

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 11, 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 JUNE 8, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 26, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 1, 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.

May 11, 2009 at 9:00 a.m.

MATTERS FOR ARGUMENT

1. 09-23200-A-7 DEBRA BALCH HEARING - MOTION FOR
LAZ #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 4-24-09 [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, U.S. Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$260,000 and it is encumbered by claims totaling approximately \$453,203. The movant's deed is in first priority position and secures a claim of approximately \$357,900.

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.

2. 09-24700-A-7 JILL EMMETT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-17-09 [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, Mortgage Electronic Registration Systems, Inc., as nominee for Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Orangevale, California. The property has a value of \$220,000 and it is encumbered by claims totaling approximately \$356,621. The movant's deed is in first priority position and secures a claim of approximately \$303,513.

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.

3. 09-23403-A-7 DANIEL/BETTINA DE YOUNG HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SVCING., INC., VS. 3-31-09 [12]

Tentative Ruling: The motion will be granted.

The movant, American Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Cameron Park, California.

The debtors oppose the motion, contending that they are delinquent to the movant only because the movant has been refusing to accept their payments.

The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$477,293. The movant's deed is in first priority position and secures a claim of approximately \$335,817.

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.

As to the opposition, this court is required to grant relief from the automatic stay pursuant to section 362(d)(2), when there is no equity in the property, as such is the case here, regardless of whether the debtors are delinquent on their payments to the movant. See 11 U.S.C. § 362(d)(2).

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.

4. 09-21904-A-7 BEVERLY BOSS
EAT #1
INDYMAC BANK, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-7-09 [14]

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

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

With respect to the debtor, the property has a value of \$360,000 and it is encumbered by claims totaling approximately \$333,785. The movant's deed is the only encumbrance against the property. This leaves approximately \$26,214 of equity in the property.

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

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

The movant has an equity cushion of approximately \$26,414. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after June 1, 2009. The trustee filed a report of no distribution on April 1, 2009 (and amended report on April 9) and there is nothing in the file suggesting that the case will remain open a significant period beyond June 1, 2009. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on April 1, 2009 and an amended report of no distribution on April 9.

The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The 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.

5. 09-21405-A-7 SERGIO HERBERT HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, NA, VS. 4-23-09 [24]

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 Vallejo, California. The property has a value of \$289,000 and it is encumbered by claims totaling approximately \$381,893. See Statement of Financial Affairs item 5. The movant's deed is the only encumbrance against

the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on March 16, 2009. And, in the statement of financial affairs, the debtor has indicated that the property was foreclosed or surrendered pre-petition, on or about November 5, 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 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.

6. 09-26207-A-7 STEPHANIE MERJIL HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [8]

Tentative Ruling: The petition will be dismissed.

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

7. 08-37209-A-7 CHARANJIT BAINS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-23-09 [30]

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 JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of \$260,000 and it is encumbered by claims totaling approximately \$260,616. See Schedule A. The movant's deed is in first priority position and secures a claim of approximately \$163,714.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 13, 2009.

Thus, the motion will be granted 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.

8. 09-26710-A-7 KRISTEN DELAPP HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-16-09 [6]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file a master address list with his petition, as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. Although the debtor filed a master address list on April 27, 2009, the notice of the commencement of the case was already served on April 18, 2009. As a result, the creditors on the late-filed master address list were not served with the notice. This has prejudiced those creditors and is cause for dismissal. See 11 U.S.C. § 707(a)(1). Accordingly, the petition will be dismissed.

9. 09-23716-A-7 BRADY/ERIN ELLSWORTH HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
4-14-09 [10]

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

The motion will be granted.

The movant, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Carmichael, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$385,069. 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 10, 2009. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

10. 09-23219-A-7 JOSE/ESTHER VENEGAS HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-7-09 [14]

Tentative Ruling: The motion will be granted.

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

The debtors have filed a response, stating that they are not opposed to the lifting of the automatic stay, but that they would like to negotiate a loan modification with the movant.

The property has a value of \$95,000 and it is encumbered by claims totaling approximately \$144,808. 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 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.

This ruling is without prejudice to the debtors' attempt in negotiating a loan modification with the movant.

11. 08-21220-A-12L JIM VANTRESS CONT. STATUS CONFERENCE
2-1-08 [1]

Tentative Ruling: None.

12. 08-21220-A-12L JIM VANTRESS CONT. HEARING - MOTION
WLG #5 FOR CONFIRMATION OF FIRST
AMENDED CHAPTER 12 PLAN
6-12-08 [104]

Tentative Ruling: None.

13. 08-21220-A-12L JIM VANTRESS CONT. STATUS CONFERENCE
08-2203 4-15-08 [1]
JIM VANTRESS, VS.
JOANNE SPARKS, ET AL.

Tentative Ruling: None.

14. 09-22222-A-7 CARLOS VIEYRA HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING LP, VS. 4-16-09 [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, Litton Loan Servicing, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of \$275,000 and it is encumbered by claims totaling approximately \$523,123. The movant's deed is in first priority position and secures a claim of approximately \$467,623.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on March 10, 2009.

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

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

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

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

15. 09-25422-A-7 JULIE POLISSO HEARING - MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
CITIFINANCIAL AUTO CORP., VS. 4-27-09 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Citifinancial Auto Corp., seeks relief from the automatic stay with respect to a 2005 Jeep Grand Cherokee.

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 March 26, 2009 and a meeting of creditors was first convened on May 1, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than April 25. The debtor filed a statement of intention on the petition date, which makes no reference to the vehicle.

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

Here, although the debtor filed a statement of intention on the petition date, the statement makes no reference to the vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 25, 2009, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by 11 U.S.C. § 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.

Therefore, without this motion being filed, the automatic stay terminated on April 25, 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.

16. 09-26522-A-7 DAVID HAYES HEARING - MOTION FOR
MBJ #1 RELIEF FROM AUTOMATIC STAY
SIERRA CENTRAL CREDIT UNION, VS. 4-27-09 [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, Sierra Central Credit Union, seeks relief from the automatic stay with respect to a 2007 Chevrolet Malibu. The vehicle has a value of \$11,900 and its secured claim is approximately \$21,930. 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.

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

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

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

17. 09-20625-A-7 ERIC/AVEREN BAREGGI HEARING - MOTION FOR
RSL #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 4-27-09 [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 in part and dismissed in part.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2004 Centurion ski boat with a trailer.

Given the entry of the debtor's discharge on April 27, 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 vehicle has a value of \$25,000 and its secured claim is approximately \$29,911. 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 February 24, 2009. And, the debtor has surrendered the vehicle to the movant.

Accordingly, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(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.

18. 09-25727-A-7 STEPAN/TATYANA GORKAVCHUK HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK, FSB, VS. 4-22-09 [7]

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

The motion will be granted.

The movant, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$201,000 and it is encumbered by claims totaling approximately \$321,169. The movant's deed is in first priority position and secures a claim of approximately \$224,159.

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.

19. 07-31232-A-7 RAYMOND SMITH HEARING - MOTION TO
PP #2 APPROVE STIPULATION FOR RELIEF
FIRST HORIZON HOME LOANS, VS. FROM AUTOMATIC STAY
4-27-09 [85]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f) (2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential

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

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

The movant, First Horizon Home Loans, seeks approval of a stipulation with the trustee for the termination of the automatic stay with respect to a nearly completed house in Auburn, California. The movant also seeks retroactive relief from stay, dating back to March 16, 2009, when the movant recorded a notice of default. The movant holds both the first and second deeds against the property. Even though the property is held in the name of RDS Enterprises, Inc., and not the debtors in this case, the title company would not issue title insurance for the foreclosure absent relief from the automatic stay. This problem apparently arises because the debtors listed the property in Schedules A and D.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The court will approve the stipulation with the trustee for the lifting of the automatic stay prospectively. Construction of the house is not complete. According to the debtor's Schedule A, "[e]lectrical power is not available at the home location." Also, the property is not held in the name of the debtor. It is held in the name RDS Enterprises, Inc. And, given that stipulation, had the movant applied for relief from stay before filing its notice of default on March 16, 2009, the court would have likely granted it.

Retroactive relief from the automatic stay will be granted. Cause exists because the debtors' scheduled the property as their own despite record title being held by the corporate entity. This reasonably suggested to the creditor that this case was not an impediment to the enforcement of its claim against the property.

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

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

20. 09-25632-A-7 FRANCES HETTINGER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-17-09 [8]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file an attorney's disclosure statement, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), 11 U.S.C. § 521(a), and 11 U.S.C. § 707(b)(2)(C). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

21. 09-21333-A-7 KHADER/SUZY NINO HEARING - OBJECTION TO
SF #2 TRUSTEE'S REPORT OF NO DISTRIBUTION BY ABRAHAM DAMOUNY, ET AL.
4-1-09 [29]

Tentative Ruling: The objection will be sustained.

Creditors Abraham and Betty Damouny object to the trustee's report of no distribution as premature. They contend that the debtors have not listed in their schedules details about a \$220,000 from a 401K plan and they have not accounted for how they have utilized \$400,000 in proceeds obtained from the refinance of an investment property. The Damounys wish to conduct discovery to determine whether there may be any avoidance actions.

The trustee concluded the meeting of creditors on March 2, 2009, and this objection was filed on April 1, 2009. Hence, the objection is timely as it was filed within 30 days of the conclusion of the meeting of creditors. In light of the investigation the Damounys wish to conduct, the court will sustain the objection to the trustee's report of no distribution. An order authorizing the Rule 2004 exam in favor of the Damounys was entered on April 17. The Damounys will have until May 29, 2009 to complete discovery and determine whether the trustee's report of no distribution should stand. The trustee may, if the trustee deems it appropriate, file a further no asset report after May 29 together with notice that any party in interest will have 30 days from its filing to object to it.

The objection will be sustained.

22. 09-24334-A-7 JOHNNY/KATHY GONZALES HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST, VS. 4-7-09 [11]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Bank of the West, seeks relief from the automatic stay with respect to a 2003 Chevrolet Silverado.

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 March 13, 2009 and a meeting of creditors was first convened on April 17, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than April 12. The

debtor filed a statement of intention on the petition date, but the statement does not reference the vehicle.

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

Here, although the debtor filed a statement of intention on the petition date, the statement does not reference the vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 12, 2009, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by 11 U.S.C. § 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.

Therefore, without this motion being filed, the automatic stay terminated on April 12, 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.

23. 09-21936-A-7 GERALD/SUSAN CHRISTIANSEN HEARING - MOTION FOR
DO #1 RELIEF FROM AUTOMATIC STAY
PREMIER WEST BANK, VS. 4-23-09 [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, Premier West Bank, seeks relief from the automatic stay as to a commercial real property in Fairfield, California. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$585,587. The movant's deed is in first priority position and secures a claim of approximately \$285,587.

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 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.

24. 09-26336-A-7 LAURIE PARSONS
DMG #1
CITIFINANCIAL AUTO CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-17-09 [10]

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

The motion will be granted.

The movant, Citifinancial Auto Corp., seeks relief from the automatic stay with respect to a 2003 Honda Element. Although the movant's claim is listed in Schedule F, the vehicle is not listed in the debtor's petition documents. The vehicle has been impounded after a collision and a mechanics lien sale has been scheduled by the repair shop. See April 17, 2009 Declaration of Mary Bolstad ¶8. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to 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.

The movant contends that the vehicle has a value of \$11,010, while its secured claim totals \$14,561.88.

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 has been impounded and is subject to a mechanics lien sale.

25. 08-39237-A-11 GURMEET/GURMINDER BHATIA
DBP #4

HEARING - MOTION FOR
ATTORNEYS FEES AND COSTS
RELATED TO RELIEF FROM STAY
(\$4,925.00 FEES; \$175.00 EXP.)
4-24-09 [102]

Tentative Ruling: The motion will be granted in part.

On April 13, 2009, the court granted the movant's motion for relief from stay with respect to a real property in Sacramento, California. See Docket Nos. 97 & 107. 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 now seeks compensation for bringing the motion for relief from stay. The movant seeks \$4,925 in professional fees and \$175 in costs, for a total of \$5,100. The fees represent 14.5 hours of attorney work, totaling \$4,350, at an hourly rate of \$300. It also represents \$575 of paralegal work.

The movant filed the instant motion on April 24, 2009, 11 days within the April 13 ruling above. This satisfies the temporal requirement for the motion.

The court has reviewed the work performed by the movant's counsel in bringing the motion for relief from stay. The work includes, without limitation, preparing, analyzing, and serving the motion for relief from stay, this motion, the notices of hearing, the supporting declarations, the information sheet, the certificates of service, orders, and reply to opposition to the motion for relief from stay. It also includes appearing at the hearings on the motions and following up with the debtors' counsel regarding the form of order.

However, the fees incurred in two time entries by the movant's counsel are not necessary or reasonable. A 2.5-hour February 19 time entry by counsel for the movant, for the preparation of a "new notice of motion for relief from stay for hearing on March 9, 2009," would not have been necessary if the court had not dismissed the movant's initial motion for relief from stay. The court dismissed that motion because it had been filed in a piecemeal fashion, because the supplemental pleadings were not accompanied with a proof of service, and

because the motion did not include an information sheet. See Docket No. 75. The February 19 time entry reflects work only on a new notice of the motion. It is not related to any of the deficiencies in the movant's first motion. Additionally, even if the work in the February 19 time entry had been necessary, 2.5 hours of work only for the re-noticing of an already prepared motion is quite excessive. The court will disallow this time entry in its entirety.

Next, the second of the two April 13 time entries includes a reference to a phone call with counsel for Marconi Corporation, another secured creditor, about "notice of default and payment." This portion of the time entry does not appear to be related to the motion for relief from the automatic stay. Thus, the court will deduct 0.3 hours from this time entry, leaving 0.2 hours for the preparation of the "RFS order" and sending it to counsel for the debtor. The disallowed fees total \$840 ((2.5 + 0.3 hours) x \$300 per hour).

The court concludes that the remaining fees and costs are reasonable, given the work performed. Accordingly, the motion will be granted in part.

26. 09-22538-A-7 RONALD FULLER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE CO., VS. 4-22-09 [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, Central Mortgage Company, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$262,000 and it is encumbered by claims totaling approximately \$268,774. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on March 26, 2009.

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

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

Because the movant has not established that the value of its collateral exceeds

the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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

27. 09-24138-A-7 LITA VERCELES HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-8-09 [11]

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

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

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" 11 U.S.C. § 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with 11 U.S.C. § 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46th day." See 11 U.S.C. § 521(i)(1). The 45th day was April 25 and the missing documents had not been filed. Thus, the petition was automatically dismissed effective on April 26, 2009, the 46th day after the petition filing.

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

28. 08-37341-A-7 REX/BRIDGET MINTER CONT. HEARING - AMENDED
PFF #1 MOTION TO AVOID LIEN
VS. CREDITOR TRADE ASSOC. 2-26-09 [24]

Tentative Ruling: The motion will be granted.

The debtors move to avoid a judicial lien in favor of Creditor Trade Association, Inc. on their residence in Corning, California.

CTA has withdrawn its objection to the motion.

A judgment was entered against Debtor Rex Minter in favor of CTA for the sum of \$27,852.28 on April 19, 2007. The abstract of judgment was recorded with Tehama County on February 13, 2008. That lien attached to the debtors' residential real property in Corning, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$140,000 as of the date of the petition. The unavoidable liens total \$81,036.97 on that same date. The debtors claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$58,963.03 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

29. 08-20942-A-7 AKALI IGBENE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-16-09 [127]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file the statement of current monthly income and means test calculation, as required by 11 U.S.C. § 707(b)(2)(C). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

30. 08-27643-A-7 TRUXEL PROPERTIES, LLC HEARING - MOTION FOR
FWK #2 RELIEF FROM AUTOMATIC STAY
TODD HUMPHREY, TRUSTEE, ET AL., VS. 4-27-09 [107]

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, Todd Humphrey individually, Todd and Lori Humphrey as trustees of the second amendment to the Humphrey Living Trust, dated October 11, 1989, and Todd Humphrey as trustee of the Emmerich Survivors Trust UA DTD May 18, 1989, seek relief from the automatic stay as to a real property in Auburn, California. The movants hold fractional interest in promissory notes totaling approximately \$365,000, secured by deeds against the property. The property has a value of \$5.4 million and it is encumbered by claims totaling approximately \$9,168,000. The motion does not establish the priority of the movants' interests in 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 movants to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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

31. 08-27643-A-7 TRUXEL PROPERTIES, LLC HEARING - MOTION FOR
FWK #3 RELIEF FROM AUTOMATIC STAY
HL EQUITY ADVISORS, INC., VS. 4-27-09 [113]

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, HL Equity Investors, Inc., seek relief from the automatic stay as to a real property in Citrus Heights, California. The movant holds fractional interest in the approximate amount of \$188,030 in a promissory note, secured by a deed against the property. The property has a value of \$5 million and it is encumbered by claims totaling approximately \$7,860,065. The motion does not establish the priority of the movant's interest in 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.

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.

32. 09-24444-A-7 REZA BAYATI
KAT #1
DEUTSCHE BANK NAT'L TRUST CO., VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-14-09 [15]

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 Troy, Michigan. The property has a value of \$201,000 and it is encumbered by claims totaling approximately \$268,382. The movant's deed is in first priority position and secures a claim of approximately \$220,133.

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 27, 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.

33. 07-28846-A-12L CHARLES YURGELEVIC
SAC #4

HEARING - MOTION TO
MODIFY CHAPTER 12 PLAN AFTER
CONFIRMATION
3-25-09 [84]

Tentative Ruling: The motion will be denied.

The debtor moves the court to modify his confirmed chapter 12 plan. The modified plan proposes plan payments to the trustee totaling \$97,427 by March 25, 2009 and proposes monthly plan payments of \$4,620 starting on April 25, 2009 for the remaining 44 months of the plan.

Although not stated in the motion, the modified plan also proposes to lower the interest rate on Option One Mortgage's claim to 4%, effective April 1, 2009, down from a 7.8% rate. See Docket No. 24. The newly proposed payments to Option One are in the amount of \$3,709 per month, a decrease from \$5,334 in the debtor's existing plan.

The trustee has filed a response, pointing out that under the modified plan, the debtor is ahead in plan payments by \$12,860.04. The trustee also questions

the debtor's authority to decrease the interest rate on Option One's claim.

The debtor has filed a reply, explaining why he is seeking the plan modifications.

The court may modify a plan after confirmation to alter the amount of payments on a class of claims, to alter the time for such payments, or to alter the amount of distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan. 11 U.S.C. § 1229(a)(1)-(3). 11 U.S.C. §§ 1222(a), 1222(b), and 1223(c), as well as the requirements of 11 U.S.C. § 1225(a), apply to any post-confirmation modification.

A chapter 12 plan may modify secured claims, including claims secured by the debtor's residence. See 11 U.S.C. 1222(b)(2); Cf. 11 U.S.C. §§ 1123(b)(5) & 1322(b)(2). Chapter 12 plans may also modify a secured claim to provide for payments on such claim beyond the length of the plan. See 11 U.S.C. 1222(b)(9). But, the debtor is still required to pay the present value of Option One's security. See 11 U.S.C. 1225(b)(5)(B). In other words, the proposed interest to Option One should be sufficient to pay the present value of Option One's security.

The Supreme Court in Till v. SCS Credit Corp., 124 S. Ct. 1951 (2004) decided that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an objective inquiry. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate on the modification hearing date was 3.25% as reported by the Federal Reserve, <<http://www.federalreserve.gov/releases/h15/update/>>. The debtor's proposed rate of 4% gives a .75% upward adjustment. Considering this upward adjustment, the amount of the secured claim originally (\$767,503.01) compared to the value of the property (\$1.1 million), the absence of other debt in this case, the trustee's indication that he would not oppose the modification, the financial feasibility of the plan as evidence by schedule I and J, and the continuing administration by the trustee, the court concludes that the plan satisfies section 1225(a)(5)(B).

The court further notes that Option One has not come forward with any objection or evidence that the proposed interest rate is inadequate. In the words of the Supreme Court: "Moreover, starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing"

However, the court agrees with the trustee - nothing in section 1229(a) permits

the court to revisit the interest rate once it is fixed in a confirmed plan. This is because the interest rate payable on a secured claim must be determined as of the effective date. 11 U.S.C. § 1225(a)(5)(B) requires that a secured claim receive value, as of the effective date of the plan, equal to the value of the collateral for the claim. The effective date of the plan here is its confirmation date. Thus, when the court confirmed the plan and fixed an interest rate it necessarily determined that such rate would result in the secured creditor receiving the present value of its claim. The secured creditor and the debtor are now bound by this determination. 11 U.S.C. § 1327(a). The court cannot, and will not, revisit this issue.

Nevertheless, the motion is not supported by evidence that the debtor is able to make the proposed plan payments. The debtor's declaration in support of the motion refers to Schedules I and J accompanying the motion. However, no such schedules have been filed with the motion. And, during the last one year, the trustee has had to file five dismissal motions due to the debtor's failure to make plan payments. In light of this history, the court is not prepared to approve the modified plan in the absence of evidence of the debtor's current and projected future financial condition and ability to make the proposed plan payments.

The motion will be denied.

34. 08-34347-A-11 MBD, INC.
WCL #14

HEARING - MOTION FOR
ORDER AUTHORIZING AND APPROVING
INSURANCE PREMIUM FINANCE
AGREEMENT AND BORROWING THEREUNDER
4-25-09 [253]

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 seeks to incur secured debt pursuant to 11 U.S.C. § 364(c) to finance \$8,931.80 of its \$11,308 in insurance policy premiums at a 12.29% interest. The debtor will enter into a finance and security agreement with AICCO, Inc. The financing will be secured by the insurance policies, including amounts that may become due under the finance agreement because of a loss under the policies, returned or unearned premiums, and any dividends due to the debtor under the policies. Although the policies are subject to additional insureds and loss payees, they are unencumbered. In the event the debtor defaults under the finance agreement, AICCO will be authorized without further court order to cancel the policies and apply returned or unearned premiums to the unpaid portion of the financing. AICCO will have an administrative expense claim for any deficiency amounts.

"Subject to any limitations on a trustee serving in a case under this chapter,

and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter." 11 U.S.C. § 1107(a). This includes the rights of a trustee under 11 U.S.C. § 364.

11 U.S.C. § 364(c) allows a trustee to obtain debt secured by a lien on unencumbered estate property, if the trustee is unable to obtain unsecured credit allowable under 11 U.S.C. § 503(b)(1).

The debtor needs the financing to pay for the premiums on its general liability insurance policies that are required for the operation of its business. The policies are unencumbered. See Declaration of Andrew Meghdadi ¶ 5. Hence, the policies may be used as collateral for the financing. The court then will approve the financing. The motion will be granted.

35. 08-34347-A-11 MBD, INC.
WCL #14

HEARING - MOTION FOR
APPROVAL OF SALE OF REAL PROPERTY
[LOT 57] FREE AND CLEAR OF LIENS
4-27-09 [259] O.S.T.

Tentative Ruling: The motion will be granted.

The debtor in possession moves for the approval of a sale, free and clear of liens and interests, of lot 57 with a newly constructed home in the debtor's Belvedere Heights division in Chico, California, to Erlene AuClair for \$439,000. The property is subject to three encumbrances, a construction deed of trust in favor of Tri Counties Bank, securing a claim of approximately \$315,000, a mechanics lien in favor of Chico West in the amount of \$29,145.65, and a mechanics lien in favor of Cook Concrete in the amount of \$19,225.45. The bank's claim will be paid in full, whereas the mechanics liens are disputed. The debtor also claims that Chico West's lien already includes the amount of Cook's lien. And, \$35,000 from the sale of lot 33 have been set aside for the satisfaction of the liens.

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

11 U.S.C. § 1107(a) provides that a debtor-in-possession has all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to sell property of the estate pursuant to 11 U.S.C. § 363. Section 363(b) allows, then, a debtor in possession to sell property of the estate, other than in the ordinary course of business. The sale must be fair, equitable, and in the best interest of the estate. In re Mozer, 302 B.R. 892, 897 (C.D. Cal. 2003).

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

The sale will generate sufficient proceeds to pay the bank's estimated \$315,000 claim. The purchase price of \$439,000 is only \$19,000 more than the \$420,000

scheduled value of the lot. See Schedule A. After deduction of all encumbrances and other charges to be paid from escrow, the estate will generate approximately \$102,330. This does not include any sale proceeds for satisfaction of the mechanics liens. The court concludes that the sale is fair and equitable, and in the best interest of the estate, especially in light of the currently difficult state of the housing market.

Given the dispute over the mechanics liens, the fact that the purchase price exceeds the aggregate value of the liens, and the reserved \$35,000 from the sale of lot 33 for satisfaction of the liens, the court will approve the sale free and clear of Chico West's and Cook's liens pursuant to section 363(f) (3) and (4). The court does not need to approve the sale free and clear of the bank's interest as its claim will be paid in full from escrow. Further, the court will approve the payment of the real estate commission fees and will waive the 10-day stay of Fed. R. Bankr. P. 6004(g). As always, the debtor must comply with this court's Local Bankruptcy Rule 5008-1(b). The motion will be granted.

36. 08-38850-A-7 CHILE VERDE, LLC HEARING - OBJECTION TO
REPORT OF NO DISTRIBUTION BY
AMERICAN ENTERPRISE BANK
4-22-09 [20]

Tentative Ruling: The objection will be dismissed as moot.

American Enterprise Bank objects to the trustee's report of no distribution, filed on March 23, 2009. The basis for the objection is that the trustee has not moved to administer an avoidance action listed in the debtor's Schedule B. See also Statement of Financial Affairs, item 3b. The bank is willing to advance the fees and costs for prosecuting the avoidance action.

However, after this objection was filed, the trustee filed a notice of assets on April 23. Also, the trustee has filed a motion to employ the bank's counsel as counsel for the estate to prosecute the avoidance action. See Docket No. 28. The trustee has apparently agreed to accept the bank's offer to advance the fees and costs for the prosecution of the avoidance action. Accordingly, the objection will be dismissed as moot.

37. 08-35651-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 4-13-09 [104]

Tentative Ruling: The motion will be denied.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Redding, California. The movant contends that the value of the property is \$180,000 based on an appraisal report. See Exhibit C to Declaration of Irma Galaviz. But, the appraisal report is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Linda James. See Fed. R. Evid. 802, 901(a). Further, the debtor has not listed the property in the petition documents. The court then has no admissible evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

38. 08-35651-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
DMM #2 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 4-13-09 [116]

Tentative Ruling: The motion will be denied.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Redding, California. The movant contends that the value of the property is \$175,000 based on an appraisal report. See Exhibit C to Declaration of Irma Galaviz. But, the appraisal report is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Linda James. See Fed. R. Evid. 802, 901(a). Further, the debtor has not listed the property in the petition documents. The court then has no admissible evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

39. 08-35651-A-7 LEONARD SCROGGINS HEARING - MOTION FOR
DMM #3 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 4-13-09 [110]

Tentative Ruling: The motion will be denied.

The movant, Wachovia Mortgage, seeks relief from the automatic stay as to a real property in Redding, California. The movant contends that the value of the property is \$130,000 based on an appraisal report. See Exhibit C to Declaration of Irma Galaviz. But, the appraisal report is inadmissible because it lacks foundation, it is hearsay, and is not authenticated by a declaration or an affidavit by the individual who prepared it, Sam Smith. See Fed. R. Evid. 802, 901(a). Further, the debtor has not listed the property in the petition documents. The court then has no admissible evidence of value for the property. As a result, the court cannot determine whether there is any equity in the property or whether the movant's interest in it is adequately protected. Accordingly, the motion will be denied.

40. 09-25153-A-7 TWILIA TURNER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-13-09 [11]

Tentative Ruling: The petition will be dismissed.

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

41. 09-26153-A-7 ROBERT PERRY HEARING - MOTION FOR
HSM #1 RELIEF FROM AUTOMATIC STAY
SCI PARK PLACE FUND, LLC, VS. 4-13-09 [10]

Tentative Ruling: The motion will be granted.

The movant, SCI Park Place Fund, LLC, seeks relief from the automatic stay with respect to a leased nonresidential real property in Sacramento, California. The debtor has not made approximately four and one-half pre-petition payments to the movant on account of the lease. The outstanding payments under the lease total approximately \$52,122. After serving the debtor with a three-day notice to pay or quit, the movant declared forfeiture of the lease and commenced an unlawful detainer action on February 25, 2009. The debtor filed the instant bankruptcy case on April 2, 2009. Trial in the unlawful detainer action was scheduled for April 3. The movant seeks relief in order to proceed with its unlawful detainer action and regain possession of the property.

The debtor opposes the motion, arguing that it intends to assume the lease and commence lease payments. The debtor contends that it does not have to provide adequate protection for pre-petition defaults under the lease and that the movant has not established that the lease is not necessary to an effective reorganization.

First, whether the lease is necessary to an effective reorganization is only relevant to a section 362(d)(2) analysis. Assuming cause exists for the lifting of the automatic stay under section 362(d)(1), the court does not need to determine that the lease is not necessary to an effective reorganization under section 362(d)(2)(B).

Second, in the event of an assumption of the subject lease, section 365(b)(1) would require the debtor to cure all defaults under the lease, regardless of whether it is pre or post-petition default. 11 U.S.C. § 365(b)(1)(A); ECPG (Peoria) Assocs. Ltd. P'ship v. Bldg. Block Child Care Ctrs., Inc. (In re Bldg. Block Child Care Ctrs., Inc.), 234 B.R. 762, 765-66 (B.A.P. 9th Cir. 1999). The case cited by the debtor, Pac. Shore Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064 (9th Cir. 2004), involves rejection and not the assumption of leases. That case discusses the chapter 11 debtor's obligation to pay as an administrative claim any post-petition use of a commercial premises before rejection. Assumption of the lease, on the other hand, requires the debtor in possession to cure all defaults under the lease, including pre-petition arrearages. However, the opposition offers no cure of its pre-petition defaults and offers no evidence establishing how the debtor plans to cure any of its defaults under the lease.

More importantly, section 365(d)(3) requires a debtor in possession to timely perform all of its post-petition obligations under any unexpired nonresidential real property lease, until the lease is assumed or rejected. See 11 U.S.C. § 365(d)(3); see also K-4, Inc. v. Midway Engineered Wood Prods., Inc. (In re TreeSource Indus., Inc.), 363 F.3d 994, 997 (9th Cir. 2004). This is without prejudice to the debtor requesting an extension of the time to assume or reject a lease. Yet, the debtor does not offer to make post-petition lease payments to the movant. It offers to resume payments only when it moves to assume the lease. Section 365(d)(3) does not permit this.

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) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the subject 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.

42. 09-25955-A-7 NIKOLAY ZUBYAN AND HEARING - MOTION FOR
KAT #1 RIMA KARAPETYAN RELIEF FROM AUTOMATIC STAY
HSBC BANK USA, NA., VS. 4-21-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$241,000 and it is encumbered by claims totaling approximately \$408,471. The movant's deed is in first priority position and secures a claim of approximately \$329,763.

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.

43. 09-25756-A-7 DENNIS JOHNSON HEARING - APPLICATION FOR
WAIVER OF THE CHAPTER 7 FILING FEE
3-31-09 [6]

Tentative Ruling: The application will be denied.

The debtor moves for a waiver of the chapter 7 filing fee on the grounds that he has a monthly income of \$1,530 and monthly expenses of \$3,000. The debtor

claims to have a five-member household, himself and his four daughters.

However, although this case was filed on March 31, 2009, the debtor's schedules and statements are still outstanding. The only documents on file are the three pages of the debtor's voluntary petition. This means that the court does not have the benefit of schedules I and J, which show the debtor's itemized income and expenses. The court also does not have the benefit of assessing the debtor's assets and liabilities or the information that should be disclosed in the statement of financial affairs. And, the court cannot verify any of the information on the subject application, such as the debtor's monthly income and expenses.

Accordingly, the application will be denied.

44. 09-23058-A-7 YURIY KHARCHENKO HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE CO., VS. 4-22-09 [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, Central Mortgage Company, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of \$347,500 and it is encumbered by claims totaling approximately \$500,000. 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.

45. 08-38360-A-7 JASON/CHRISTINA LEE CONT. HEARING - MOTION FOR
MEH #1 REDEMPTION
VS. WFS/WACHOVIA DEALER SVCS. 4-1-09 [16]

Tentative Ruling: The motion will be denied.

This motion was originally scheduled for hearing on April 27. At the April 27 hearing, the court issued the following ruling:

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.

At the request of the debtors, the court continued the motion to May 11, to allow them an opportunity to supplement the record. The debtors have filed an Amended Schedule C, claiming a \$9,200 exemption in the vehicle pursuant to Cal. Civ. Proc. Code § 703.140(b)(2). The debtors have also filed two declarations where each of them states their opinion of value for the vehicle.

However, the motion will be denied because the maximum exemption claim under Civ. Proc. Code § 703.140(b)(2) is \$2,775. By claiming an exemption of \$9,200, the debtors have exceeded the allowable maximum exemption under that provision. The motion will be denied also because, as pointed out in the court's April 27 ruling, 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). The debtors' opinion of value for the vehicle is not evidence of the price a retail merchant would charge for their vehicle considering the age and condition of the vehicle at the time value is determined. The court then does not have evidence of the replacement value of the vehicle.

Given the foregoing, the motion will be denied.

46. 09-25062-A-7 NELSON GERONA AND HEARING - MOTION FOR
KAT #1 NOEMI RAMOS RELIEF FROM AUTOMATIC STAY
INDYMAC FEDERAL BANK FSB, VS. 4-27-09 [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 Lathrop, California. The property has a value of \$187,000 and it is encumbered by claims totaling approximately \$318,907. 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.

47. 09-23465-A-11 MOORE EPITAXIAL, INC. HEARING - MOTION FOR
RPM #1 RELIEF FROM AUTOMATIC STAY
DCFS USA LLC, VS. 4-8-09 [50]

Tentative Ruling: The motion will be denied.

The movant, DCFS U.S.A., seeks relief from the automatic stay with respect to a 2006 Mercedes Benz CLS55. However, the court approved the sale of the vehicle on April 27. The order was entered on April 29. See Docket No. 76. The vehicle is no longer property of the estate. And, the movant should have been paid from the sale proceeds. Accordingly, the motion will be denied.

48. 09-24065-A-7 STEPHEN/LACEY WALKER HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CENTRAL MORTGAGE CO., VS. 4-17-09 [9]

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

The motion will be granted.

The movant, Central Mortgage Company, seeks relief from the automatic stay as to a real property in Fair Oaks, California. The property has a value of \$220,000 and it is encumbered by claims totaling approximately \$342,250. The movant's deed is in first priority position and secures a claim of approximately \$291,033.

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 21, 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.

49. 09-20567-A-7 CAROLYN WILSON HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-3-09 [58]

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

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

The debtor has filed opposition.

Given the entry of the debtor's discharge on April 28, 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 \$151,257 and it is encumbered by claims totaling approximately \$374,376. The movant's deed is in first priority position and secures a claim of approximately \$305,625.

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 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.

50. 09-23567-A-7 MARIETTA FREYMOND HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-13-09 [10]

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 April 10, 2009. This is cause for dismissal. See 11 U.S.C. §§ 343 & 707(a)(1).

51. 09-26168-A-11 CHARLES SILLER HEARING - MOTION TO
MLG #1 DISMISS
4-13-09 [12]

Tentative Ruling: The motion will be granted.

The debtor seeks dismissal of this case on the basis that he had to file two cases because the first case he filed did not allow him "to file some of the necessary accompanying documents with [the first petition]," Case No. 09-26167. Given the filing of the two duplicative cases, this case (Case No. 09-26168) will be dismissed. No other relief will be granted.

52. 09-25671-A-11 419 J, LLC HEARING - MOTION FOR
SAC #1 RELIEF FROM AUTOMATIC STAY
BYONG ROK AND KYUNG CHOI, VS. 4-10-09 [7]

Tentative Ruling: The motion will be granted.

The movant, Byong Rok and Kyung Choi, seek relief from the automatic stay as to a leased nonresidential real property in Sacramento, California. The debtor has not made two pre and one post petition payments to the movant under the lease. The outstanding payments under the lease total approximately \$110,011. After serving the debtor with a three-day notice to pay or quit, the movant instituted an unlawful detainer action against the debtor on March 16, 2009. The instant bankruptcy petition was filed on March 30.

The debtor opposes the motion, arguing that it intends to assume the lease and commence lease payments. The debtor contends that it does not have to provide adequate protection for pre-petition defaults under the lease and that the movant has not established that the lease is not necessary to an effective reorganization.

The movant has filed a declaration in reply, showing that the debtor is delinquent in lease payments, including property taxes and insurance, for April and May 2009.

First, whether the lease is necessary to an effective reorganization is only relevant to a motion brought pursuant to 11 U.S.C. § 362(d)(2). Assuming cause exists for the lifting of the automatic stay under section 362(d)(1), the court does not need to determine that the lease is unnecessary to an effective reorganization under section 362(d)(2)(B).

Second, in the event of an assumption of the subject lease, 11 U.S.C. § 365(b)(1) would require the debtor to cure all defaults under the lease, regardless of whether they are pre or post-petition. 11 U.S.C. § 365(b)(1)(A); ECPG (Peoria) Assocs. Ltd. P'ship v. Bldg. Block Child Care Ctrs., Inc. (In re Bldg. Block Child Care Ctrs., Inc.), 234 B.R. 762, 765-66 (B.A.P. 9th Cir. 1999). The case cited by the debtor, Pac. Shore Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064 (9th Cir. 2004), involves rejection and not the assumption of leases. That case discusses the chapter 11 debtor's obligation to pay as an administrative claim any post-petition, pre-rejection use of a commercial premises. Assumption of the lease, on the other hand, requires the debtor in possession to cure all defaults under the lease,

including pre-petition arrearages. However, the opposition offers no cure of the pre-petition default and offers no evidence establishing that the debtor plans is able to cure any of the lease defaults. Moreover, Schedule B shows that the debtor has no available funds.

Third, and most important, section 365(d)(3) requires a debtor in possession to timely perform all of its post-petition obligations under any unexpired nonresidential real property lease until the lease is assumed or rejected. See 11 U.S.C. § 365(d)(3); see also K-4, Inc. v. Midway Engineered Wood Prods., Inc. (In re TreeSource Indus., Inc.), 363 F.3d 994, 997 (9th Cir. 2004). Here, the debtor does not offer to make post-petition lease payments to the movant. It offers to resume payments only when it moves to assume the lease. Section 365(d)(3) does not permit this. And, the debtor has already missed one post-petition payment under the lease, the April payment.

The court concludes that the foregoing is cause for terminating the automatic stay. Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action in state court. The parties are to return to state court in order to determine who is entitled to possession of the subject 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.

Fourth, as to the debtor's counterclaims against the movant for breach of the lease and overpayment of rent, abstention is appropriate.

28 U.S.C. § 1334(c)(1) provides that "[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." In the Ninth Circuit, the factors that a court must consider when deciding whether to abstain include: (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties. In re Tuscon Estate, Inc., 912 F.2d 1162, 1166-67 (9th Cir. 1990).

Regardless of which court adjudicates the claims, the debtor's hurdles of estimating the counterclaims and proposing a confirmable chapter 11 plan would be the same. Therefore, abstention would have no effect on the administration of the estate. The debtor's counterclaims would be compulsory counterclaims in the pending state court action instituted by the movant because they arise under the same lease the debtor is charged with breaching.

Also, all claims are solely based on state law. They include claims and counterclaims for breach of the lease, as well as a counterclaim for overpayment. They are not core claims as they do not invoke substantive rights provided by title 11 and the claims could arise in a context outside of a bankruptcy case. All the claims could be asserted and adjudicated in state court. The claims are merely related to a case under title 11 because their outcome could conceivably only 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)). The movant's claim against the debtor would be liquidated fixing the movant's claim against the estate. Similarly, the estate's claims against the movant would be liquidated leading to a potential recovery by the estate and distributions for the benefit of the creditors. As such, the claims 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). Given the instant motion for the lifting of the automatic stay, no such consent exists here.

Further, this court's docket and law and motion schedule would not permit it to conduct a lengthy trial. And, the pending state court action involves nondebtor defendant parties, including Ai Pham, Hung Toan, Ershad Ali, and Ronald Malcom. See Exhibit 3 to Exhibit D to Motion, Docket No. 10. The court would have no jurisdiction over the claims asserted against those non-filing defendants. This would lead to piecemeal litigation of the state court action as this court would have jurisdiction only over claims to which the debtor is a party.

Finally, the timing of the subject bankruptcy case indicates a high likelihood of forum shopping by the debtor. The pending state court action was filed on March 16, 2009, while the bankruptcy case was filed only 14 days later, on March 30. A conclusion of forum shopping is further bolstered by the fact that the debtor's schedules list the movant as the creditor holding the largest unsecured claim against the estate. That claim is for \$2 million. The second largest unsecured creditor holds a claim for only \$7,500. The debtor's scheduled unsecured claims total \$2,019,343.13. The movant is also listed as the sole secured creditor of the debtor. The size of the movant's claim shows that the debtor filed this bankruptcy case solely due to the pressures of one creditor, the movant.

In light of the foregoing, the court concludes that permissive abstention is warranted with respect to the debtor's counterclaims.

53. 09-24572-A-7 JOSE MIRANDA AND HEARING - MOTION FOR
SW #1 MARIA HERNANDEZ RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES, INC., VS. 4-22-09 [12]

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

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

The motion will be granted.

The movant, Wachovia Dealer Services, Inc., seeks relief from the automatic stay with respect to a 2005 Jeep Liberty. The vehicle has a value of \$8,000 and its secured claim is approximately \$16,054.

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 17, 2009. And, the debtor has surrendered the vehicle to the movant. 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.

54. 09-24872-A-7 JASON MILTON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-9-09 [11]

Tentative Ruling: The petition will be dismissed.

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

55. 09-24872-A-7 JASON MILTON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-23-09 [15]

Tentative Ruling: The petition will be dismissed.

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

56. 09-27374-A-7 ELVIR EMBRY, SR.
UST #1

HEARING - MOTION FOR
DETERMINATION RE: APPOINTMENT
OF PATIENT CARE OMBUDSMAN
4-24-09 [7]

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

The motion will be granted and an ombudsman will be appointed.

The U.S. Trustee moves the court to determine whether the appointment of a patient care ombudsman under 11 U.S.C. § 333(a) is necessary.

11 U.S.C. § 333(a) (1) provides that:

If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

The term "health care business" means "any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for- (i) the diagnosis or treatment of injury, deformity, or disease; and (ii) surgical, drug treatment, psychiatric, or obstetric care." 11 U.S.C. § 101(27A).

Although the debtor has not checked the "Health Care Business" box on his petition, in item 18 of the statement of financial affairs, the debtor states that he has been operating a care home under the name of Embry's Care Homes. Schedule I also states that the debtor is self-employed, operating Embry's Care Homes. Operating a care home typically involves facilities that offer some services for the treatment of injury, deformity, or disease and involves some drug treatment services to clients. Therefore, the court concludes that the debtor operates a health care business and the appointment of an ombudsman is appropriate.

57. 09-24782-A-7 WILLIAM/SUZANNE LIZOTTE
KAT #1
JPMORGAN CHASE BANK, NA., VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-14-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of \$325,000 and it is encumbered by claims totaling approximately \$528,293. The movant's deed is in first priority position and secures a claim of approximately \$448,805.

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.

58. 09-20783-A-7 PHYLLIS SCHOUTEN HEARING - MOTION FOR
LAZ #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 4-17-09 [15]

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

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

The movant, U.S. Bank, seeks relief from the automatic stay as to a real

property in Vacaville, California.

Given the entry of the debtor's discharge on April 30, 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 trustee filed a report of no distribution on February 25, 2009.

The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The property has a value of \$268,500 and it is encumbered by claims totaling approximately \$244,980. The movant's deed is in second priority position and secures a claim of \$48,500.

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. 09-21784-A-7 SHARON SHARP HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FINANCIAL, VS. 4-10-09 [19]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Financial, seeks relief from the automatic stay with respect to a 2007 Toyota Corolla.

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

The petition here was filed on February 3, 2009 and a meeting of creditors was first convened on April 1, 2009. Therefore, a statement of intention that refers to the movant's vehicle and debt was due no later than March 5. 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 April 1, 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 May 1, 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.

Therefore, without this motion being filed, the automatic stay terminated on May 1, 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.

60. 08-34085-A-7 QUYNH HOANG AND CONT. HEARING - MOTION FOR
08-2579 TY GOANG-TRAN CRL #1 RELIEF FROM AUTOMATIC STAY
PEOPLE OF THE STATE OF CA, ET AL., VS. 3-13-09 [40]

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

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

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

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

(1) the state court action is void because it was filed after the filing of a bankruptcy petition by Jamie Hoang (case no. 08-29587, filed on July 15, 2008);

(2) despite the automatic stay, the state court action has been moving forward;

(3) although at this time the state court complaint does not meet the requirements for nondischargeability of section 523, as alleged in the adversary proceeding, the defendants suspect that the plaintiffs will amend their state court complaint to allege claims that would be nondischargeable; this would violate the recent In re Wardrobe Ninth Circuit decision;

(4) even if the state court action is adjudicated in favor of the plaintiffs, they would still have to litigate the willful and malicious elements of section 523(a)(6) in the pending adversary proceeding;

(5) the section 523(a)(7) claim in the adversary proceeding is not appropriately asserted against the individual defendants;

(6) granting relief from stay does not best serve judicial economy because the defendants would have to retain separate counsel to defend the state court action;

(7) abstention by this court of not hearing the adversary proceeding until the resolution of the state court action is not appropriate;

(8) no cause for the granting of relief from stay exists because "many of the [s]tate [c]ourt [c]laims are now moot with the appointment of the receiver;"

(9) the hardships balance in favor of the defendants.

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

Further, the defendants/debtors received their discharge on January 20, 2009, meaning that the automatic stay is no longer in effect with respect to them. See 11 U.S.C. § 362(c)(2)(C). Accordingly, the motion will be dismissed as moot with respect to the defendants/debtors.

As to the estate, the motion will be granted under section 362(d)(1) because the trustee filed a report of no distribution on January 26, 2009. The motion will be granted as to the estate to permit the plaintiffs/movants to proceed with their state court action against the debtors. But, relief from stay is granted only for the liquidation of the pending state court claims against the debtors. No other relief is awarded. The plaintiffs/movants are not allowed to enforce any judgments entered by the state court against the debtors. In the event the state court enters a judgment against the debtors, the plaintiffs/movants must come back to this court for adjudication of the section 523 claims. The motion will be granted in part.

As a final note, despite raising abstention as an issue by the defendants/debtors, this issue is not properly before the court because the motion discussed and requested only relief from the automatic stay. In the event the defendants/debtors wish to raise abstention before this court, they must file their own motion.

61. 09-24185-A-7 RAMON GARCIA AND CONT. HEARING - MOTION FOR
KAT #2 CHRISTINA JARLEGO RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS. 4-15-09 [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, Deutsche Bank National Trust Company, 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 \$404,659. The movant's deed is in second priority position and secures a claim of approximately \$88,930.

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 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.

62. 09-25587-A-7 CINDY ALVARDO
KAT #1
HSBC USA BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-21-09 [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, HSBC U.S.A. Bank, seeks relief from the automatic stay as to a real property in Auburn, California. The street number for the property in the

schedules is slightly different from the street number in the motion. The property has a value of \$350,000 and it is encumbered by claims totaling approximately \$483,032. The movant's deed is the only deed against the property, securing a claim of approximately \$482,032.

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.

63. 08-24988-A-7 ANTHONY/MINDY BOWERS
JRR #1

HEARING - TRUSTEE'S MOTION FOR
APPROVAL OF COMPROMISE AND
SETTLEMENT
4-16-09 [39]

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 of a settlement agreement between the estate and the debtors over the estate's interest in a post-petition inheritance totaling \$205,000. Under the terms of the compromise, the debtors will pay \$88,065 to the estate in full satisfaction of the estate's interest in the inheritance. The settlement will result into a 100% distribution to creditors, including the payment of administrative claims.

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 the settlement proceeds will pay all estate claims in full 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.

64. 09-25888-A-7 EDEN ELMIDO
WGM #1
PHH MORTGAGE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-22-09 [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, PHH Mortgage Corp., seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$190,000 and it is encumbered by claims totaling approximately \$394,783. 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.

65. 09-23691-A-7 BRAD/MONIQUE CARROLL HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
CITIBANK NA, VS. 4-17-09 [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, Citibank, seeks relief from the automatic stay as to a real property in El Dorado Hills, California. The property has a value of \$340,000 and it is encumbered by claims totaling approximately \$392,730. 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.

66. 09-24491-A-7 ROBERT/KATHRYN GOLDMAN
ND #1
HSBC BANK USA AS TRUSTEE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-22-09 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Manteca, California. The property has a value of \$230,000 and it is encumbered by claims totaling approximately \$459,820. The movant's deed is in first priority position and secures a claim of approximately \$288,004.

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 28, 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.

67. 09-22492-A-7 CECIL JACOB
RSS #2
INDYMAC FEDERAL BANK, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-23-09 [23]

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 Stockton, California. The movant purchased the property at a pre-petition foreclosure sale, on December 9, 2008. On January 8, 2009, the movant served the debtor with a three-day notice to quit. On January 21, 2009, the movant commenced an unlawful detainer proceeding. The debtor filed the instant petition on February 13.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the 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.

68. 09-20993-A-7 CHANTON LAM HEARING - MOTION FOR
RSS #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A., VS. 4-23-09 [27]

Tentative Ruling: The motion will be dismissed without prejudice because it is not accompanied with a proof of service indicating when and who it was served upon, in violation of Local Bankruptcy Rule 9014-1(e)(1)-(3).

69. 08-24995-A-7 PEARL MCGINTY HEARING - MOTION FOR
MPD #3 APPROVAL OF COMPROMISE AND SETTLE-
MENT OF ESTATE'S (1) CLAIM FOR
POTENTIAL RECOVERY OF FRAUDULENT
TRANSFERS AND (2) REQUEST TO
DISMISS THE PENDING ADVERSARY
ACTION TO DENY DISCHARGE
4-21-09 [66]

Tentative Ruling: The motion will be denied.

The trustee seeks approval of a settlement agreement between the estate, on one hand, and the debtor, her son and her daughter, on the other hand, resolving fraudulent conveyance claims against the debtor's son and daughter. The debtor transferred two real properties to her son and daughter each. The son encumbered the property transferred to him, while the property transferred to the daughter remains unencumbered. The total claims against the estate, including administrative expenses but excluding one disputed claim filed by Shannon Bentley for \$291,000 and one late claim filed by Bonnie Baker for \$3,986.20, total \$18,522.67. Under the terms of the compromise, the debtor

will pay \$18,500 to the estate in full satisfaction of the estate's fraudulent conveyance claims against her son and daughter. In conjunction with the settlement, the trustee will dismiss a section 727 action against the debtor.

The trustee alleges that the total value of the unencumbered real property is between \$25,000 and \$40,000. On the other hand, the encumbered property would have "little room for any equity after sale." See Memorandum of Points and Authorities ¶2A. The trustee also alleges that a sale of the real properties in the currently difficult housing market increases the uncertainties of recovery for the estate.

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).

However, the motion will be denied because the supporting declaration of John Reger states little or nothing about his investigation of what the estate would receive from the sale of the real properties. For instance, neither the motion nor the declaration of Mr. Reger provide any figures about the value and encumbrances of the encumbered property, transferred to the debtor's son. Also, while the motion states that the unencumbered property, transferred to the debtor's daughter, has a value of between \$25,000 and \$40,000, this is not in the declaration of Mr. Reger. Due to the absence of evidence on these points, the court concludes that the evidentiary record is not sufficient to permit a conclusion that the settlement is equitable and fair.

70. 09-24795-A-7 MARTIN LOPEZ AND OLGA GARCIA HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 4-8-09 [8]

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

This order to show cause was issued because the debtors failed to file Schedule E, as required by Bankruptcy Rules 1007(b)(1), (c), 11 U.S.C. § 521(a).

If an individual debtor in a voluntary chapter 7 case or in a chapter 13 case fails to file "all of the information required under" section 521(a)(1) [list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs with section 342(b) certificate, copies of employer payment advices, statement of monthly net income, statement of reasonably anticipated increases in income or expenditures] within 45 days of the filing of the petition, the case "shall be automatically dismissed effective on the 46th day." See 11 U.S.C. § 521(i)(1). The 45th day was May 3 and the missing documents had not been filed. Thus, the petition was automatically dismissed effective on May 4, the 46th day after the petition filing.

72. 09-21797-A-7 CONNECT 2 WIRELESS, INC.
PJR #1
TRI COUNTIES BANK, VS.

HEARING - MOTION FOR
APPROVAL OF STIPULATION FOR
RELIEF FROM THE AUTOMATIC STAY
4-28-09 [32]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by Tri Counties Bank, 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.

The movant, Tri Counties Bank, moves the court to approve a stipulation between the bank and the trustee lifting the automatic stay to permit the bank to dispose of its collateral, a Ford F250 vehicle, repossessed by the bank pre-petition. The bank has made three unsuccessful pre-petition attempts to sell the vehicle at an auction for \$7,600. The bank's claim secured by the vehicle totals approximately \$11,585.44. Given this, 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 movant may 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. The stipulation will be approved.

FINAL RULINGS BEGIN HERE

73. 09-20803-A-7 AUTO FIDELITY GROUP, INC. HEARING - AMENDED MOTION TO
FJL #3 APPROVE AUCTIONEER'S COMPENSATION
(\$3,679.80)
4-6-09 [29]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 on behalf of West Auctions, auctioneer for the estate, has filed West's first and final application for approval of compensation. The requested compensation consists of \$3,679.80 in fees and \$0.00 in expenses. This application covers an online sale of estate personal property on March 5, 2009. The sale generated gross proceeds of \$18,399. The requested compensation represents West's 20% auctioneer fee, resulting in \$14,719.20 of net proceeds for the estate. The court approved West's employment as auctioneer for the estate on February 4, 2009.

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, conducting of an online sale of estate personal property, including motorcycle clothing and accessories.

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

74. 08-35404-A-7 DEBRA BEAR HEARING - MOTION TO
09-2032 CWS #2 DISMISS COUNTER-COMPLAINT FOR
DAVEEN WILLIAMS, VS. FAILURE TO STATE A CLAIM UPON
DEBRA J. BEAR WHICH RELIEF MAY BE GRANTED AND
TO LACK OF SUBJECT MATTER
JURISDICTION
4-9-09 [15]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the defendant / counter-claimant 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.

Daveen Williams, the plaintiff in this proceeding, moves to dismiss the counterclaim on the ground that it fails to state a claim for breach of contract. In the counterclaim, the defendant seeks an accounting and damages. The plaintiff alleges that the counterclaim is barred by the doctrine of judicial estoppel because the defendant did not list the counterclaim in her schedules and because the defendant has no standing to bring the counterclaim. She asserts that the counterclaim belongs to the bankruptcy estate and therefore can only be asserted by the bankruptcy trustee.

The court agrees. Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b), requires dismissal when a complaint fails to state a claim upon which relief can be granted. "In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

Judicial estoppel bars the prosecution of a claim by a debtor who previously failed to disclose the claim in his bankruptcy schedules. Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 784-85 (9th Cir. 2001). The debtor must know enough facts to know that a claim exists during the pendency of the bankruptcy case. Id.

Here, the defendant did not list the counterclaim in her Schedule B. Item 21 of Schedule B specifically required the defendant to disclose other claims of every nature, including "counterclaims of the debtor." The defendant listed nothing. Further, the defendant's counterclaim for breach of contract arises from a business venture between her and the plaintiff that ended in late 2007. See Counterclaim ¶ 9. The defendant did not file the underlying bankruptcy case until October 24, 2008, nearly one year after her business venture with the plaintiff ended. This means that the defendant knew of enough facts by the petition date to realize that she had a claim against the plaintiff. The trustee issued a report of no distribution on November 18, 2008 and the defendant received her discharge on January 26, 2009. In light of the above, the court concludes that judicial estoppel bars the defendant from prosecuting the alleged counterclaim against the plaintiff.

Finally, even if the defendant is not barred by judicial estoppel in the prosecution of the counterclaim, she has no standing to bring any such claim because it is owned by the estate. Only the trustee would have standing to prosecute the claim. And, while the no asset report and the closure of the bankruptcy estate had the legal effect of abandoning property of the estate to the defendant, this claim was not abandoned to her because it was not scheduled. See 11 U.S.C. § 554(c).

Hence, the counterclaim will be dismissed. The motion will be granted.

75. 09-25405-A-7 STEPHEN NYE
PD #1
BANK OF AMERICA MORTGAGE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [7]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The

failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 Carmichael, California. The property has a value of \$225,000 and it is encumbered by claims totaling approximately \$324,606. The movant's deed is in first priority position and secures a claim of approximately \$279,382.

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.

76. 09-21008-A-7 DENNIS/FLORENCE BARLESI HEARING - U.S. TRUSTEE'S MOTION TO
UST #2 DISMISS CASE
4-6-09 [18]

Final Ruling: The parties have agreed to continue this motion to June 22, 2009 at 9:00 a.m.

77. 09-23808-A-7 GIANA ABERNATHY HEARING - MOTION FOR
RCO #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A., VS. 4-10-09 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 Rancho Cordova, California. The property has a value of \$87,000 and it is encumbered by claims totaling approximately \$267,162. 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.

78. 09-24408-A-7 BRIAN SHAW HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-10-09 [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, Mortgage Electronic Registration Systems, Inc., seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of \$285,000 and it is encumbered by claims totaling approximately \$541,004. The movant's deed is in first priority position and secures a claim of approximately \$441,004.

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 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.

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

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

79. 09-21511-A-7 ELIZABETH ROGERS-COX HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
INDYMAC BANK FSB, VS. 4-2-09 [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, Indymac Federal Bank, seeks relief from the automatic stay as to a real property in Woodland, California. The movant has produced evidence that the property has a value of \$212,000 and it is encumbered by claims totaling approximately \$452,052. 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 \$410,430.

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. And, in the statement of financial affairs, the debtor has indicated that the property was foreclosed pre-petition, in September of 2008.

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

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

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

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

80. 09-25912-A-7 ABDUL AHMADI HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 4-10-09 [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 Sacramento, California. The property has a value of \$150,000 and it is encumbered by claims totaling approximately \$257,007. 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.

81. 09-22013-A-7 MARK/VICKI ORSILLO HEARING - MOTION FOR
PD #2 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 4-13-09 [65]

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 Oroville, California. The property has a value of \$105,000 and it is encumbered by claims totaling approximately \$151,828. 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.

82. 09-24415-A-7 LAZARO/SHANNON CHONG HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
CITIZENS AUTO FINANCE, VS. 4-3-09 [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, Citizens Auto Finance, seeks relief from the automatic stay with respect to a 2007 Nissan Titan. The vehicle has a value of \$14,715 and its secured claim is approximately \$21,046.

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 24, 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.

83. 08-21220-A-12L JIM VANTRESS HEARING - MOTION
08-2203 WW #4 FOR AUTHORITY TO COMPROMISE
JIM VANTRESS, VS. 4-10-09 [66]
JOANNE SPARKS

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 chapter 12 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 debtor seeks approval of a settlement agreement among the debtor, U.S. Bank, Stewart Title Guaranty Company, and Ameriquest Mortgage. The settlement resolves the nature, extent, validity, and priority of liens on the debtor's personal property and real property in Brown Valley, California. Both Ameriquest and U.S. Bank have claimed a first priority interest in the property. U.S. Bank also has claimed an interest in the debtor's personal property. Under the terms of the compromise, U.S. Bank will have three allowed

claims against the estate, including a claim for \$75,000 secured by the real property, a claim for \$284,000 secured by the personal property, and an unsecured claim for any deficiency balance. Stewart Title then will pay \$75,000 to U.S. Bank and receive an assignment of U.S. Bank's interest in the real property. Stewart Title will subordinate the assigned interest of U.S. Bank to Ameriquest's deed against the real property. Finally, Ameriquest and Stewart Title will be granted relief from the automatic stay with respect to the real property.

The settlement resolves this adversary proceeding in its entirety, except for the claims against Roy Lanza. Roy Lanza, trustee of the Roy and Sondra Lanza Family Trust dated February 8, 1996, has not answered the debtor's complaint. Accordingly, the debtor will be moving for an entry of default and default judgment against Mr. Lanza.

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

On a motion by a chapter 12 debtor, then, 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 the creditors have agreed on the nature, extent, validity, and priority of their interests in the real and personal property of the debtor and given the avoidance of further delay and costs of 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 debtor, 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.

84. 09-25123-A-7 STEPHEN/MEDY PODLISKA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 4-13-09 [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, Bank of America Mortgage, seeks relief from the automatic stay as to a real property in Los Molinos, California. The property has a value of \$120,000 and it is encumbered by claims totaling approximately \$129,746. 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.

85. 09-26223-A-7 VERONICA GOMEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-17-09 [9]

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

This order to show cause was issued because the debtor filed a master address list on April 9, 2009, but did not pay the \$26 filing fee.

However, the debtor paid the filing fee on April 28, 2009. No prejudice has resulted from the delay.

86. 09-24024-A-7 TODD REICH HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SVCING., INC., VS. 4-10-09 [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 Home Mortgage Servicing, Inc., seeks relief from the automatic stay as to a real property in Cottonwood, California. The property has a value of \$293,000 and it is encumbered by claims totaling approximately \$410,288. The movant's deed is in first priority position and secures a claim of approximately \$363,832.

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.

87. 08-39325-A-7 MICHELLE DE LA CRUZ HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 4-2-09 [15]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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., as nominee for DHI Mortgage Company, seeks relief from the automatic stay as to a real property in Lincoln, 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 \$180,000 and it is encumbered by claims totaling approximately \$232,150. The movant's deed is in first priority position and secures a claim of approximately \$172,078.

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 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.

88. 09-24629-A-7 KATHRYN BARRIENTOS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-22-09 [13]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$99 due on April 16, 2009 was not paid.

However, the debtor paid the installment fee on April 24, 2009. No prejudice has resulted from the delay.

89. 09-21333-A-7 KHADER/SUZY NINO HEARING - MOTION TO
SF #1 CONTINUE DEADLINE FOR OBJECTIONS
TO EXEMPTION IN 401K FUNDS
3-30-09 [24]

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 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.

Creditors Abraham and Betty Damouny move the court to continue the deadline for objecting to the debtors' \$220,000 claim of exemption in a 401k plan from April 1 through May 14, 2009. The Damounys loaned \$400,000 cash to the debtors. In return, the debtors promised the Damounys to repay the loan from the refinance of a multi-dwelling investment property. See Exhibit A to Declaration of Abram Feuerstein. The debtors allegedly refinanced the subject property but did not repay the Damounys. The Damounys would like to investigate the source used to finance the 401k plan, including whether the debtors diverted funds from the refinance to the 401k plan.

Fed. R. Bankr. P. 4003(b) provides that:

"A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person."

Here, the meeting of creditors concluded on March 2, 2009. This motion was filed on March 30, 2009, before the expiration of the 30-day deadline after the conclusion of the meeting of creditors. Hence, the motion is timely. The Damounys have also established cause in that they wish to investigate the debtors' 401k plan. The debtors have scheduled the value of the plan at \$220,000 and have claimed an exemption for the full value of the plan. The deadline for objecting to the debtors' exemption in the plan will be extended to May 14.

90. 09-24334-A-7 JOHNNY/KATHY GONZALES HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 4-8-09 [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, 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 \$330,000 and it is encumbered by claims totaling approximately \$342,968. 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.

91. 09-23837-A-7 ESTEL/VELTA WOODCOCK HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
GREEN TREE SERVICING, LLC, VS. 4-3-09 [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, Green Tree Servicing, seeks relief from the automatic stay as to a manufactured home located in Yakima, Washington.

The debtors have filed a non-opposition to the motion.

The property has a value of \$11,000 and it is encumbered by claims totaling approximately \$17,333. See Schedule B. 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.

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 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. 05-29741-A-7 BERNARD/DANYELLE ARCHIBEQUE HEARING - MOTION TO
WSD #3 CLOSE CASE, AND TO RETAIN JURIS-
DICTION OVER AND EXCEPT ESTATE'S
INTEREST IN ARCHIBEQUE TRUST FROM
ABANDONMENT WHEN CASE IS CLOSED
4-8-09 [91]

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 moves for the court to close the case, to except the estate's interest in a trust from abandonment, and to retain jurisdiction over the estate's interest in the trust. The trust is the Danyelle Archibeque Trust, which was funded from assets of the Mildred P. Anderson Trust, dated July 8, 2005. Distributions under the Archibeque Trust are due in about six years from now, when Mrs. Archibeque turns 35 years of age. The trustee has been unable to liquidate the estate's interest in the trust at this time.

11 U.S.C. § 554(c) provides that any property scheduled but not otherwise administered is abandoned and administered for purposes of section 350 at the time of closing, unless the court orders otherwise. Section 554(c) provides the court with discretion to except from abandonment upon closing property of the estate. See also 11 U.S.C. § 554(d) (providing that "[u]nless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate").

The debtor's interest in the Archibeque Trust is listed in Amended Schedule B. The debtor has claimed an exemption in the trust in the amount of \$19,620. See Second Amended Schedule C. Outside the estate's interest in the trust, the trustee has no other assets to administer. Given the estate's interest in the trust, the court will close the case, but it will except that interest from abandonment and administration and will retain jurisdiction over the interest. The motion will be granted.

93. 08-38145-A-7 ISAC/ENRIQUETA HERNANDEZ HEARING - MOTION TO
DMB #1 AVOID LIEN
VS. WELLS FARGO FIN'L CALIF., INC., VS. 3-31-09 [34]

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 respondent creditor 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.

A judgment was entered against Debtor Enriqueta Hernandez in favor of Wells Fargo Financial California, Inc. for the sum of \$3,366.95 on August 4, 2008. The abstract of judgment was recorded with Tehama County on September 5, 2008. That lien attached to the debtor's residential real property in Red Bluff, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$42,500 as of the date of the petition. The unavoidable liens total \$0.00 on that same date. The debtor claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

94. 08-38145-A-7 ISAC/ENRIQUETA HERNANDEZ HEARING - MOTION TO
DMB #2 AVOID LIEN
VS. AQUA FINANCE, INC. 3-31-09 [29]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor 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.

A judgment was entered against Debtor Isac Hernandez in favor of Aqua Finance, Inc., for the sum of \$5,596.62 on September 16, 2008. The abstract of judgment was recorded with Tehama County on October 6, 2008. That lien attached to the debtor's residential real property in Red Bluff, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$42,500 as of the date of the petition. The unavoidable liens total \$0.00 on that same date. The debtor claimed an exemption pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

95. 09-20946-A-7 CHRISTOPHER/SHERRY GUNN HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
CHRYSLER FINANCIAL SVCS., ETC., VS. 4-10-09 [26]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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, Chrysler Financial Services Americas, seeks relief from the automatic stay with respect to a leased 2006 Jeep Wrangler. The outstanding amount under the lease agreement totals \$13,116. The debtor also has not made 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 February 24, 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.

96. 09-25848-A-7 MITCHEL/SHELLY LONG HEARING - MOTION TO
PLG #1 STRIKE DUPLICATE FILING
4-7-09 [8]

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 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 debtors seek dismissal of this case on the basis that they erroneously filed two cases. The other case is Case No. 09-25843. Given the erroneous filing of the two cases, this case (Case No. 09-25848) will be dismissed. No other relief will be granted.

97. 08-34449-A-7 CYNTHIA LEWIS HEARING - MOTION TO
PP #2 EXTEND DEADLINE TO FILE COMPLAINT
TO DENY DISCHARGE/DISCHARGEABILITY
4-10-09 [38]

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 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.

Creditors Christopher and Laura Harper move a second time for a 90-day extension, from April 13 to July 12, 2009, of the deadlines for filing complaints objecting to discharge and determining the dischargeability of debts pursuant to 11 U.S.C. §§ 727 and 523. The movants also seek extension of the deadline for filing motions to dismiss pursuant to 11 U.S.C. § 707(b). The movants are the children of the debtor's late husband. They seek the extensions because they are waiting on the debtor's production of documents to the trustee in order for them to investigate the disposal of funds from the probate estate of their late father.

Fed. R. Bankr. R. 1017(e)(1) provides that the court may grant an extension of the deadline for filing section 707(b) motions to dismiss upon a showing of cause. The motion for an extension must be filed before the time for filing the motions to dismiss has expired. Fed. Bank. R. 1017(e)(1).

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing section 727 complaints for cause. Fed. R. Bankr. P. 4007(c) provides that the court may extend the deadline for filing section 523 complaints for cause. The motions must be filed before the deadlines expire.

This court's February 10, 2009 order extended all three deadlines in favor of the movants to April 13, 2009. See Docket No. 34. Hence, this motion is timely as it was filed on April 10, before the April 13 deadlines.

Given that the movants are still waiting on the debtor's production of documents, in order for them to investigate the disposal of funds from the probate estate of their late father, cause for extension of the deadlines exists. The motion will be granted and the deadlines will be extended to July 12, 2009.

98. 08-34449-A-7 CYNTHIA LEWIS HEARING - MOTION FOR
MFB #2 EXTENSION OF DEADLINES
4-13-09 [42]

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 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 trustee seeks a 91-day extension, from April 13 to July 13, 2009, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee seeks the extension because the debtor has not yet produced a complete accounting of the administration of the probate estate of the debtor's late husband and her 2008 income tax returns.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing section 727 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing discharge complaints was April 13, 2009. See Docket No. 32. The instant motion was filed on April 13. Thus, the motion complies with the temporal requirements of the rule. Given the debtor's failure to provide the trustee with requested accounting of the probate estate and 2008 tax returns, the court concludes that cause for the extension exists. The motion will be granted and the deadline extended to July 13, 2009.

99. 09-20650-A-7 ADA NAVARRO HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 4-8-09 [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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$402,291. The movant's deed is in first priority position and secures a claim of approximately \$371,613.

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 20, 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.

100. 09-20751-A-7 MIKHAIL/TATYANA MITROFANOV HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-21-09 [20]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$54 due on April 16, 2009 was not paid.

However, the debtor paid the installment fee on April 27, 2009. No prejudice has resulted from the delay.

101. 09-21956-A-7 ESTRELLA ALIZAGA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [22]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of \$74.75 due on April 6, 2009 was not paid.

However, the debtor paid the installment fee on April 13, 2009. No prejudice has resulted from the delay.

102. 09-24557-A-7 KAO/KOY SAECHAO HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-6-09 [11]

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

This order to show cause was issued because the debtors failed to file an attorney's disclosure statement, Exhibit D with the credit counseling certificates for both debtors, 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) and 2016(b), 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C).

However, the debtors filed all missing documents on March 17 and April 8, 2009. No prejudice has resulted from the delay.

103. 09-22559-A-7 ERNEST FERGUSON
MET #1
BANK OF THE WEST, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-13-09 [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, Bank of the West, seeks relief from the automatic stay with respect to a 2003 Winnebago Realta motor home. The vehicle has a value of \$22,000 and its secured claim is approximately \$34,289. 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. 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.

104. 07-29563-A-11 442 NORTH SUTTER STREET LLC
08-2157 JMQ #3
442 NORTH SUTTER STREET LLP, VS.
SAN JOAQUIN COUNTY

CONT. HEARING - MOTION FOR
JUDGMENT OF THE PLEADINGS
2-19-09 [71]

Final Ruling: This motion was continued from March 23 because U.S. Magistrate Judge Mueller had taken under submission the plaintiff's motion to clarify the dismissal of the prior district court case and to reopen that case. Judge Mueller denied the motion, ruling that the dismissal of the district court case was with prejudice as to all plaintiffs, including both the plaintiff individually and the family trust of which the plaintiff was a trustee.

However, the plaintiff has objected to Judge Mueller's report and recommendations pursuant to 28 U.S.C. § 636(b)(1). See Judge Mueller's Findings and Recommendations at 2, ln. 18-23. The defendant has 10 days to file a reply to the objection. Id. A district court judge then will then review de novo the objected to portions of Judge Mueller's report and

recommendation. 28 U.S.C. § 636(b)(1). The district court judge may accept, reject, or modify, in whole or in part, the report and recommendations. The district court judge may also receive further evidence or recommit the case back to Judge Mueller with instructions. 28 U.S.C. § 636(b)(1).

Until the district judge has ruled, this motion will be removed from calendar. The defendant shall restore it to calendar on 14 days' notice when the district court has ruled (regardless of whether any appeal follows). When re-set for hearing, no party may file anything further other than a copy of the district court's disposition.

105. 09-23463-A-7 KEVIN/TERESA GALART HEARING - MOTION FOR
JMS #1 RELIEF FROM AUTOMATIC STAY
CHASE HOME FINANCE, LLC, VS. 4-10-09 [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, Chase Home Finance, seeks relief from the automatic stay as to a real property in Woodland, California. The property has a value of \$287,000 and it is encumbered by claims totaling approximately \$465,733. The movant's deed is in first priority position and secures a claim of approximately \$374,733.

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 20, 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.

106. 09-25665-A-7 TRINITY MINES, INC.

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-17-09 [8]

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

This order to show cause was issued because the debtor failed to file an attorney's disclosure statement, schedules A, B, D, E, F, G, and H, the statement of financial affairs, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), 11 U.S.C. § 521(a).

However, the debtor filed all missing documents on April 20, 2009. No prejudice has resulted from the delay.

107. 09-25571-A-7 ROGER/KATHLEEN VALDIVIA
EAT #1
BANK OF AMERICA, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-09 [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 Cumming, Georgia. The property has a value of \$200,000 and it is encumbered by claims totaling approximately \$264,467. The movant holds the first, second and third deeds against the property, but the motion relates only to the second deed, securing a claim of approximately \$27,294. The claim in first priority position totals approximately \$204,434.

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

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

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

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

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

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

108. 09-25771-A-7 MANUEL COSTA, JR. HEARING - MOTION FOR
JHW #1 RELIEF FROM AUTOMATIC STAY
AMERICREDIT FINANCIAL SVCS., INC., VS. 4-13-09 [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, Americredit Financial Services, Inc., seeks relief from the automatic stay with respect to a 2007 Nissan Altima. The vehicle has a value of \$16,000 and its secured claim is approximately \$24,733.

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.

109. 09-25074-A-7 EDWARD/CELESTE SAPIDA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [8]

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

This order to show cause was issued because the debtors failed to file an

attorney's disclosure statement, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), and 11 U.S.C. § 521(a).

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

110. 09-25079-A-7 FELIPE GALVAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [9]

Final Ruling: This order to show cause will be discharged as moot because the petition was dismissed previously on April 30, 2009.

111. 09-21788-A-11 MC2 WINES HEARING - MOTION FOR
DTD #2 RELIEF FROM AUTOMATIC STAY
DEERE AND COMPANY, VS. 4-1-09 [83]

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, Deere & Company, seeks relief from the automatic stay with respect to a John Deere utility tractor and a John Deere loader. The movant has produced evidence that the value of the tractor is \$8,661 and the value of the loader is \$1,500, for a total of \$10,161, while the secured claim against the vehicles totals approximately \$10,290. See Declaration of Kristen Jagerson ¶6.

Additionally, the debtor has not made three pre-petition and two post-petition payments to the movant. Also, the movant does not have evidence of adequate insurance coverage for the vehicles. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to 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 vehicles are being used by the debtor without compensation and are depreciating in value.

112. 09-23388-A-7 PATRICK MURRAY AND HEARING - MOTION FOR
HEIDI LITTLE RELIEF FROM AUTOMATIC STAY ETC
CALIF. STATE AUTO. ASSN., VS. 4-6-09 [13]

Final Ruling: The motion will be dismissed.

First, the motion is not accompanied by a separate notice of hearing indicating whether and when written opposition must be filed. The notice of motion and motion does not state whether and when written opposition must be filed.

Second, a motion placed on the calendar by the moving party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the motion.

This motion was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

113. 09-25088-A-7 GREG/JULIE BUTCHER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [16]

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

This order to show cause was issued because the debtors failed to file an attorney's disclosure statement, the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), 11 U.S.C. § 521(a) and 11 U.S.C. § 707(b)(2)(C).

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

114. 09-21392-A-7 LUZ PENA HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE, LLC, VS. 4-2-09 [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 Mountain House, California. The property has a value of \$275,500 and it is encumbered by claims totaling approximately \$562,533. 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 2, 2009.

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

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

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

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

115. 08-39094-A-7 VIVENCIO/MERCIA CARAGAY HEARING - MOTION TO
SAC #1 CONVERT CASE TO A PROCEEDING
UNDER CHAPTER 13
4-2-09 [37]

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

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

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

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

Amended Schedules I and J show that the debtors have sufficient disposable income to make the proposed \$2,900 in chapter 13 plan payments. See Docket Nos. 25 & 27. The debtors' income is regular as Debtor Vivencio Caragay is employed as an auditor and appraiser for the State Board of Equalization, while Debtor Mercia Caragay receives social security and disability income. And, the debtors have noncontingent, liquidated secured debt in the amount of \$621,449 and noncontingent, liquidated unsecured debt in the amount of \$122,044. See Summary of Schedules, Docket No. 25. Given the foregoing, the court concludes that the debtors are eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

116. 09-24195-A-7 JOHN/BRENDA BATCHELDER HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-17-09 [11]

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

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The first installment fee in the amount of \$75 due on April 13, 2009 was not paid.

However, the debtor paid the installment fee on April 29, 2009. No prejudice has resulted from the delay.

117. 08-38797-A-7 JUAN/VELIA ESPARZA HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 3-31-09 [30]

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., as nominee for Indymac Bank, seeks relief from the automatic stay as to a real property in Lodi, California.

Given the entry of the debtor's discharge on April 1, 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 \$454,000 and it is encumbered by claims totaling approximately \$936,649. The movant's deed is in first priority position and secures a claim of approximately \$881,556.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 23, 2009.

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.

118. 08-38897-A-7 KENNETH/LISA WOOTEN HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 4-8-09 [26]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 Mortgage, seeks relief from the automatic stay as to a real property in Placerville, California.

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

dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$227,000 and it is encumbered by claims totaling approximately \$240,653. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 2, 2009.

Thus, the motion will be granted 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.

119. 09-25598-A-7 JOSE/DIANA GALVAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-16-09 [8]

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

This order to show cause was issued because the debtors failed to file the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rules 1007(b)(1), (c), 11 U.S.C. § 521(a), and 11 U.S.C. § 707(b)(2)(C).

However, the debtors filed all missing documents on April 29, 2009. No prejudice has resulted from the delay.

120. 09-23335-A-7 CHARLES/NANETTE SMITH CONT. HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MORTGAGE, INC., VS. 4-1-09 [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, Wells Fargo Home Mortgage, Inc., seeks relief from the automatic stay as to a real property in Sutter Creek, California. The movant has produced evidence that the property has a value of \$595,000 and it is encumbered by claims totaling approximately \$654,489. See Declaration of Carol Olson ¶ 7. 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. See Docket No. 39 at 25.

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.