the debtor's Schedule C from her 2006 federal tax return; (9) the debtor's declaration in support of a request to enter default and default judgment against former clients in unrelated litigation; (10) time sheets for the debtor's legal representation of clients; and (11) a statement of attorney's fees and costs in unrelated litigation.

But, virtually all of the exhibits contain out-of-court statements offered for the truth of the matter asserted therein. See Fed. R. Evid. 801. To that extent, then, the exhibits are inadmissible hearsay. See Fed. R. Evid. 802.

The debtor's statements in her declaration about the recommendations by Dr. Biga are also inadmissible hearsay. See Debtor's March 31, 2009 Declaration ¶ 5.

None of the exhibits are authenticated by a declaration or an affidavit of the individuals who prepared them. The debtor's own declaration does not even attempt to authenticate the exhibits. See Debtor's March 31, 2009 Declaration. Also, some of the exhibits contain deficient and/or irrelevant information. For instance, the progress report was prepared for a patient named Lucinda Meyer, not Lucinda Bauer. One of the submitted BMW brochures is about a 2004 BMW X5 and not the debtor's 2003 BMW X5. Item 6. The other BMW brochure discusses BMW vehicles in general. Item 7.

Even though the debtor is representing herself in these proceedings, she is an attorney licensed to practice law in California, with 13.5 years of experience. See Schedule I. Thus, the debtor is not entitled to the same leniency in the compliance with the Federal Rules of Evidence as would be afforded a non-attorney pro se litigant.

Further, even in the absence of the foregoing evidentiary deficiencies, a vehicle is not a professionally prescribed health aid, especially if it is an unmodified vehicle of general design. A vehicle is a transportation aid. In re Driscoll, 179 B.R. 664, 665 (Bankr. D. Ore 1995) (interpreting an Ohio exemption statute identical to 11 U.S.C. § 522(f)(1)(B)(iii) and holding that a 1990 Lexus LS400 is not "uniquely suited and principally used for the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body").

The debtor contends that Driscoll is distinguishable from the facts here because Driscoll's physical therapist, rather than his physician, recommended a vehicle specially-equipped for his needs. But, Driscoll did not focus on who recommended a specially-equipped vehicle. Rather, it focused on whether the therapist, as a health-care professional within the meaning of the statute, recommended a vehicle or merely discussed an option for a specially-equipped vehicle. Driscoll at 665.

The debtor alleges that in January of 2003, a doctor advised her to "consider acquiring a vehicle that provide[s] improved visibility such as an SUV to minimize [her] neck rotation and one which would better accomodat[e] [her] need to vary frequently the seat and steering wheel height and proximity to [her] body so as to better minimize the prolonged stressful pushing, pulling, and rotation of [her] head, neck, arms, and upper extremities as a result of driving." See Debtor's March 31, 2009 Declaration ¶ 5.

However, the BMW in this case is a vehicle of general design without any modifications. It is not uniquely suited to the debtor's condition. Although it may provide her with the visibility she was advised to have when driving, the doctor who advised her did not advise her to purchase an SUV or a BMW SUV. The doctor's reference is to a vehicle "such as an SUV." See Debtor's March 31, 2009 Declaration ¶ 5. And, the doctor did not reference any BMW vehicles. This means that the BMW vehicle was not a medically prescribed aid and is not an only or unique vehicle that meets the criteria described by her physician. Therefore, the court concludes that the debtor's 2003 BMW X5 SUV is not a prescribed health aid within the meaning of section 522(f)(1)(B)(iii).

Third, while the court is sympathetic to the debtor's financial situation in that she complains that she does not have the funds to purchase another

vehicle, this is not basis for holding that a vehicle of general design, such as her vehicle, is a prescribed health aid.

Finally, pursuant to In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough for a debtor to show in a motion under section 522(f) that an exemption was claimed on Schedule C without objection. To avoid a lien on exempt property, the debtor must prove entitlement to the exemption in the lien avoidance motion. "The exemption by default under section 522(l) is not an exemption 'to which the debtor would have been entitled under subsection (b)' of 11 U.S.C. § 522. [Citations omitted.] This language is not ambiguous and does not permit a lien to be avoided unless there is entitlement to exemption under section 522(b). It matters not at all that the property may be exempt by virtue of section 522(l)." In re Mohring, 142 B.R. at 393-394 (Bankr. E.D. Cal. 1992). The debtor has not proven or even discussed her entitlement to the claimed exemptions in the vehicle.

Consequently, it is irrelevant that neither the respondent nor anyone else objected to the debtor's exemption of the vehicle. She must establish her entitlement to the exemption in order to prevail on this motion. She has not done so.

The motion will be denied.

13. 09-23419-A-7 NATASHA NORRIS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-23-09 [25]

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

14. 09-24422-A-7 ERIC VALDEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-26-09 [5]

Tentative Ruling: The case 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 26, 2009. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

15. 09-24223-A-7 KERRY/CYNTHIA PETERSON HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, VS. 4-10-09 [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 motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Los Molinos, California. The property has a value of \$110,000 and it is encumbered by claims totaling approximately \$111,220. 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.

17. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OMNIBUS OBJECTION TO
MBS #1 "CLASS ACTION" CLAIMS OF FORMER
EMPLOYEES, CLAIM NOS. 74 TO 89
2-27-09 [401]

Tentative Ruling: The objection will be dismissed without prejudice.

The debtor and the official committee of unsecured creditors jointly object to proofs of claim 74 through 89 all by former employees of the debtor who are either named plaintiffs or are putative class members in a lawsuit filed against the debtor and a nonfiling entity Rayray Farm Labor Service, Inc. The lawsuit is currently pending before Judge Damrell in the district court, Eastern District of California. The objections and the corresponding oppositions to the objections are duplicative of the pending district court litigation. Therefore, now that the debtor has elected to dispute the claim in the bankruptcy, there is cause to modify the automatic stay to allow the district court to proceed with the litigation in order to liquidate the claims.

The district court action has been pending since February 3, 2007, more than one year before the filing of the bankruptcy petition. The district court has already denied a motion to dismiss by the debtor, paving the way for the lawsuit to move forward. The district court is already familiar with the lawsuit and has already begun its adjudication.

The claims include failure to pay FLSA overtime (title 29), failure to pay overtime wages (California Labor and Business and Professions Codes), failure to pay minimum wages (California Labor Code), failure to provide rest periods and meal periods or compensation in lieu thereof (California Labor Code),

failure to indemnify employees for incurred necessary expenditures or losses (California Labor Code), failure to timely pay wages due at termination (California Labor Code), failure to provide itemized employee wage statements (California Labor Code), breach of contract (California Labor Code), unfair competition violations (California Labor and Business and Professions Codes), and private attorney general act claims (California Labor Code). The claims invoke substantive rights provided by state law and substantive rights provided by federal statutory law, other than title 11. Thus, the claims are not under title 11 and do not invoke substantive rights provided by title 11. Also, by their nature, the claims could arise outside the context of a bankruptcy case.

Hence, the claims in the lawsuit then are only "related to a case under title 11." The only connection between the lawsuit and the bankruptcy case is the proofs of claim filed by the plaintiffs. As such, regardless of which court adjudicates the pending lawsuit, the debtor's hurdles of liquidating the claims and proposing a confirmable chapter 11 plan would be the same.

Further, the pending lawsuit involves a nonfiling defendant, Rayray Farm Labor Service, Inc. As Rayray is not a bankruptcy debtor, this court has no jurisdiction over the pending claims against Rayray. As a result, if the court does not defer to the district court, the claimants will litigate their claims twice, once here against the debtor and again in the district court against Rayray.

The plaintiffs have demanded a jury trial. The district court is best suited to conducting such a trial.

The court concludes that the debtor's challenge to the merits of the objections is cause for the granting of relief from the automatic stay pursuant to section 362(d)(1). Accordingly, the court will permit the continuation of the pending lawsuit in district court. However, the plaintiffs are allowed only to obtain a judgment against the debtor. The plaintiffs are not allowed to enforce or collect on any judgment entered against the debtor. Once a judgment is entered against the debtor, the plaintiffs must amend their proofs of claim against the estate.

18. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #1 CLASS ACTION CLAIM OF FORMER
EMPLOYEE AUDELIA SOREQUE
3-13-09 [432]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

19. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #2 CLASS ACTION CLAIM OF FORMER
EMPLOYEE ALEJANDRO MORALES
3-13-09 [428]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

20. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #3 CLASS ACTION CLAIM OF FORMER
EMPLOYEE BERTHA MEDINA
3-13-09 [440]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

21. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #4 CLASS ACTION CLAIM OF FORMER
EMPLOYEE SARA ACOSTA
3-13-09 [436]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

22. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #5 CLASS ACTION CLAIM OF FORMER
EMPLOYEE LILIA URIBE
3-13-09 [448]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

23. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
PP #6 CLAIM OF DOUGLAS KIRKLE
3-13-09 [406]

Tentative Ruling: The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the priority proof of claim of former employee of the debtor Kirkle Douglas (claim no. 21), in the amount of \$8,099.06. The claim is for 31 days of vacation accrual at the rate of \$261.26 per day. The objection argues that:

- 1) Mr. Douglas' priority claim is limited only to vacation accrual within 180 days before the April 17, 2008 petition filing,
- 2) his vacation accrual during the 180-day period is only 6.7 days, which translates into \$1,750.44,
- 3) yet Mr. Douglas was paid \$4,245.57 on March 3, 2008, after his last day at work on January 19, 2008 in the form of a severance,
- 4) the payments to employees labeled as severance were actually for vacation accruals because the debtor had no formal severance policy, and
- 5) the claim should be disallowed in its entirety pursuant to section 502(d) as the \$4,245.57 payment to Mr. Douglas is a preferential transfer avoidable pursuant to section 547(b).

Mr. Douglas has filed a response, contending that his last day as an employee of the debtor was February 29, 2008 and not on January 19, 2008 as claimed by the objection and that he was promised payment of vacation accrual.

The court agrees with the objection. 11 U.S.C. § 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a

transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property."

Regardless of the actual number of vacation days accrued, the instant proof of claim must be disallowed due to the \$4,245.57 payment received by Mr. Douglas from the debtor on or about March 3, 2008, only 45 days before the petition date. See Statement of Financial Affairs item 3. Such transfer is avoidable pursuant to section 547(b). The objection will be sustained.

24. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #6 CLASS ACTION CLAIM OF FORMER
EMPLOYEE DELFINA LOEZA GONZALEZ
3-13-09 [444]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

25. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
PP #7 PRIORITY CLAIM OF RON BENEVIDEZ
3-13-09 [410]

Tentative Ruling: The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the priority proof of claim of former employee of the debtor Ronald Benavidez (claim no. 92), in the amount of \$2,504.83. The claim is for unpaid sale commissions. The objection argues that the claim was filed late, on September 16, 2008, whereas the claims bar date was on August 21, 2008.

Mr. Benavidez has filed a response, contending that his "claim was late because [he] did not receive [his] proof of claim forms or notices on time."

However, Mr. Benavidez does not state when he actually received the notice to file claims or the proof of claim form. The proof of service for the notice to file claims shows that the notice and proof of claim form were mailed to Mr. Benavidez on April 23, 2008, nearly four months before the bar date. See Docket No. 36. Also, the documents were mailed to the same address for Mr. Benavidez as the address appearing on his response to the objection. Given this, the claim will be disallowed as tardy and the objection will be sustained.

26. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #7 CLASS ACTION CLAIM OF FORMER
EMPLOYEE FRANCISCO HERNANDEZ
3-13-09 [456]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

27. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
PP #8 PRIORITY CLAIM OF CHRIS MERRILL
3-13-09 [413]

Tentative Ruling: The objection will be disposed as provided below.

The official committee of unsecured creditors and the debtor jointly object to the proof of claim of former employee of the debtor Chris Merrill (claim no.

73). On its face, the claim is for a total amount of \$23,293.01. \$10,950 of the total claim amount is classified as a priority claim. The proof of claim form does not state whether the claim is for vacation accrual. It merely states that the claim is for "services performed." The "wages, salaries, or commissions" box has been checked as basis for the claimed priority portion of the claim.

But, in the attachment to the proof of claim, Chris Merrill requests payment of \$18,723.84 as a priority claim, for vacation accrual, as listed in Schedule E.

The objection requests the claim to be allowed in the amount of \$2,262 as a priority claim and \$16,461.89 as a general unsecured claim, for a total of \$18,723.89.

However, it is not clear from the proof of claim whether the \$18,723.84 amount in the attachment to the claim is part of the \$23,293.01 on the face of the claim. The amount in the attachment might be separate and distinct from the total amount on the face of the claim. Yet, the objection ignores the discrepancy in amounts between the face and attachment of the claim. The objection assumes that the only relevant amount is the \$18,723.84 in the attachment to the claim. The court cannot ignore the discrepancy in ruling on the objection, as the face of the proof of claim already claims \$10,950 of the total \$23,293.01 claim as a priority claim. The amounts in the proof of claim are not consistent with each other and the claim is not clear about the actual priority amount claimed. Therefore, the claim will be disallowed in its entirety but Chris Merrill may file an amended proof of claim within 30 days of service of the order on this objection. The amended proof of claim shall cure the foregoing discrepancies.

28. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #8 CLASS ACTION CLAIM OF FORMER
EMPLOYEE HECTOR PECH
3-13-09 [452]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

29. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #9 CLASS ACTION CLAIM OF FORMER
EMPLOYEE JUAN LOPEZ
3-13-09 [464]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

30. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #10 CLASS ACTION CLAIM OF FORMER
EMPLOYEE LUIS PECH
3-13-09 [460]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

31. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #11 CLASS ACTION CLAIM OF FORMER
EMPLOYEE MERCEDES CHAVEZ
3-13-09 [472]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

32. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #12 CLASS ACTION CLAIM OF FORMER
EMPLOYEE OFELIA ROMAN
3-13-09 [468]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

33. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #13 CLASS ACTION CLAIM OF FORMER
EMPLOYEE ALBA PONCE
3-13-09 [484]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

34. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #14 CLASS ACTION CLAIM OF FORMER
EMPLOYEE JULIUS RAMIREZ
3-13-09 [480]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

35. 08-24927-A-11 MAINLAND NURSERY, INC. HEARING - OBJECTION TO
MBS #15 CLASS ACTION CLAIM OF FORMER
EMPLOYEE CELEN ROMAN
3-13-09 [476]

Tentative Ruling: The court adopts its ruling on the Omnibus Objection to Class Claims of Former Employees (DC No. MBS #1).

36. 09-23328-A-7 JAY PROMISCO AND HEARING - MOTION FOR
KAT #1 NEISHA FOWLER RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 4-6-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$603,225. The movant's deed is in first priority position and secures a claim of approximately \$490,385.

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

37. 09-20431-A-7 ABRAHAM/SONIA MARTINEZ HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
HSBC MORTGAGE SERVICES, VS. 4-2-09 [14]

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

The motion will be granted.

The movant, HSBC Mortgage Services, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$134,000 and it is encumbered by claims totaling approximately \$325,157. 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 \$237,865.

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 17, 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.

38. 09-21935-A-7 MARICEL LAXAMANA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 4-6-09 [20]

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 Mortgage, seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$507,468. 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 \$398,547.

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.

39. 09-21935-A-7 MARICEL LAXAMANA HEARING - MOTION TO
TJW #1 DISMISS CHAPTER 7 PROCEEDING
3-5-09 [11]

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

Also, the motion does not identify the other case filed by this debtor.

40. 09-23837-A-7 ESTEL/VELTA WOODCOCK HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 4-2-09 [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, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Sacramento, California.

The debtor has filed a non-opposition to the motion.

The property has a value of \$150,000 and it is encumbered by claims totaling approximately \$331,083. The movant's deed is in second priority position and secures a claim of approximately \$49,190.

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 HEARING - MOTION FOR
BLL #3 CENTER, LLC ORDER AUTHORIZING EMPLOYMENT
OF COUNSEL FOR TRUSTEE
4-7-09 [104]

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 approval to employ Byron Lynch and Michael Dacquisto as co-counsel for the estate. They 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 them on a one-third contingency fee basis. The fee will be calculated on the basis of liquidated unencumbered receivables, equipment, inventory, and other tangible or intangible assets, including causes of action prosecuted on behalf of the estate. Mr. Lynch will be entitled to two-thirds of any awarded compensation, while Mr. Dacquisto will be entitled to one-third of any awarded compensation.

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."

The court concludes that the terms of employment and compensation are reasonable. Mr. Lynch and Mr. Dacquisto are disinterested persons within the meaning of 11 U.S.C. § 327(a) and do not hold an interest adverse to the estate. Accordingly, the motion will be granted.

42. 09-20140-A-7 SHASTA REGIONAL MEDICAL HEARING - MOTION FOR
HSM #2 CENTER, LLC APPROVAL OF STIPULATION FOR
SIEMENS MEDICAL SOLUTIONS USA, INC., VS. RELIEF FROM AUTOMATIC STAY
USA, INC., VS. 4-15-09 [122] O.S.T.

Tentative Ruling: The motion will be granted.

Siemens Medical Solutions U.S.A., Inc. moves the court to approve a stipulation between the estate and Siemens lifting the automatic stay with respect to a leased E Cam variable nuclear medicine unit. The debtor has defaulted under the terms of the lease agreement by failing to make payments on account of the lease. The outstanding amount under the lease is approximately \$317,610. And, the estate is in no need of the equipment as the debtor is no longer operating. Given this, the court concludes that cause exists for the approval of the stipulation. The motion will be granted.

43. 09-20940-A-7 HERMINIA SANTILLAN HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-16-09 [22]

Tentative Ruling: The motion will be denied.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Coldwell Banker Home Loans, seeks relief from the automatic stay as to a real property in Rio Linda, California. However, the alleged value and encumbrances against the property in Rio Linda are for a real property in Sacramento, California. See Schedules A and D. The debtor has scheduled no property in Rio Linda, California. The only property in the debtor's schedules is a property in Sacramento, California. Given this discrepancy, the court has no evidence of the value and encumbrances of a real property in Rio Linda, California. The court also has no evidence that the debtor has claimed an interest in such property. Accordingly, the motion will be denied.

44. 09-22940-A-7 JEREMY LICO HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 4-9-09 [17]

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 Chico, California. The property has a value of \$209,000 and it is encumbered by claims totaling approximately \$289,041. The movant's deed is in second priority position and secures a claim of approximately \$58,241.

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 April 8, 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.

45. 08-38443-A-7 TAMELA MOORE HEARING - MOTION TO
MAA #1 REDEEM PERSONAL PROPERTY
3-20-09 [20]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2004 Ford Expedition with 46,090 miles in fair condition. The debtor claims that the vehicle has a retail value of \$13,509 based on a printout from Edmunds.com. The debtor listed The Golden One Credit Union as holding a secured claim in the approximate amount of \$27,652 in Schedule D.

The Golden One Credit Union opposes the motion, arguing that the vehicle has not been exempted by the debtor and it challenges the debtor's valuation of the vehicle.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

The debtor has claimed an exemption of \$13,509 in Amended Schedule C, pursuant to Cal. Civ. Proc. Code 703.140(b)(5). See Docket No. 26.

The vehicle must be valued at its replacement value as of the petition date. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the

price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

Here, the debtor has produced a vehicle condition report and a separate printout from Edmunds.com in support of her valuation of the vehicle. However, the information in these documents is inadmissible hearsay. See Fed. R. Evid. 802. The report and printout are not accompanied by a declaration or an affidavit of the person who prepared or obtained them. Also, while the vehicle condition report reports that the vehicle is not four wheel drive, the Edmunds printout reports that it is a four wheel drive. Further, it is not clear from the Edmunds printout how the base price of the vehicle was calculated. The printout simply states that the retail national base price is \$14,663. Thus, the court does not have admissible and sufficient evidence of value. Accordingly, the motion will be denied.

46. 06-20046-A-11 LARGE SCALE BIOLOGY CORPORATION HEARING - MOTION FOR ORDER RE CONTEMPT OR IN THE ALTERNATIVE FOR AN ORDER TO SHOW CAUSE RE CONTEMPT 3-23-09 [1107]

Tentative Ruling: The motion will be denied.

Kevin Ryan, creditor and former principal of the debtor, moves the court to hold John Rakitan, Gershon Wolfe, and Advanced Ideas in Medicine, LLC in contempt for violating an injunction in the debtor's confirmed plan by attempting to repossess property of the bankruptcy estate that was seized by the Vacaville Police Department from them in February 2006, about two months after the filing of the bankruptcy petition. The property includes, without limitation, items described as LSBC paper, BAMF reports, and PDI paper. The respondents have filed a proceeding in the Solano County Superior Court for the return of the property.

Mr. Ryan is the plaintiff in recently remanded state court litigation against the respondents, including claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty claims, fraud, conversion, aiding and abetting conversion, breach of contract, breach of duty of loyalty, and civil conspiracy. The litigation includes both personal claims of Mr. Ryan, as well as claims of the debtor assigned to Mr. Ryan. The estate has assigned all of its claims against the respondents to Mr. Ryan. In exchange, the estate has an interest in 20% of the recovery on the assigned claims.

Mr. Ryan alleges that the bankruptcy estate has declined to pursue contempt proceedings due to lack of resources.

The debtor has filed a response, contending that the plan administrator cannot determine whether and to what extent the property in question is property of the estate based on the descriptions of the items in Vacaville PD's report. Nonetheless, the debtor asks for an order compelling the respondents to inventory and segregate the property, and to allow the debtor time to determine whether the estate has any interest in or claim to the property. The debtor takes no position on the request for contempt.

Doubling as a counter-motion, the debtor's response moves the court to re-close the case after adjudication of the motion. The debtor asserts that the case was reopened solely for the purpose of administering the removed state court

action involving Mr. Ryan and the respondents. The action has been already remanded.

The respondents have filed an opposition, contending that: (1) this court lacks post-confirmation jurisdiction over this motion; (2) Mr. Ryan does not have standing to prosecute the motion; (3) either mandatory or permissive abstention applies; (4) the contempt requested by Mr. Ryan is criminal and cannot be imposed by this court; (5) Mr. Ryan has not established civil contempt by clear and convincing evidence; and (6) contempt cannot be imposed because (I) the property and the respondents are not subject to the injunction in the plan, (ii) because they did not receive sufficient notice of the injunction, and (iii) because the estate's interest in property has been either abandoned or assigned to Mr. Ryan.

The respondents also object to the admissibility of Mr. Ryan's declaration. The objections include lack of foundation, lack of personal knowledge, and hearsay.

Mr. Ryan has filed a reply asserting that (a) this court has jurisdiction because the estate has 20% interest in the recovery on the claims assigned to Mr. Ryan, (b) he has standing to prosecute this motion as a creditor in the bankruptcy case, (c) the respondents need only to have had personal knowledge of the injunction to be held in contempt; formal notice of the injunction is not necessary, and (d) the respondents cannot argue in this case that the estate's interest in the property in question has been assigned to Mr. Ryan, while arguing in the state court action that the same assignment is void.

The motion puts in issue whether Rakitan, Wolfe, and AID possess, have possessed, and/or are now attempting to repossess property of the debtor. As a result, the motion is directly related to the claims in the remanded state court action. The action includes claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraud, conversion, aiding and abetting conversion, breach of contract, breach of duty of loyalty, and civil conspiracy. But, because the court remanded the action to state court, this court has effectively surrendered jurisdiction over the claims and issues in the action to the state court. See e.g., Huth v. Hartford Ins. Co. of the Midwest, 298 F.3d 800, 802 (9th Cir. 2002); see also Snodgrass v. Provident Life and Acc. Ins. Co., 147 F.3d 1163, 1166 (9th Cir. 1998). This includes the issues raised by this motion. Hence, the court does not have jurisdiction over the issues raised in the motion.

Therefore, the motion will be denied.

47. 06-20046-A-11 LARGE SCALE BIOLOGY HEARING - COUNTER
FWP #58 CORPORATION MOTION TO RE-CLOSE CASE
4-13-09 [1113]

Tentative Ruling: The motion will be granted.

The court adopts its ruling on the motion for order of contempt. See Docket No. 1107.

48. 09-23946-A-7 MATTHEW/MELISSA CANIGLIA HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 3-31-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$358,500 and it is encumbered by claims totaling approximately \$417,083. The movant's deed is in first priority position and secures a claim of approximately \$337,251.

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

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

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

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

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

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

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

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

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

49. 08-34347-A-11 MBD, INC.
WCL #13

HEARING - MOTION FOR
APPROVAL OF AGREEMENTS WITH
TRI COUNTIES BANK GOVERNING
USE OF CASH COLLATERAL AND
POST-PETITION FINANCING
4-13-09 [238]

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

The motion will be granted.

The debtor in possession moves the court to approve two stipulations with Tri-Counties Bank. One is a stipulation for use of cash collateral and the other one is for DIP financing. The financing stipulation is actually a stipulation for the modification of two loans held by the bank.

Under the stipulation for use of cash collateral, the bank has agreed for the debtor to use its cash collateral rents from the debtor's two commercial buildings. The bank holds two separate loans on each of the buildings. The debtor may use the rents as long as it first applies them toward expenses for the operation and maintenance of the buildings and toward the making of the regular loan payments to the bank.

Under the financing stipulation, the parties have agreed to extend the maturity date of the loan secured by a deed of trust on the debtor's lot 57. The maturity date is extended from October 2, 2008 to December 15, 2009. The stipulation also re-amortizes one of the loans secured by a deed of trust on one of the debtor's two commercial buildings, to reflect reduction in the loan principal from the pre-petition sale of another property encumbered by the deed of trust, known as the Forest Avenue Property.

The stipulations allow the debtor to use cash collateral rents from its commercial buildings, while ensuring the funding for the building's management and operation. The stipulations also relieve the debtor from default on a loan that has already matured by extending the maturity date. And, the stipulations lower the debtor's regular monthly payment on a loan by re-amortizing it. Overall, the stipulations lower the debtor's monthly loan obligations and provide it with the potential to use cash collateral rents, while ensuring that management and operation expenses are paid first. This is in the best interest of the estate and the creditors. Accordingly, the stipulations will be approved. The motion will be granted.

50. 08-36148-A-11 COPPERFORD, LLC
CWC #2

HEARING - SECOND MOTION FOR
FURTHER AUTHORITY TO USE CASH
COLLATERAL
3-30-09 [123]

Tentative Ruling: The motion will be denied.

The debtor in possession seeks authority for further use of cash collateral, including rents previously intercepted by the debtor's principal secured creditor, Pacific State Bank, holding a \$2.832 million claim consisting of several promissory notes secured by the debtor's winery assets, including accounts, equipment, general intangibles, contracts, leases and fixtures. The debtor operates a winery on 23.61 acres in Lockeford, California, with approximately 10 lease tenants in boutique wineries, with dining, banquet and tasting rooms, bonded warehouse, storage, barreling/cooperage, and wine/spirits production facilities.

The remaining creditors of the debtor that may have an interest in the debtor's cash collateral are: SCRS Investors, LLC, holding a deed of trust against the real property, securing a note in the original principal amount of \$500,000; Ashland Capital, LLC, holding a deed of trust against the real property, securing a note in the original principal amount of \$50,000; Frank Crivello holds a security interest on all tangible and intangible assets, including without limitation to improvements, furniture, fixtures, equipment, inventory, notes receivables, and accounts receivable, securing two notes with a total outstanding balance of \$169,440.

The debtor seeks to use the cash collateral through June 30, 2009, to meet its ongoing operating expenses, including paying payrolls, paying liability, auto, and health insurance, paying its utilities and bank fees, paying the necessary operating expenses of the winery, which includes items such a fork lift rental, lab services and bottling expenses, and paying the maintenance costs for the premises leased to its tenants. For more details on the debtor's budget projections, interested parties should review the exhibit to the order granting the debtor's prior interim use of cash collateral, entered on March 5, 2009.

Creditor J.W. Scott Co's, Inc. opposes the motion, arguing that: (1) the February 2009 operating report shows that the debtor is not meeting its projections; (2) the February report was filed 22 days late; (3) the operating reports do not reflect the accrual of interest on secured claims, other than the bank's claim; (4) the operating reports reflect only \$304 in collections on pre-petition receivables with a scheduled value of \$100,000 and face value of \$328,395; and (5) a 2004 exam conducted on April 3 has revealed that two tenants occupying three of the debtor's properties have defaulted on their lease obligations and that the obligations of Gigolo, a tenant which vacated its space in March 2009, are still outstanding.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights under section 363. Section 363(c)(2)(B), (c)(3), (e) provides that, when secured claimants with interest in cash collateral do not consent to its use, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

Initially, the opposition of J.W. Scott will be stricken as late. It was filed on April 14, only 13 days before the hearing, instead of the required 14 days before the hearing. See Local Bankruptcy Rule 9014-1(f)(1).

Nonetheless, the motion will be denied. While the debtor refers to a budget submitted and attached to the court's March 5 order authorizing interim use of cash collateral, the debtor has produced no evidence that it has met its financial projections for February, March and April, to the extent available. Also, the court does not have evidence about whether there are any changes to the debtor's financial condition since the hearing on the last request for use of cash collateral. The motion and supporting declaration discuss principally the debtor's plan providing for the sale of its real property. Even though the filing of the plan is a positive development, this is not sufficient to assist the court in determining whether further use of cash collateral should be granted. The motion will be denied.

51. 08-36148-A-11 COPPERFORD, LLC HEARING - COUNTER-MOTION FOR
PA #2 APPOINTMENT OF CHAPTER 11 TRUSTEE
4-14-09 [139]

Tentative Ruling: The motion will be dismissed.

Secured creditor J.W. Scott Co's, Inc. moves the court for the appointment of a chapter 11 trustee. However, the motion was filed on April 14, 2009, only 13 days before the scheduled hearing of April 27. And, the moving party has not obtained an order from the court shortening the time for filing of the motion. The motion then does not comply with any of the filing requirements of Local Bankruptcy Rule 9014-1(f). Accordingly, it will be dismissed.

52. 08-36148-A-11 COPPERFORD, LLC HEARING - MOTION FOR
08-2622 REMAND
JAMES/SUSAN COLAFRANCESCO, VS. 4-8-09 [23]
COOPERFORD, LLC

Tentative Ruling: The motion for remand will be granted.

Dwight Russi, one of the defendants and a third-party plaintiff in this adversary proceeding, seeks remand of this removed action from state court. Susan and James Colafrancesco, the plaintiffs in this proceeding, oppose abstention or remand.

The plaintiffs filed a complaint against the debtor, Don and Karyn Litchfield, Mr. Russi, and Busaba Voraritskul. Answers have been filed by all named defendants. The debtor has also filed counter-claims against the plaintiffs. The plaintiffs have answered the counter-claims. Additionally, Mr. Russi has filed cross-claims against the debtor and the Litchfields. The debtor and the Litchfields have answered the cross-claims.

Remand to state court is appropriate.

The court agrees that abstention is not applicable because the entire state court action was removed to this court. Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c) (1) and 1334(c) (2) do not apply when "there is no pending state proceeding.").

However, remand is appropriate. 28 U.S.C. § 1452(a) provides that "a party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title."

28 U.S.C. § 1452(b) provides that the court "may" remand a removed action "on any equitable ground." Those grounds include judicial economy, comity and respect for the state court's decision-making capabilities, the effect of remand upon administration of the bankruptcy estate, the effect of bifurcating claims and parties and the possibility of inconsistent result, predominance of state law issues and non-debtor parties, and prejudice to other parties in the action. Western Helicopters, inc. v. Hiller Aviation, Inc., 97 B.R. 1, 6 (E.D. Cal. 1988); see also Williams v. Shell Oil Co., 169 B.R. at 692-93.

First, the court disagrees with the plaintiffs that the pending claims are core. Bankruptcy jurisdiction extends to four types of title 11 matters, cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006). The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." For instance, 28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to- (A) matters concerning the administration of the estate."

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1).

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id. Finally, a proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr.

N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

In this case, the removed proceeding consists only of state law claims, including sale of securities induced by misrepresentation and omission of material fact (California Corporations Code); fraud, deceit and misrepresentation (California Civil Code); fraud, deceit and intentional misrepresentation (California Civil Code); breach of fiduciary duty; negligent misrepresentation; violation of California Corporations Code provisions; slander of title; and fraudulent dishonor of check and underlying obligation (California Civil Code). The plaintiffs seek the following relief: injunctive relief, declaratory relief, rescission, accounting, constructive trust, receivership, damages, and punitive damages. Thus, none of the claims in the pending lawsuit are under title 11 and none of them invoke substantive rights provided by title 11. Also, the claims could arise *outside* the context of a bankruptcy case. The claims were originally brought in state court, before and outside the context of a bankruptcy case.

Hence, the claims are only "related to a case under title 11." The sole connection between the state court claims and the bankruptcy case are the proofs of claim filed against the estate by the plaintiffs and Mr. Russi. See Claim Nos. 42 and 56. As such, regardless of which court adjudicates the claims, the debtor's hurdles of estimating the claims of the plaintiffs and Mr. Russi and proposing a confirmable chapter 11 plan would be the same. Therefore, remand would have no effect on the administration of the estate.

Second, because the claims are only related to a case under title 11, this court may not enter final orders or judgments. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). The court does not have the consent of the parties in this case.

Third, the court disagrees that remand would double the plaintiffs' litigation costs and would not favor judicial economy and comity as it would result in both the state court and this court adjudicating the same issues. The plaintiffs are not clear as to how remand would double their litigation costs. They are not specific regarding the issues would have to be adjudicated by both courts. Bankruptcy courts routinely allow the resolution of such disputed claims outside the bankruptcy context, whether brought by the debtor or against the debtor. Remand to state court would simply liquidate the pre-petition claims of the plaintiffs and Mr. Russi against the estate. Assuming a judgment is entered against the debtor, the plaintiffs and/or Mr. Russi would have to return to this court and amend their proof of claim against the estate, reflecting the amount of that judgment. This court would not permit the plaintiffs or Mr. Russi to enforce such a judgment entered against the debtor. This court then would not have to adjudicate the same issues the state court would have to adjudicate upon remand.

Moreover, even if a bankruptcy court would have to address previously adjudicated claims or issues by another court, issue and claim preclusion are available to prevent duplicative litigation, prevent duplicative litigation costs and prevent risk of inconsistent judgments.

Fourth, in order for this court to conduct a jury trial, all parties must consent. 28 U.S.C. § 157(e). But, while Mr. Russi demands a jury trial, he

does not consent to this court conducting the jury trial.

Fifth, even if the court did have the consent to a jury trial by all the parties, this court is not equipped to conduct the likely multi-week trial. This court's docket and law and motion schedule would not permit such a trial. In light of the foregoing, the court concludes that equitable remand is appropriate. Accordingly, the adversary proceeding will be remanded back to state court.

Finally, this court will grant relief from the automatic stay to permit the continuation of the state court action, after remand. The necessity for liquidation of the claims of the plaintiffs and Mr. Russi is cause for the granting of relief from the automatic stay pursuant to section 362(d)(1). However, the plaintiffs and Mr. Russi are allowed only to obtain a judgment against the debtor. They are not allowed to enforce or collect on any judgment. Assuming a judgment is entered against the debtor, the plaintiffs and/or Mr. Russi must return to this court to amend their proofs of claim against the estate.

53. 08-36148-A-11 COPPERFORD, LLC CONT. STATUS CONFERENCE
08-2622 11-17-08 [1]
JAMES/SUSAN COLAFRANCESCO, VS.
COOPERFORD, LLC

Tentative Ruling: None.

54. 09-20648-A-7 WILLIAM DAVENPORT HEARING - MOTION FOR
RSL #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 4-13-09 [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, Bank of America, seeks relief from the automatic stay with respect to an already surrendered 2007 Toyota Highlander. The vehicle has a value of \$20,000 and its secured claim is approximately \$32,133.

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 February 25, 2009. And, the debtor surrendered the vehicle to the movant on or about January 15, 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) and

(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

55. 09-21248-A-7 MICHAEL GLAZIER
EDH #1
OCWEN LOAN SERVICING, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [27]

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, Ocwen Loan Servicing, seeks relief from the automatic stay as to a real property in Georgetown, California. The property has a value of \$346,500 and it is encumbered by claims totaling approximately \$394,647. The movant's deed is in first priority position and secures a claim of approximately \$365,001.

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.

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.

56. 09-21049-A-7 KATHLEEN MATLEY HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, VS. 4-3-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of \$120,000 and it is encumbered by claims totaling approximately \$163,257. 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.

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. 08-38850-A-7 CHILE VERDE, LLC

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [17]

Tentative Ruling: The case will remain pending on condition that counsel for the petitioning creditors serves all creditors with a copy of the February 11 Notice of Chapter 7 Bankruptcy Case, etc. This service shall occur no later than May 4 and a proof of service shall be filed no later than May 7. If the foregoing is not done, the petition will be dismissed without further notice or hearing.

58. 09-23950-A-7 MATT HIRSA
WGM #1
JPMORGAN CHASE BANK N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-3-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$335,500 and it is encumbered by claims totaling approximately \$471,147. See Schedule D. The property is not listed in Schedule A. The movant's deed is in first priority position and secures a claim of approximately \$331,566.

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

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

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

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

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

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

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

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

59. 08-39251-A-7 KATHERINE CLARK HEARING - MOTION FOR
HLC #1 RELIEF FROM AUTOMATIC STAY
BUTTE COMMUNITY BANK, VS. 4-7-09 [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, Butte Community Bank, seeks relief from the automatic stay with respect to the inventory, accounts receivable, equipment, machinery, general intangibles, furnishings, and fixtures of Aleva Medical Exams, Inc. The property has a value of \$7,576 and its secured claim is approximately \$79,283. See Schedules B and D.

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. 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. Finally, the movant does not have information that the property has insurance coverage. 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 property is depreciating in value.

60. 09-24051-A-7 MARSHA CHILDS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 4-3-09 [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, U.S. Bank, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$192,500 and it is encumbered by claims totaling approximately \$423,415. 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.

61. 08-29554-A-7 DAVID CLARK HEARING - MOTION FOR
08-2567 SMO #2 SUMMARY JUDGMENT
SUSAN KRIMEL, VS. 3-30-09 [13]
DAVID CLARK

Tentative Ruling: The motion will be denied.

The plaintiff Susan Krimel moves for summary judgment on the basis that the defendant David Clark, who is also the debtor in the underlying bankruptcy proceeding, did not respond to requests for admission and that such requests are deemed admitted.

The defendant maintains that he received no discovery from the plaintiff. The defendant has also produced evidence of allegedly unanswered numerous telephone calls to counsel for the plaintiff.

Given the defendant's denial of receiving the discovery referenced in the motion, the court will deny the motion without prejudice.

62. 08-33454-A-7 K.S. MCCCELLAND HEARING - AMENDED MOTION FOR
KSM #3 HEARING TO CONVERT BANKRUPTCY FROM
CHAPTER 7 TO CHAPTER 13
2-12-09 [25]

Tentative Ruling: The motion will be denied.

The debtor moves for conversion from chapter 7 to chapter 13.

The trustee filed a report of no distribution on January 16, 2009 and the debtor obtained a chapter 7 discharge on January 27, 2009.

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

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

However, the court does not have evidence that the debtor has regular and

sufficient income to pay the claim secured by his residence. In his recently filed chapter 13 plan, the debtor discloses monthly income of \$1,428.95, whereas in Schedule I the debtor discloses only \$802.47 in monthly income. The debtor has not explained this discrepancy. The debtor also has not explained the absence of his mortgage payment from Schedule J; the mortgage payment is included in the chapter 13 plan. Further, the dividends proposed in the plan total \$1,511.06. This exceeds the debtor's alleged income of \$1,428.95. Given these discrepancies, the motion will be denied.

63. 09-21755-A-7 CHARLES/AZUCENA LIGHTY HEARING - MOTION TO
RECONSIDER DISMISSAL
3-20-09 [19]

Tentative Ruling: The motion will be denied.

Debtor Charles Lighty moves the court to reconsider the dismissal of the case on March 9, 2009 on an order to show cause due to the debtors' failure to pay the petition filing of \$299. The fee was paid on March 20, at the same time this motion was filed.

However, the motion will be dismissed because it was not served on any of the parties in interest, including the trustee, the creditors, and the U.S. Trustee.

Further, the motion does not explain why the debtors initially failed to pay the filing fee when it was due. The motion states that Mr. Lighty "misunderstood about payment that came in mail." While the court is unsure what this means, it does not explain the nature of the misunderstanding. And, no explanation is given for the failure of the debtors to appear at the March 9, 2009 order to show cause hearing. That hearing was set on notice to the debtors. They were informed in the order to show cause that the hearing would concern their failure to pay the filing fee. If they had appeared, perhaps any misunderstanding could have been resolved. They failed to appear and the case was dismissed.

Because the motion explains neither the failure to timely pay the filing fee or the failure to appear on March 9, the motion will be denied.

64. 09-24456-A-7 RICHARD/JULIE FULWIDER HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 4-10-09 [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, Wachovia Dealer Services, Inc., seeks relief from the automatic stay with respect to a 2004 Chevrolet Silverado.

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 May 12, 2008, the debtors filed a chapter 13 case (case no. 08-26157). But, the court dismissed that case on December 18, 2008 due to the debtors' failure to make plan payments. The debtors filed the instant case on March 16, 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 vehicle, expired as to the debtors on April 15, 2009, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A).

As to the estate, the analysis is different. The vehicle has a value of \$17,290 and its secured claim is approximately \$18,065.

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.

Accordingly, the motion will be granted as to the estate 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 debtors without compensation and is depreciating in value.

65.	08-22158-A-7	JEAN/SONIA LAPEYRI	HEARING - MOTION FOR
	KAT #1		RELIEF FROM AUTOMATIC STAY
	U.S. BANK N.A., VS.		4-7-09 [65]

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, U.S. Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$261,000 and it is encumbered by claims totaling approximately \$403,776. 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 17, 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.

66. 08-38360-A-7 JASON/CHRISTINA LEE HEARING - MOTION FOR
MEH #1 REDEMPTION
WFS/WACHOVIA DEALER SERVICES 4-1-09 [16]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2006 Ford Freestyle with approximately 37,300 miles in a fair condition. The debtor claims that the vehicle has an estimated retail value of \$9,200 based on an appraisal prepared by Collateral Valuation Services. The debtor listed Wachovia Dealer Services as holding a secured claim in the approximate amount of \$19,958 in Schedule D.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

The vehicle must be valued at its replacement value as of the petition date. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

First, the appraisal report has no foundation and it is inadmissible hearsay. See Fed. R. Evid. 802. The report is not accompanied by a declaration or an affidavit of the person who prepared it, Andrea Wessel. And, the court has no evidence that Ms. Wessel was qualified to prepare the appraisal report on the vehicle. Thus, the court does not have admissible evidence of value.

Second, the debtor claimed an exemption in the vehicle in the amount of \$0.00. This is tantamount to claiming no exemption. Absent an allowed exemption, the vehicle cannot be redeemed pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992). Accordingly, the motion will be denied.

67. 09-23465-A-11 MOORE EPITAXIAL, INC. HEARING - MOTION TO
HLC #2 EMPLOY AND COMPENSATE BANKRUPTCY
COUNSEL ON A FIXED FEE BASIS
3-30-09 [32]

Tentative Ruling: The motion will be denied.

The debtor in possession seeks approval to employ Hollister Law Corporation as counsel for the estate. HLC will provide the debtor with the following services: (1) advising it about its powers and duties as debtor in possession; (2) advising it about the administration of the estate; (3) preparing all necessary pleadings and documents for the administration of the estate, including without limitation, a plan and disclosure statement; and (4) assisting the debtor with all other necessary services in connection with this bankruptcy. HLC's proposed compensation is as follows: the greater of (I) the net retainer in the amount of \$77,525 or (ii) 10% of the aggregate distributions, including, without limitation, to dividends paid by the debtor or its successors to its shareholders on account of the shareholders' equity interests in the debtor. Also, HLC will be reimbursed for its costs in providing services to the debtor. And, HLC seeks permission to monthly offset against the net retainer invoices to be served on the debtor, the committee of unsecured creditors, if one is appointed, and/or the U.S. Trustee. Further, HLC requests an immediate offset of \$26,040 representing unreimbursed billings from February 3 through March 29, 2009. Finally, HLC seeks to reserve a "right to seek upward equitable adjustments based upon developments not capable of being anticipated at the time of the fixing of such terms is reserved."

Creditors GSI Exim America, Inc., GSI Creos Corporation, and GSI Holding Corporation oppose the motion, arguing that the proposed fee arrangement is ambiguous, it is potentially unreasonable, it gives HLC an interest adverse to the estate, and it is unnecessary because the debtor has sufficient funds to pay HLC's desired fixed fee.

Section 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals 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 . . . including . . . on a contingent fee basis."

First, the proposed fee arrangement is ambiguous. In the prayer of the motion, HLC requests approval of the following fee arrangement: the greater of (i) the net retainer in the amount of \$77,525 or (ii) 10% of the aggregate distributions, including, without limitation, to dividends paid by the debtor or its successors to its shareholders on account of the shareholders' equity interests in the debtor. However, on page 9, lines 13 through 19 of the motion, HLC states that "HLC agreed to undertake the representation at the flat rate of \$77,575 (the Net Retainer), so long as it has the opportunity for an enhancement should the plan succeed and equity receiver a distribution equal to at least \$775,750, in which case HLC would recover 10% of that distribution, after a credit of the Net Retainer." The latter statement appears to contradict the prior one because the latter statement implies that HLC's proposed fee will include the \$77,575 net retainer *in addition* to the 10% of the distributions to the equity holders.

Second, there must be some demonstrated nexus and proportionality between HLC's potential compensation and his work for the estate. On the evidence at hand, the court cannot conclude that HLC's potential compensation is proportional to his expected work for the estate. The court has insufficient evidence about the magnitude of work HLC will be providing the estate. His motion merely states that HLC expects the case to entail "significantly more than 220 hours of work." And, the motion does not discuss the potential range of the proposed contingency fee. Stated differently, the court is not convinced that the proposed fee arrangement would not result in a windfall compensation for HLC.

Third, the court is not persuaded that the contingency fee portion of the proposed arrangement is warranted. The motion does not mention any risk of non-payment by the debtor, in the event HLC is employed solely on an hourly rate.

Finally, the court cannot alter HLC's terms of compensation after it approves them unless it concludes them "to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms." In re Reimers, 972 F.2d 1127, 1128 (9th Cir. 1992) (quoting In re Confections by Sandra, Inc., 83 B.R. 729, 731 (B.A.P. 9th Cir. 1987)). Hence, this does not offer protection against HLC receiving a windfall compensation in the absence of developments not capable of being anticipated at the time of approval of the compensation terms.

In light of the foregoing, the motion will be denied.

68. 09-23465-A-11 MOORE EPITAXIAL, INC. HEARING - MOTION FOR
HLC #3 AUTHORITY TO USE CASH COLLATERAL
4-6-09 [43]

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

The motion will be granted.

The debtor in possession seeks approval to use the cash collateral, including operating revenue, of creditor GSI Creos, Inc., which holds a scheduled secured claim of approximately \$2,334,460, for the 18-week period from the petition date, February 27, 2009, through June 30, 2009. GSI's claim is secured by the debtor's interest in (1) shares of International Reactor Services, a joint venture of the debtor and Shanghai Simgui Technology, with a scheduled and purportedly "discounted" value of \$4.2 million and (2) its inventory, parts and finished goods, with proceeds thereof, with an unknown scheduled value, but likely exceeding \$1 million in value. The debtor does not identify other creditors with interest in the cash collateral. Also, GSI consented to the debtor's use of cash collateral through April 10, 2009.

The debtor seeks to use the cash collateral to meet its ongoing operating expenses, including, without limitation, partial contract labor, utilities, insurance, patent fees, and income and employment taxes. The debtor's projected expenses also exclude some deferred pay to its contractors. The debtor has projected total operating expenses as follows: April expenses of \$25,065, excluding \$13,865 in deferred pay; May expenses of \$9,419, excluding \$12,133 in deferred pay; and June expenses of \$11,706, excluding \$8,451 in deferred pay, for a total of \$46,190 of expenses, excluding a total of \$34,449 in deferred pay. As to income, the debtor has projected a total of \$137,000 for the three-month period. See Exhibit B to Declaration of Gary Moore.

As additional adequate protection, the debtor will grant GSI a post-petition replacement lien in post-petition assets, to the same extent, scope and priority as GSI's pre-petition lien.

Section 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights under section 363. Section 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The court will approve the debtor's use of cash collateral from the petition date through April 10, 2009, given GSI's consent to use during that period.

The court will grant use of cash collateral through June 30, 2009, as the projected income for that period exceeds the debtor's projected expenses. Moreover, GSI's interest in the cash collateral is adequately protected by the abundant equity in the debtor's interest in the IRS shares and its inventory, parts and finished goods, which appear to exceed \$5.2 million in value, while GSI's claim totals only approximately \$2,334,460. This conclusion is reached on the assumption that the debtor does not have other creditors besides GSI with interest in the cash collateral. The motion will be granted.

69. 09-23465-A-11 MOORE EPITAXIAL, INC.
HLC #4

HEARING - MOTION TO
SELL USED 2006 MERCEDES BENZ CLASS
AMG AUTO TO MICHAEL PETERSON, OR
ALTERNATIVELY, TO THE HIGHEST
BIDDER
4-6-09 [39]

Tentative Ruling: The motion will be granted.

The debtor in possession moves the court to sell a 2006 Mercedes Benz CLS55 AMG to Michael Peterson for \$37,000. Mr. Peterson will be responsible for all costs of sale, excluding the cost of preparing and prosecuting this motion. The current payoff on the vehicle's secured claim is approximately \$35,143, held by Mercedes-Benz Financial. The sale will be free and clear of liens or interests. Mr. Peterson is a former employee and current part-time independent contractor of the debtor, as well as a 30% owner of an affiliate of the debtor, Moore Semiconductor Parts, Inc.

Section 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to sell property of the estate pursuant to Section 363. 11 U.S.C. § 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 11 U.S.C. § 363(f), the debtor in possession may sell the vehicle 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 be approved free and clear of the encumbering claim pursuant to section 363(f)(3) because the proposed purchase price exceeds the amount of the secured claim. The claim will attach to the net proceeds from the sale. And, the debtor must comply with Local Bankruptcy Rule 5008-1(b) and deposit the net sale proceeds into a separate, interest-bearing blocked account with the inscription "not to be disbursed or withdrawn except upon further order of the Bankruptcy Court."

The sale will generate sufficient proceeds for a payoff in full of the encumbrances on the vehicle, thus decreasing the secured claims against the estate and the debtor's monthly service obligations to service the subject secured claim. Further, selling the vehicle in the context of a confirmed chapter 11 plan would prejudice the estate as it would require the debtor to service the vehicle's secured obligation until it obtains plan confirmation. 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 motion will be granted.

70. 09-20467-A-7 ROMEO/JOSEPHINE UBALDO
SS #2

HEARING - MOTION FOR
ORDER COMPELLING TRUSTEE TO
ABANDON PROPERTY OF THE ESTATE
4-2-09 [34]

Tentative Ruling: Because less than 28 days' notice of the hearing was given

by the debtors, 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 an order compelling the trustee to abandon the estate's interest in their real property, located in Sacramento, California. The property is over-encumbered.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. The debtors have scheduled the value of the property at \$193,000. The property is encumbered by a deed of trust in favor of Washington Mutual in the amount of \$346,570. Given the scheduled value of and encumbrances against the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

71. 09-20567-A-7 CAROLYN WILSON HEARING - MOTION FOR
KDH #1 RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, N.A., VS. 4-13-09 [63]

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, HSBC Bank USA, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$113,060 and it is encumbered by claims totaling approximately \$162,911. 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.

72. 07-21368-A-7 WAYNE CHATTIN HEARING - MOTION TO
AVOID LIEN ON PROPERTY AT
VS. MAINSTAY BUSINESS SOLUTIONS 124 LOST OAK CT., ROSEVILLE, CA
3-5-09 [40]

Tentative Ruling: The motion will be denied.

The debtor moves for avoidance of one or more unspecified liens against his residence located in Roseville, California.

However, the motion violates Local Bankruptcy Rule 9014-1(e)(3) because it is not accompanied by a proof of service. Moreover, because the debtor has not clearly identified the subject lienholder(s), the court cannot determine who should be noticed with the motion.

Further, 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)." Accordingly, the motion will be denied.

73. 08-21969-A-7 CRAIG/HEATHER SANASSARIAN HEARING - MOTION TO
08-2388 BSJ #1 SET ASIDE DEFAULT AND
TRI COUNTIES BANK, VS. DEFAULT JUDGMENT
CRAIG SANASSARIAN 3-30-09 [19]

Tentative Ruling: The motion will be denied.

The defendant, Craig Sanassarian, who is also one of the debtors in the underlying bankruptcy case, moves to set aside the default entered on November 6, 2008 and the default judgment entered on November 20, 2008. As grounds, the defendant cites his attempts to surrender the collateral at issue to the plaintiff. The defendant complains that he was not able to surrender the collateral because the plaintiff's attorney refused to communicate with him.

The plaintiff, Tri Counties Bank, opposes the motion, contending that: 1) the defendant's inaction does not constitute excusable neglect; 2) the surrender of the collateral would not resolve two claims for fraud pleaded in the complaint; 3) the court should deny the motion even if excusable neglect exists because

the defendant offers no meritorious defenses to two of the claims in the complaint and because the defendant's culpable conduct led to the entry of the default and default judgment.

Fed. R. Civ. P. 60(b), as made applicable here via Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for: (1) mistake, inadvertence, surprise, or excusable neglect; "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the [order]."

Rule 60(b) requires that motions for relief from a judgment must be made within a reasonable time after the judgment or the moving party must establish a reasonable excuse for having failed to contest the underlying matter. Meadows v. Dominican Republic, 817 F.2d 517 (9th Cir. 1987). Motions seeking to set aside a default judgment for excusable neglect must be brought within one year after the judgment. Fed. R. Civ. P. 60(b). And the court has discretion to deny a motion to set aside a default judgment if defendant has no meritorious defense, the defendant's culpable conduct caused the default, or plaintiff would be prejudiced if the judgment is set aside. Meadows, 817 F.2d at 521; see also Pena v. Seguros La Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985).

The court agrees with the plaintiff.

First, the motion appears to admit the defendant's actual knowledge of the adversary proceeding, yet instead of making an appearance, the defendant made attempts only to surrender the vehicle to the plaintiff.

Second, the defendant does not explain why it took him over four months to make the motion, since entry of the default judgment on November 20, 2008. In the absence of such explanation, the court cannot determine whether this motion is being made within reasonable time.

Third, the defendant cannot complain about the refusal of the plaintiff's counsel to communicate with him because the defendant has had counsel of record, namely the attorney who filed the subject motion, Mr. Johnston. Communicating directly with the defendant while he was represented by counsel would have been a violation of the ethical obligations of the plaintiff's counsel.

Fourth, the defendant's offer to surrender the vehicle does not resolve the first and second claims in the complaint, brought pursuant to section 523(a)(2)(A) and section 523(a)(2)(B). Those claims involve the defendant's representations about his financial condition and that he would be the one to use the vehicle, even though he transferred the vehicle to a third party after purchasing it. Those claims are not addressed in the motion.

Finally, the evidence produced by the defendant states nothing about whether the vehicle has been repaired or whether the vehicle has adequate insurance coverage naming the plaintiff as a loss payee.

Thus, the court does not have sufficient evidence to determine whether this

motion is being made within reasonable time and the defendant does not have meritorious defenses to all of the claims in the complaint. Moreover, the motion appears to admit the defendant's actual knowledge of the adversary proceeding, making his culpable conduct cause of the default. Given these deficiencies, the court will exercise its discretion to deny the motion.

74. 09-21873-A-7 RANDAL SKAGGS
IMW #100
U.S. BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-2-09 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, U.S. Bank, seeks relief from the automatic stay with respect to a 2006 Mercedes Benz SLK.

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 4, 2009 and a meeting of creditors was first convened on March 12, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than March 6. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the March 12, 2009 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 11, 2009, 30 days after 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 13, 2009, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 11, 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. 08-28376-A-7 SUTTER FOAM & COATING, INC. CONT. HEARING - OBJECTION TO
RLC #2 CLAIM OF KENNETH TREXLER
11-26-08 [52]

Tentative Ruling: The objection will be sustained.

The court continued this objection from March 23. For the January 12 hearing, the court had issued the following ruling:

Tentative Ruling: The objection will be overruled.

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

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

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

Here, Combs has not presented evidence rebutting the presumptive validity of the claim. Combs points out that the claimant was a president of the debtor and has the same last name as the name of the debtor's owners, but it does not discuss the significance of this. Combs also contends that the claimant should

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

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

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

Accordingly, the objection will be overruled.

After the court continued the objection to March 23, Combs filed a supplemental declaration, presenting evidence that it served the claimant with interrogatories requesting information about the basis of the subject claim. The interrogatories were served as prescribed by Fed. R. Civ. P. 33, made applicable by Fed. R. Bankr. P. 7033. The claimant has failed to respond or object to the interrogatories, or seek a protective order. See Fed. R. Civ. P. 33(b)(2). And, the proof of claim is not supported by evidence. Hence, sanctions are warranted under Fed. R. Civ. P. 37(d)(1)(A)(ii), as made applicable by Fed. R. Bankr. P. 7037. Accordingly, the court will take the claimant's default and sustain the objection.

76. 09-23079-A-7 JAMES/DANA JULIAN
TJS #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-09 [21]

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, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to a 2006 Ford Expedition. The vehicle has a value of \$19,000 and its

secured claim is approximately \$35,888.

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 April 7, 2009.

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.

77. 09-25079-A-7 FELIPE GALVAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-1-09 [6]

Tentative Ruling: The case will be dismissed.

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). The deadline to file these documents expired on April 7. This is cause for dismissal of the case. See 11 U.S.C. § 707(a)(3).

78. 09-26480-A-7 GREGORY BRUTUS HEARING - MOTION FOR
PCJ #1 RELIEF FROM AUTOMATIC STAY
LEFEVER MATTSON, INC., VS. 4-9-09 [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, Lefever Mattson, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California. The movant is the legal owner of the

property and the debtor is a tenant at the property. The movant seeks relief from stay to exercise her rights under state law to obtain possession of the property. After serving the debtor with a three-day notice to pay or quit, the movant filed an unlawful detainer action against the debtor pre-petition, on or about March 17, 2009. The debtor is two pre-petition and one post-petition payments delinquent to the movant. The instant bankruptcy petition was filed on April 7, 2009.

This is a liquidation proceeding and the debtor has no interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, he is three payments delinquent on his rent obligation. 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) to permit the movant to return to state court in order to determine who is entitled to possession of the property. 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 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.

79. 09-24581-A-7 HOLLEE CUMMINGS HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 4-6-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Mammoth Lakes, California. The property has a value of \$399,000 and it is encumbered by claims totaling approximately \$513,309. The movant's deed is in first priority position and secures a claim of approximately \$458,344.

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 April 10, 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.

80. 09-24582-A-7 RAY/JOANNA ERENO HEARING - MOTION FOR
VVF #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP., VS. 4-2-09 [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, American Honda Finance Corp., seeks relief from the automatic stay with respect to a 2008 Honda Odyssey. The vehicle has a value of \$35,000 and its secured claim is approximately \$42,648. See Statement of Financial Affairs item 5.

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. And, the debtor surrendered the vehicle to the movant pre-petition, in February 2009. See Statement of Financial Affairs item 5; see also Declaration of Kevin Kukla ¶10. This is cause for the granting of relief from stay.

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

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

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

81. 09-24083-A-7 TERESA DIETRICH
EBS #1
BENCHMARK INVESTMENTS, ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-7-09 [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, Benchmark Investments, seeks relief from the automatic stay as to a real property in Smartville, California. In the schedules, the property is identified as located in Big Oak Valley, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$321,156. The movant's deed is in second priority position and secures a claim of approximately \$107,196.

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.

82. 09-24185-A-7 RAMON GARCIA AND
KAT #1 CHRISTINA JARLEGO
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-2-09 [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 San Leandro, California. The property has a value of \$234,000 and it is encumbered by claims totaling approximately \$435,845. The movant's deed is in first priority position and secures a claim of approximately \$349,203.

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.

83. 09-25085-A-7 HUBERT ROTTEVEEL HEARING - MOTION FOR
RVD #2 RELIEF FROM AUTOMATIC STAY
SAM LAMONICA, VS. 4-13-09 [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, Sam LaMonica, seeks relief from the automatic stay as to a real property in Dixon, California. The property has a value of \$1,650,000 and it is encumbered by claims totaling approximately \$3,332,341. See Exhibit E to Declaration of Sam LaMonica. The movant's deed is in first priority position and secures a claim of approximately \$1,716,569.

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.

84. 08-28487-A-11 ROOM SOURCE, LLC
DD #1

CONT. HEARING - MOTION OF
KLAUSSNER FURNITURE INDUSTRIES,
INC. FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE CLAIM
10-20-08 [266]

Tentative Ruling: The motion will be continued to a date to be decided at the hearing.

Klaussner Furniture Industries, Inc. moves this court for the allowance and payment of an administrative claim in the amount of \$57,182.24 for goods delivered to the debtor within 20 days before the petition filing, pursuant to 11 U.S.C. § 503(b)(9).

The debtor opposes the motion, contending that the claim should not be allowed because the movant received \$295,586.79 in preferential transfers from the debtor within 90 days before the petition filing. See 11 U.S.C. § 502(d). In the alternative, the debtor argues that the movant received a payment in the amount of \$36,317.40, on account of the liability referenced in the motion, reducing the allegedly still-owed sum of \$57,182.24.

Section 503(b)(9) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business."

However, section 502(d) provides that "the court shall disallow any claim of

any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property." This includes the disallowance of administrative priority claims. MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.), 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Given this and given the avoidable payments received by the movant from the debtor within 90 days before the petition filing, the court concludes that the movant's administrative claim under section 503(b) (9) must be disallowed. The motion will be denied.

After the December 29, 2008 hearing on the motion, the court continued the motion to February 23, 2009. The movant filed additional evidence on February 2 and the debtor filed a further opposition on February 17. The movant contends that it has complete defenses to the preference claims. Arguing an ordinary course of business defense, the movant calculated that invoices were paid on average of 76.8 days during the 90-day preference period and were paid on average of 72 days during the pre-preference period. The movant also alleges that it advanced approximately \$213,380 in subsequent new value to the debtor, excluding the \$57,323 in goods delivered during the 20-day period before the petition date.

The debtor responds that the movant's ordinary course defense does not take into account payments on an individual basis. The debtor alleges that the preference period payments were made between 85 and 91 days after invoice, in contrast to the 72-day average of pre-preference period payments. The debtor also contends that preference period payments were made under pressure by the movant, taking them outside the ordinary course of business defense. Finally, the debtor argues that the movant has not applied the subsequent new value defense correctly. The movant has applied the "net result" rule, but without offsetting new value only with prior preference payments.

As to the movant's application of the subsequent new value defense, the court agrees with the debtor. The movant advanced a total new value of \$213,380.03. But, only \$137,657.38 may be used to offset preference payments received by the movant. The reason for this is that the movant may use new value to offset only prior preference payments. Mosier v. Ever-Fresh Food Co. (In re IRFM, Inc.), 52 F.3d 228, 232 (9th Cir. 1995) see also Amick v. Hoff Co., Inc. (In re Amick), 163 B.R. 589, 593 (Bankr. D. Idaho 1994). "A creditor is permitted to carry forward preferences until they are exhausted by subsequent advances of new value." IRFM at 232.

Turning to the ordinary course of business defense, the debtor's reference to pressure exerted by the movant is not supported by any evidence. The debtor simply attached an email received by counsel for the debtor from one of the debtor's employees, stating that the movant applied pressure to the debtor for payments made during March, April and May 2008. The email is not authenticated by a declaration or an affidavit. The email is inadmissible hearsay. See Fed. R. Evid. 802. Even though this is not a summary judgment motion on the issue of whether the transfers to the movant were preferential, the debtor should have supported its response with admissible evidence. The court then cannot determine whether the movant is a transferee of a transfer avoidable under section 547. Therefore, the court will continue this motion for 60 days, to allow time for the debtor to file a preference action against the movant. If the debtor files a preference action before the next hearing on this motion, the court will continue the motion again to allow for the adjudication of the pending action. If the debtor does not file a preference action before the next hearing on this motion, the court will decide this motion on merits, based

on the evidence submitted thus far. The record on this motion is otherwise closed.

85. 09-25088-A-7 GREG/JULIE BUTCHER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 4-6-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The movant has produced evidence that the property has a value of \$332,000 and it is encumbered by claims totaling approximately \$550,109. 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.

86. 08-36789-A-7 MICHAEL ARMER HEARING - MOTION FOR
HEATHER WILBUR, VS. RELIEF FROM AUTOMATIC STAY
3-27-09 [60]

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

The movant, Heather Wilbur, seeks relief from the automatic stay and the

discharge injunction to proceed with her state court tort action against the debtor, including (1) prosecution of her negligence claim(s) to the extent insurance coverage is available and (2) prosecution of her intentional tort claim(s) "as [such claims are] not dischargeable in bankruptcy."

The debtor opposes the motion as frivolous, arguing that his discharge was entered and that Ms. Wilbur did not timely file a section 523 complaint. Hence, any liability owed to Ms. Wilbur has been discharged.

The court agrees with the debtor, but only in part. The debtor received his discharge on February 18, 2009. The deadline for filing complaints for determining the dischargeability of debts under section 523 was on February 9, 2009. See Docket No. 6. Even though she was served with the notice of bankruptcy and the notice of that deadline on November 22, 2008, Ms. Wilbur had not filed a section 523 complaint by February 9. See Docket No. 7. Hence, the debtor's liability, whether based on negligence or intentional torts, was discharged on February 18. Therefore, the court will not allow any prosecution of Ms. Wilbur's pre-petition state court claims and the enforcement of any recovery on such claims against the debtor or property of the debtor.

Nevertheless, the discharge injunction does not preclude Ms. Wilbur from prosecuting the pre-petition state court claims, including naming the debtor to establish his liability, but only to collect on or satisfy a judgment from a collateral source, such as the debtor's insurance policy. See Patronite v. Beeney (In re Beeney), 142 B.R. 360, 362-63 (B.A.P. 9th Cir. 1992); see also Gonzalez v. Munoz (In re Munoz), 287 B.R. 546, 550 (B.A.P. 9th Cir. 2002). The discharge injunction precludes only actions to recover a debt as personal liability of the debtor. Munoz at 550. This means that to the extent Ms. Wilbur wishes to recover on the debtor's liability solely under his insurance policy, she may prosecute the pre-petition state court claims, including naming the debtor in the action to establish his liability. But, she may not enforce any judgment on those claims against the debtor or property of the debtor. Ms. Wilbur does not need an order from this court to prosecute her claims post-discharge to the extent she will be seeking to recover only under the debtor's insurance policy.

With respect to the automatic stay, it expired as to the debtor at the time he received his discharge on February 18. See 11 U.S.C. § 362(c)(2)(C). The motion will be dismissed as moot, then, to the extent it seeks relief from the automatic stay as to the debtor. Further, Ms. Wilbur's lawsuit has no value to the estate. The trustee filed a report of no distribution on December 12, 2008. This is cause for the granting of relief from stay as to the estate. Accordingly, the court will grant relief from the automatic stay as to the estate pursuant to section 362(d)(1), allowing Ms. Wilbur to prosecute her claims in state court, including naming the debtor to establish his liability, but to enforce any recovery only from available insurance proceeds. Ms. Wilbur may not recover personally from the debtor, property of the debtor or the estate. The motion will be granted in part.

The parties shall bear their own fees and costs.

87.	09-24191-A-7	VIVENCIO/SALLY ONGACO	HEARING - MOTION FOR
	WGM #1		RELIEF FROM AUTOMATIC STAY
	JPMORGAN CHASE BANK, N.A., VS.		4-10-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Redlands, California. The property has a value of \$600,000 and it is encumbered by claims totaling approximately \$650,787. 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.

88. 09-20093-A-7 EMILY ADAMS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
FIRST HORIZON HOME LOAN CORP., VS. 4-8-09 [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, First Horizon Home Loan Corp., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$463,659. The movant's deed is in first priority position and secures a claim of approximately \$371,453.

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.

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

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

89. 09-21193-A-7 ADELE JACKSON HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK, N.A., VS. 3-17-09 [17]

Tentative Ruling: The motion will be dismissed as moot.

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay with respect to a 2005 Honda Civic.

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 January 26, 2009 and a meeting of creditors was first convened on March 5, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than February 25. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30

days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not move to reaffirm within the 30-day deadline after the March 5, 2009 meeting of creditors or any time after. No reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 4, 2008, 30 days after 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 6, 2009, indicating an intent not to administer the vehicle or any other assets.

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

90. 09-24298-A-7 WILLIAM FREEMAN

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [13]

Tentative Ruling: The case will be dismissed.

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). The deadline to file these

documents expired on March 28. This is cause for dismissal of the case. See
11 U.S.C. § 707(a)(3).

FINAL RULINGS BEGIN HERE

91. 09-23801-A-7 JOSE/MARIA FERNANDEZ HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of \$129,900 and it is encumbered by claims totaling approximately \$305,948. The movant's deed is in first priority position and secures a claim of approximately \$254,324.

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.

92. 08-35803-A-7 WESLEY RICE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-26-09 [62]

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

The debtor failed to file Form 22A after conversion of the petition from chapter 13 to chapter 7. However, after the issuance of the order to show

cause, that document was filed. No prejudice resulted from the late filing.

93. 07-25904-A-7 ANATOLIY/LARISA ZUBKU HEARING - MOTION TO
08-2284 SMR #1 DISMISS ADVERSARY PROCEEDING
VIKTOR DEREVYANCHUK, ET AL., VS. 3-18-09 [28]

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

The motion will be granted.

The plaintiffs move for dismissal of all claims in the subject complaint. The claims are pursuant to sections 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6), and 727(c), (d) and (e) of the Bankruptcy Code. The plaintiffs contend that discovery has yielded information warranting dismissal of the claims.

Fed. R. Civ. P. 41(a)(2), as made applicable here via Fed. R. Bankr. P. 7041, allows for the dismissal of an action by a court order. The trustee and U.S. Trustee have been noticed with the motion. See Fed. R. Bankr. P. 7041. Also, no counterclaims have been asserted against the plaintiffs. Thus, the motion will be granted and all claims in the complaint will be dismissed. The parties shall bear their litigation expenses.

94. 09-23504-A-7 JOHN/ROBIN CARROLL HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE, VS. 3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of \$480,500 and it is encumbered by claims totaling approximately \$665,203. The movant's deed is in first priority position and secures a claim of approximately \$565,702.

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 April 8, 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.

95. 09-25404-A-7 AHMED ABOUDKHIL AND HEARING - ORDER TO SHOW
AICHA BENBRAHIM CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
4-3-09 [7]

Final Ruling: This order to show cause will be discharged as moot because on April 14, 2009, the court entered an order determining that the appointment of a patient care ombudsman is not required.

96. 09-22805-A-7 GUY/CYNTHIA COZZI HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC., 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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Chase Home Finance, seeks relief from the automatic stay as to a real property in Rescue, California. The property has a value of \$390,000 and it is encumbered by claims totaling approximately \$405,197. The movant's deed is in first priority position and secures a claim of approximately \$301,921.

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 27, 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 (9th Cir. 1998).

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

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

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

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

97. 09-24706-A-7 RUTH BROUSSARD HEARING - MOTION TO
RDM #1 DISMISS DUPLICATE FILING
4-7-09 [12]

Final Ruling: The movant has provided only 20 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires

written opposition at least 14 days before the hearing, language consistent only with motions brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). 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 without prejudice.

98. 09-21507-A-7 DONALD/LORI MAESTAS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO., VS. 3-24-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, National City Mortgage, seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$475,000 and it is encumbered by claims totaling approximately \$940,839. The movant's deed is in first priority position and secures a claim of approximately \$600,541.

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 6, 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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Roseville, California.

Given the entry of the debtor's discharge on March 31, 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 \$339,925. The movant's deed is in first priority position and secures a claim of approximately \$325,418.

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 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.

100. 08-30609-A-7 RANDALL/SHARLENE KNIGHT HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, INC., VS. 3-18-09 [64]

Final Ruling: The motion will be dismissed because the proof of service indicates that debtor Sharlene Knight was served at an incorrect address, P.O. Box 2299 Cottonwood, CA 96022. The correct address according to the petition is P.O. Box 491974 Redding, CA 96049. Notice is defective.

101. 08-37209-A-7 CHARANJIT BAINS HEARING - MOTION FOR
RCO #2 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-27-09 [23]

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

The motion will be granted.

The movant, 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 \$300,000 and it is encumbered by claims totaling approximately \$349,951. 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. 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.

102. 09-20109-A-7 MARY PHOONG
PD #1
GMAC MORTGAGE, LLC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-24-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of \$300,000 and it is encumbered by claims totaling approximately \$433,600. The movant's deed is in first priority position and secures a claim of approximately \$389,500.

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.

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.

103. 08-27610-A-7 MICHELLE HAYES
JRR #1

HEARING - TRUSTEE'S MOTION FOR
APPROVAL OF COMPROMISE AND
SETTLEMENT
3-10-09 [55]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

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

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Chico, California. The property has a value of \$270,000 and it is encumbered by claims totaling approximately \$286,791. 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.

106. 06-24015-A-7 MONICA KUIL
SF #3

HEARING - MOTION TO
COMPROMISE CONTROVERSY RE FRAUD-
ULENT TRANSFER/TURNOVER CLAIM
3-30-09 [26]

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

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and Matthew Kuil, the debtor's former spouse, resolving a pending adversary

proceeding where the trustee seeks to set aside the property division provisions of a marital settlement agreement between the debtor and Matthew Kuil. Under the terms of the compromise, Mr. Kuil will pay \$30,000 to the estate in full satisfaction of the estate's pending claims against him.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the costs, risks, and delay of further litigation and given that the settlement will result in a 40% to 60% dividend distribution to the creditors of the estate, the settlement is equitable and fair.

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

107. 09-24415-A-7 LAZARO/SHANNON CHONG
MET #1
BANK OF THE WEST, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-27-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay with respect to already repossessed or returned 2004 Bayliner boat, motor and trailer. The value of the property in the statement of financial affairs is \$9,500 and its secured claim is approximately \$9,938. See Statement of Financial Affairs item 5.

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, the movant has possession of the property. This is cause for the granting of relief from stay.

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

other relief is awarded.

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

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

108. 09-21416-A-7 CHARLES/ROXANNE BARTLEY HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$315,000 and it is encumbered by claims totaling approximately \$457,196. The movant's deed is in second priority position and secures a claim of approximately \$31,877.

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.

109. 08-33317-A-7 DARRIN KING

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-30-09 [50]

Final Ruling: The debtor failed to file Form 22A after the conversion of the case to chapter 7. However, while the case was pending under chapter 11, the debtor filed Form 22B, the chapter 11 equivalent of Form 22A. Given the debtor's lack of current monthly income for the six month period prior to the filing of the petition, no purpose would be served by filing Form 22A. The order to show cause will be discharged and the petition shall remain pending.

110. 08-39217-A-7 GILBERTO/GUADALUPE CHAVEZ
PD #1
AURORA LOAN SERVICES, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Vacaville, California.

Given the entry of the debtor's discharge on April 13, 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 \$600,000 and it is encumbered by claims totaling approximately \$873,928. The movant's deed is in first priority position and secures a claim of approximately \$758,561.

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

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. 09-22922-A-7 STEVEN/NICOLE ROEDIGER HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, VS. 3-26-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2005 Chevrolet Siverado. The vehicle has a value of \$15,000 and its secured claim is approximately \$31,670. 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 27, 2009.

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.

114. 05-31823-A-7 PATRICK MCGRATH HEARING - MOTION TO
MG #3 APPROVE SETTLEMENT
3-30-09 [294]

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

least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and Frank and Marie Assali, resolving claims for violation of the automatic stay. Under the terms of the compromise, the Assalis will pay \$80,000 to the estate. In exchange, the trustee will dismiss the pending adversary proceeding against the Assalis and will waive any ownership claims in seven related entities, more specifically identified in the motion.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the complex, convoluted and poorly documented history between the parties and given the costs, delay and risks of further litigation, including a potential laches defense, the settlement is equitable and fair.

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

115. 05-31823-A-7	PATRICK MCGRATH	HEARING - APPLICATION FOR
MG #4		APPROVAL OF COMPENSATION PAID FOR
		PROFESSIONAL SERVICES RENDERED
		(\$10,000.00)
		3-30-09 [300]

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

The application will be approved.

McGrane Greenfield, LLP, special litigation counsel for the trustee, has filed its first and final application for approval of compensation. The requested compensation consists of \$10,272 in fees and \$42.24 in expenses, for a total of \$10,314.24. This application covers the period from September 23, 2008 through February 5, 2009. The court approved the applicant's employment as the trustee's special litigation counsel on October 22, 2008. In performing its services, the applicant charged hourly rates of \$200, \$250 and \$400.

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 trustee in the prosecution of violation of the automatic stay claims against the Assalis; (2) conducting legal research on laches defense issues; (3) participating in discovery conferences with opposing counsel; (4) negotiating a settlement agreement; (5) reviewing and revising proposed settlement agreement; and (6) preparing a compensation application.

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

116. 09-22024-A-7 AZZYET HOLDINGS AND INVESTMENTS, LLC HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 3-23-09 [12]

Final Ruling: The order to show cause will be discharged because it is moot. The case was previously ordered dismissed.

117. 08-24927-A-11 MAINLAND NURSERY, INC. PP #9 HEARING - OBJECTION TO CLAIM OF JOHN MERRILL, NOW HELD BY THOMAS ACEITUNO CHAPTER 7 TRUSTEE FOR JOHN MERRILL 3-13-09 [419]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to claimant John Merrill as required by Local Bankruptcy Rule 3007-1(c)(1)(I). The failure of John Merrill 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 (9th Cir. 1995). John Merrill's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the scheduled priority claim of former employee and principal of the debtor John (a.k.a. Jack) Merrill. See 11 U.S.C. § 1111(a); see also Statement of Financial Affairs item 21; Schedule E. The claim is currently held by the Merrills' chapter 7 trustee, Thomas Aceituno. Although the objection states that the claim is in the amount of \$26,000, the actual total amount of the claim is \$19,500. See Schedule E. \$6,500 of the claim is classified as a priority claim. The objection argues that the claim should be disallowed in its entirety pursuant to section 502(d) as Mr. and Mrs. Merrill received

preferential transfers avoidable pursuant to section 547(b).

Section 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property."

The subject proof of claim must be disallowed due to approximately \$36,652 in payments received by Mr. Merrill from the debtor during the one-year period before the petition date. See Statement of Financial Affairs item 3. Such transfers are avoidable pursuant to section 547(b). The objection will be sustained.

118. 08-24927-A-11 MAINLAND NURSERY, INC.
PP #10

HEARING - OBJECTION TO
CLAIM OF KATHERINE MERRILL,
NOW HELD BY THOMAS ACEITUNO,
CHAPTER 7 TRUSTEE
3-13-09 [416]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to claimant Katherine Merrill as required by Local Bankruptcy Rule 3007-1(c)(1)(I). The failure of Katherine Merrill 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 (9th Cir. 1995). Katherine Merrill's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the scheduled priority claim of former employee and principal of the debtor Katherine Merrill, in the amount of \$2,580, \$1500 of which is claimed as a priority claim. See 11 U.S.C. § 1111(a); see also Statement of Financial Affairs item 21; Schedule E. The claim is currently held by the Merrills' chapter 7 trustee, Thomas Aceituno. The objection argues that the claim should be disallowed in its entirety pursuant to 11 U.S.C. § 502(d) as Mr. and Mrs. Merrill received preferential transfers that are avoidable pursuant to 11 U.S.C. § 547(b).

Section 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property."

The subject proof of claim must be disallowed due to approximately \$36,652 in payments received by Mr. and Mrs. Merrill from the debtor during the one-year period before the petition date. See Statement of Financial Affairs item 3. Such transfers are avoidable pursuant to section 547(b). And, although only John Merrill is identified as the payee on the preferential transfers in the statement of financial affairs, Schedule B in the Merrills' personal bankruptcy case shows that the debts owed to them by the debtor are jointly held. See Schedule B in Case No. 08-31026. The court takes judicial notice of the schedules in the Merrills' personal bankruptcy case. See Fed. R. Evid. 201(c). The objection will be sustained.

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to claimant Tatsuko Nitta as required by Local Bankruptcy Rule 3007-1(c)(1)(I). The failure of Tatsuko Nitta 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 (9th Cir. 1995). Tatsuko Nitta's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the scheduled claim of former employee of the debtor Tatsuko Nitta, in the total amount of \$6,636, \$2,212 of which has been classified as a priority claim. See 11 U.S.C. § 1111(a); see also Schedule E. The claim is for accrued vacation. The objection argues that:

- 1) Tatsuko Nitta was paid \$2,654.03 in the form of a "severance" on April 15, 2008, two days before the petition date,
- 2) the payments to employees labeled as severance were actually for vacation accruals because the debtor had no formal severance policy, and
- 3) the claim should be disallowed in its entirety pursuant to section 502(d) as the \$2,654.03 payment to Tatsuko Nitta is a preferential transfer avoidable pursuant to section 547(b).

11 U.S.C. § 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property."

The instant proof of claim must be disallowed due to the \$2,654.03 payment received by Tatsuko Nitta from the debtor on April 15, 2008, only two days before the petition date. See Statement of Financial Affairs item 10. Such transfer is avoidable pursuant to section 547(b). The objection will be sustained.

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to claimant Patrick Kraemer as required by Local Bankruptcy Rule 3007-1(c)(1)(I). The failure of Patrick Kraemer 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 (9th Cir. 1995). Patrick Kraemer's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The official committee of unsecured creditors and the debtor jointly object to the proof of claim of former employee of the debtor Patrick Kraemer (claim no.

14), in the total amount of \$19,425, \$4,375 of which has been classified as a priority claim. The claim is for accrued vacation. The objection argues that:

1) Patrick Kraemer was paid \$5,250 in the form of a "severance" on April 15, 2008, two days before the petition date,

2) the payments to employees labeled as severance were actually for vacation accruals because the debtor had no formal severance policy, and

3) the claim should be disallowed in its entirety pursuant to section 502(d) as the \$5,250 payment to Patrick Kraemer is a preferential transfer avoidable pursuant to 11 U.S.C. § 547(b).

11 U.S.C. § 502(d) provides that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 of this title, unless such entity or transferee has paid the amount, or turned over any such property."

The instant proof of claim must be disallowed due to the \$5,250 payment received by Patrick Kraemer from the debtor on April 15, 2008, only two days before the petition date. See Statement of Financial Affairs item 3. Such transfer is avoidable pursuant to section 547(b). The objection will be sustained.

121. 09-21727-A-7 ODELL KIRBY
PD #1
GMAC MORTGAGE, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$209,000 and it is encumbered by claims totaling approximately \$381,899. The movant's deed is in first priority position and secures a claim of approximately \$317,906.

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.

122. 09-20228-A-7 MARCELO/HILDA CUMPLIDO-NERI HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOAN SVCING., LP, VS. 3-20-09 [19]

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

The motion will be granted.

The movant, Countrywide Home Loans Servicing, seeks relief from the automatic stay as to a real property in Lockport, Illinois. The movant has produced evidence that the property has a value of \$35,000 and it is encumbered by claims totaling approximately \$46,598. The movant's deed appears to be the only encumbrance against the property, even though the movant references two additional encumbrances, scheduled against a different 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. And, the statement of financial affairs indicates that the property was foreclosed on pre-petition, in October 2008. See Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to conduct a nonjudicial foreclosure sale, if not already completed, and to obtain possession of the subject property following sale. No other relief is awarded.

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

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

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

123. 09-20731-A-7 CAROL BOISA
PD #1
GMAC MORTGAGE, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Las Vegas, Nevada. The property has a value of \$137,500 and it is encumbered by claims totaling approximately \$166,078. 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 \$149,041.

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. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

124. 09-23632-A-7 STEPHEN BOUDREAU

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
3-25-09 [19]

Final Ruling: The order to show cause will be discharged as moot. The case was previously ordered dismissed.

125. 09-21935-A-7 MARICEL LAXAMANA
RCO #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-27-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$300,000 and it is encumbered by claims totaling approximately \$525,605. The movant's deed is the only deed against the property, securing a claim of approximately \$519,424.

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

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

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

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 \$110,000 and it is encumbered by claims totaling approximately \$121,928. The movant's deed is the only deed against the property, securing a claim of approximately \$121,818.

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 April 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.

127. 09-23238-A-7 PATRICK/MICHELLE BARROGA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$377,243. 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 \$273,373.

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 April 8, 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.

128. 09-20441-A-7 JESS SANCHEZ, JR. HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 3-24-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, GMAC Mortgage, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$235,000 and it is encumbered by claims totaling approximately \$524,970. 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 \$467,996.

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 17, 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.

129. 09-23442-A-7 LAV NGOUN AND HEARING - MOTION FOR
MET #1 HONG LAOSOUVANH RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP., VS. 3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2005 Acura TSX. The vehicle has a value of \$13,460 and

its secured claim is approximately \$15,019.

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 April 10, 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.

130. 09-24444-A-7 REZA BAYATI HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., VS. 4-14-09 [15]

Final Ruling: The movant has given only 13 days' notice of the hearing on this motion to the debtors' counsel. This violates the court's local rules, including Local Bankruptcy Rule 9014-1(f)(1) and (2). Accordingly, the motion will be dismissed.

131. 08-29245-A-7 SIEREL SALISBURY HEARING - TRUSTEE'S MOTION FOR
JRR #1 APPROVAL OF COMPROMISE AND
SETTLEMENT
3-16-09 [28]

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

The motion will be granted.

The trustee seeks approval of a settlement agreement between the estate and Hazel Troche, the debtor's grandmother, resolving the estate's claim for a preferential transfer received by Ms. Troche in the amount of \$10,000. Under the terms of the compromise, Ms. Troche will pay the estate \$7,500 in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may

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

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

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

132. 08-34347-A-11 MBD, INC.
WCL #12

HEARING - MOTION FOR
APPROVAL OF SALE OF REAL PROPERTY
(LOT 54) FREE AND CLEAR OF LIENS
4-13-09 [231]

Final Ruling: The motion will be dismissed because the debtor has provided less than 20 days notice of the hearing.

Fed. R. Bankr. P. 2002(a)(2) requires at least 20 days' notice of the hearing on a motion to by the estate to sell assets. The proof of service indicates that this motion was served on April 13, 2009, 14 days before the hearing. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(4) requires a minimum of 20 days of notice of the hearing and because only 14 days' notice was given, notice is insufficient.

The motion also was not served on all creditors. The motion was served only on Chico West, Cook Concrete, Northern California National Bank, and the U.S. Trustee.

133. 09-22047-A-7 KAREN PLUMMER
RCO #1
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-27-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Rocklin, California. The property has a value of \$245,000 and it is encumbered by claims totaling approximately \$424,373. The movant's deed is in first priority position and secures a claim of approximately \$340,773.

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.

134. 09-23948-A-7 LISA NOYER HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MTG., ETC., ET AL., VS. 3-26-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of America Mortgage, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$264,000 and it is encumbered by claims totaling approximately \$327,494. 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.

135. 09-21552-A-7 MARSHALL/MARY ROSE
ND #1
WELLS FARGO BANK MINN., N.A., VS.

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

The motion will be granted.

The movant, Wells Fargo Bank Minnesota, seeks relief from the automatic stay as to a real property in Tracy, 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 August 9, 2004, the debtors filed a chapter 13 case (case no. 04-32003). But, the court dismissed that case on December 18, 2008 due to the debtors' failure to cure plan payments or obtain approval of a modified plan. The debtors filed the instant case on January 30, 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 debtors on March 1, 2009, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A).

As to the estate, the analysis is different. The property has a value of \$227,375 and it is encumbered by claims totaling approximately \$406,333. The movant's deed is the only deed against the property, securing a claim of approximately \$403,721.

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 17, 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.

136. 09-25153-A-7 TWILIA TURNER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [7]

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

The debtor paid \$274 of the \$299 filing fee when the petition was filed. The remaining \$25 was not paid and an order to show cause was issued. However, after its issuance the \$25 was paid. No prejudice resulted from the late payment.

137. 09-23357-A-7 KATIE WHITE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 3-20-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

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

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Vacaville, California. The property has a value of \$570,600 and its encumbrances total approximately \$561,410. The movant's deed is in first priority position, securing a claim of approximately \$423,783. The trustee filed a report of no distribution on April 7, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property. This is cause for the granting of relief from stay.

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

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

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

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

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

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

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

138. 09-20559-A-7 NICOLAS VARGAS HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-16-09 [31]

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Coldwell Banker Home Loans, seeks relief from the automatic stay as to a real property in Rio Linda, 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 October 8, 2008, the debtor filed a chapter 13 case (case no. 08-34536). But, the court dismissed that case on December 14, 2008 due to the debtor's failure to make a filing fee installment payment. The debtor filed the instant case on January 14, 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 January 21, 2007, 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 \$214,000 and it is encumbered by claims totaling approximately \$558,495. See Schedule D. The movant's deed is in second priority position and secures a claim of approximately \$113,502.

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 17, 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.

139. 09-23863-A-7 ANTONY/JOHANNA GUEST HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Folsom, California. The property has a value of \$325,000 and it is encumbered by claims totaling approximately \$484,412. 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 \$391,538.

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.

140. 08-38364-A-7 GREGORY LUTZ AND HEARING - TRUSTEE'S OBJECTION TO
SLC #1 DINAH HAMMOND PROPERTY CLAIMED AS EXEMPT
3-6-09 [30]

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

The objection will be sustained.

The trustee objects to the debtors' exemption claim of a 2000 Honda CRV in the amount of \$6,800, pursuant to Cal. Civ. Proc. Code § 704.060, arguing that (1) the debtors are not allowed to exempt a vehicle under Cal. Civ. Proc. Code § 704.060 because they have exempted a different vehicle under Cal. Civ. Proc. Code § 704.010, namely a 1998 Toyota Avalon; (2) the exemption of a vehicle under Cal. Civ. Proc. Code § 704.060 is limited only to \$4,850; and (3) the Honda CRV is not a commercial vehicle as required by Cal. Civ. Proc. Code § 704.060(d)(1).

The court has no evidence that the Honda CRV is a tool of a trade of the debtors and meets the requirements of Cal. Civ. Proc. Code § 704.060(a). Moreover, Cal. Civ. Proc. Code § 704.060(c) prohibits the exemption of a motor vehicle under Cal. Civ. Proc. Code § 704.060(a) "if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section." The debtors have exempted the full value of a 1998 Toyota Avalon pursuant to Cal. Civ. Proc. Code § 704.010. The Toyota is reasonably adequate for either Dinah Hammond's use in her practice of law or Gregory Lutz's use in his self-employment as a consultant. See Schedule I. Accordingly, the objection to the exemption claim of the Honda CRV will be sustained.

141. 09-21065-A-7 CAROLE BARNARD HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 3-27-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$363,815. The movant's deed is the only deed against the property, securing a claim of approximately \$356,289.

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.

142. 09-23469-A-7 ANQUINITTA BELLINGER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [10]

Final Ruling: The order to show cause will be discharged and the case 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 30 was not paid. However, the debtor paid the fee on April 3. No prejudice has resulted from the delay.

143. 08-38671-A-7 KENNETH/CYNTHIA GREENHAW HEARING - MOTION FOR
RCO #2 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-27-09 [19]

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

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

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Tracy, California. The property has a value of \$450,000 and it is encumbered by claims totaling approximately \$576,878. The movant's deed is in first priority position and secures a claim of approximately \$457,343.

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 3, 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. 09-23671-A-7 ROBERT/VIVIAN MORTON
RCO #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Olivehurst, California. The property has a value of \$330,000 and it is encumbered by claims totaling approximately \$467,566. 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 April 8, 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.

145.	09-22073-A-7	SARAH RODRIGUEZ	HEARING - MOTION FOR
	JHW #1		RELIEF FROM AUTOMATIC STAY
	U.S. BANK LEASING LT, VS.		3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, U.S. Bank Leasing, seeks relief from the automatic stay with respect to a leased 2007 Honda Odyssey. The outstanding amount under the lease agreement totals \$32,607. The debtor also has not made one 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 19, 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.

146. 09-23977-A-7 GILBERT FERREIRA
APN #1
WELLS FARGO FINANCIAL, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-26-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2006 Ford F-150. The movant alleges that the vehicle has a value of \$19,545 based on a Kelly Blue Book retail value printout. But, the movant's valuation does not take into account the vehicle's condition, such as the actual mileage on the vehicle. And, the declaration of Heidi Spidell in support of the motion does not state the basis for the valuation. It merely states that Ms. Spidell is "informed and believe[s], and thereon allege[s], the property has a replacement value to Debtor of \$19,545.00." In other words, Ms. Spidell admits to not having personal knowledge about the proffered valuation. Hence, the evidence produced in support of the movant's valuation of the vehicle is not adequate to substantiate the alleged value.

Turning to the schedules and statements filed by the debtor, the vehicle has a value of \$15,000 and its secured claim is approximately \$19,541. See Statement of Financial Affairs item 5.

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. And, the vehicle was repossessed pre-petition, in February of 2009. See Schedule F; see also Statement of Financial Affairs item 5. This is cause for the granting of relief from stay.

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

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

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

147. 09-21082-A-7 CARY DEAL HEARING - MOTION FOR
ASW #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-19-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Mortgage Electronic Registration Systems, Inc., as nominee for SunTrust Mortgage, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$140,500 and it is encumbered by claims totaling approximately \$290,168. The movant's deed is in first priority position and secures a claim of approximately \$238,660.

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 6, 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.

148. 09-24782-A-7 WILLIAM/SUZANNE LIZOTTE HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, NA., VS. 4-14-09 [15]

Final Ruling: The movant has given only 13 days' notice of the hearing on this

motion to the debtors' counsel. This violates the court's local rules, including Local Bankruptcy Rule 9014-1(f)(1) and (2). Accordingly, the motion will be dismissed.

149. 09-24083-A-7 TERESA DIETRICH
PD #1
WELLS FARGO HOME MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-26-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Penn Valley, California. In the schedules, the property is identified as located in Big Oak Valley, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$323,960. The movant's deed is in first priority position and secures a claim of approximately \$213,960.

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

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

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

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

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

the motion.

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

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

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

150. 06-23284-A-7 WILBUR/JULIE HEATH HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
DAIMLER TRUST, VS. 3-26-09 [62]

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

The motion will be granted.

The movant, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2002 Mercedes Benz S500. In the schedules, the vehicle is identified as a 2002 Mercedes Benz E500.

Given the entry of the debtor's discharge on December 6, 2006, 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 lease matured on March 1, 2009. The outstanding amount under the lease agreement totals approximately \$50,397. And, the debtor has not made two post-petition payments under the lease agreement. See Declaration of Dewhana Jones ¶7. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The court concludes that the above 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 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.

151. 08-28184-A-7 JOHN BROWN AND HEARING - MOTION FOR
EAT #1 JACQUELINE MCDANIELS RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES LLC, VS. 3-13-09 [85]

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

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

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Tampa, Florida.

Given the entry of the debtor's discharge on September 26, 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 \$235,000 and it is encumbered by claims totaling approximately \$313,055. 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.

152. 08-38484-A-7 RICHARD/JOAN JACKSON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 3-23-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Aurora Loan Services, seeks relief from the automatic stay as to a real property in Boise, Idaho.

Given the entry of the debtor's discharge on January 21, 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 \$313,922. 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 \$268,322.

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 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 property following sale. No other relief is awarded.

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

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this

motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

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

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

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

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

153. 08-38485-A-7 JOON CHO AND YOON HONG HEARING - MOTION OF
MFB #1 THE CHAPTER 7 TRUSTEE FOR
EXTENSION OF DEADLINES
3-23-09 [14]

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

The motion will be granted.

The trustee seeks a 91-day extension, from March 23 to June 22, 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 all previously requested documents, including the debtors' tax returns. Also, the trustee has discovered that the debtors may not have disclosed all of their assets.

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 23, 2009. The motion was filed on March 23. Thus, the motion complies with the temporal requirements of the rule. Given the debtors' failure to turn over to the trustee all 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 June 22, 2009.

154. 09-20585-A-7 MATHEW/MONA BAUGHMAN HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, VS. 3-27-09 [21]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of \$500,000 and it is encumbered by claims totaling approximately \$701,781. The movant's deed is the only deed against the property, securing a claim of approximately \$693,503.

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 17, 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.

155. 09-24185-A-7 RAMON GARCIA AND HEARING - MOTION FOR
KAT #2 CHRISTINA JARLEGO RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS. 4-15-09 [14]

Final Ruling: The movant has given only 12 days' notice of the hearing on this motion to the debtors' counsel. This violates the court's local rules, including Local Bankruptcy Rule 9014-1(f)(1) and (2). Accordingly, the motion will be dismissed.

156. 08-39490-A-7 JESSICA SMITH HEARING - MOTION FOR
RCO #2 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 3-27-09 [21]

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

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

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Marysville, California.

Given the entry of the debtor's discharge on April 15, 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 \$170,000 and it is encumbered by claims totaling approximately \$222,523. 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 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

158. 06-21891-A-7 THOMAS PISHOS HEARING - MOTION TO
08-2023 DNL #18 SET AMOUNT OF RECEIVER'S BOND
SUSAN SMITH, VS. 3-23-09 [307]
BONNIE PISHOS, ET AL.

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

The motion will be granted.

The plaintiff, Susan Smith, who is also the trustee in the underlying bankruptcy proceeding, moves the court to set an amount of \$25,000 for the bond of Kevin Smith, the appointed receiver in charge of the Hunting Lodge notes.

The court has already appointed Mr. Smith as receiver to collect the \$5,500 monthly payments on the notes. At this time, the funds on hand that will be turned over to the receiver are only \$11,000. Hence, the court agrees with the plaintiff that, for the present, the proposed \$25,000 bond will be sufficient. The bond is subject to a future increase upon a motion by any party in interest. The motion will be granted.

159. 09-22693-A-7 GAIL GRIDDINE HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
HOME LOAN SERVICES, INC., VS. 3-25-09 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Home Loan Services, Inc., seeks relief from the automatic stay as to a real property in Rancho Cordova, California. The property has a value of \$290,000 and it is encumbered by claims totaling approximately \$478,710. The movant's deed is in first priority position and secures a claim of approximately \$390,180.

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.

160. 08-36396-A-7 ARTHUR MILLER
DMM #1
WACHOVIA MORTGAGE , FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-27-09 [74]

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

The motion will be granted.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Vallejo, California. The property has a value of \$175,000 and it is encumbered by claims totaling approximately \$351,858. 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.

161. 09-22997-A-7 SERGIO CHIRIP, SR. HEARING - MOTION FOR
JEB #1 RELIEF OF AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS. 4-2-09 [22]

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. 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.

162. 09-24297-A-7 LAURRIE DOTY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [15]

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

The order to show cause was issued because the debtor failed to file Exhibit D to the petition and a statement of financial affairs. See Fed. R. Bankr. P. 1006, 1007; 11 U.S.C. § 521(a)(1). The time to file these documents expired prior to the issuance of the order to show cause.

The statement of financial affairs, however, was filed on April 3. While not timely, there is no indication that the debtor's tardiness was prejudicial.

While the debtor has never filed Exhibit D, she did file on March 18 the attachment to such exhibit, the certificate of creditor counseling. It proves compliance with the requirements to 11 U.S.C. § 109(h).